Laws and Resolutions

OF THE

STATE OF MONTANA

ENACTED BY THE

Forty-Sixth Legislature

In Regular

Session

Held at Helena, the Seat of Government

January 3, 1979 to April 20, 1979

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MONTANA LEGISLATIVE COUNCIL

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OFFICERS AND MEMBERS
MONTANA
FORTY-SIXTH
LEGISLATURE 1979
SENATE

William L. Mathers, President of the Senate
Allen Kolstad, President Pro Tempore

24 Democrats
26 Republicans

50 Senators

NAME	RESIDENCE OR MAILING ADDRESS	DIST. NO.	COUNTY OF RESIDENCE	POLITICS
Aklestad, Gary C.	638 First Street South, Shelby 59474	6	Toole	Republican
Anderson, Mike	Rt. #2, Box 346, Belgrade 59714	40	Gallatin	Republican
Blaylock, Chet	502 3rd Avenue, Laurel 59044	35	Yellowstone	Democrat
Boylan, Paul F.	3747 So. 19th Road, Bozeman 59715	38	Gallatin	Democrat
*Brown, Bob	Route #2, Whitefish 59937	10	Flathead	Republican
Brown, Steve	917 Cannon, Helena 59601	15	Lewis and Clark	Democrat
Conover, Max	P.O. Box 46, Broadview, 59015	36	Yellowstone	Democrat
*Dover, Harold L.	712 7th Avenue North, Lewistown 59457	24	Fergus	Republican
*Etchart, Mark	Box 229, Glasgow 59230	2	Valley	Republican
*Fasbender, Larry	Rt. 1, Box 23, Fort Shaw 59443	17	Cascade	Democrat
Galt, Jack E.	Martinsdale 59053	23	Meagher	Republican
Goodover, Pat M.	803 Forest Avenue, Great Falls 59404	22	Cascade	Republican
*Graham, Carroll	Drawer K, Lodge Grass 59050	29	Big Horn	Democrat
Hafferman, William F.	Route 3, Box 1274, Libby 59923	11	Lincoln	Democrat
*Hager, Tom	150 Norris Court, Billings 59101	30	Yellowstone	Republican
*Hazelbaker, Frank W.	P.O. Box 430, Dillon 59725	41	Beaverhead	Republican
Healy, John E. (Jack)	624 W. Granite, Butte 59701	44	Silver Bow	Democrat
Himsl, Matt	305 4th Avenue E, Kalispell 59901	9	Flathead	Republican
*Jergeson, Greg	Box 8, Star Route 71, Chinook 59523	3	Blaine	Democrat
Kolstad, Allen C.	Box 648, Chester 59522	5	Liberty	Republican
*Lensink, Everett R.	1611 S. Willson, Bozeman 59715	39	Gallatin	Republican
*Lockrem, Lloyd C., Jr.	2750 Gregory Drive S., Billings 59102	32	Yellowstone	Republican
*Lowe, William R. (Bill)	1008 Poly, Billings 59102	33	Yellowstone	Republican
*McCallum, George	Niarada 59852	12	Sanders	Republican
Manley, John E.	Drummond 59832	14	Granite	Democrat
Manning, Dave	Hysham 59038	25	Treasure	Democrat
*Mathers, William L.	314 S. Merriam, Box 267, Miles City 59301	26	Custer	Republican
*Mehrens, John (Sandy)	206 Evergreen, Anaconda 59711	45	Deer Lodge	Democrat
Nelson, Harold C.	704 3rd Street S.E., Cut Bank 59427	7	Glacier	Republican
Norman, Bill	440 Connell Avenue, Missoula 59801	47	Missoula	Democrat
O'Hara, Jesse A.	257-21st Ave. N.W., Great Falls 59404	18	Cascade	Republican
Olson, S. A.	P.O. Box 928, Glendive 59330	28	Dawson	Republican
Palmer, Bob	228 Woodford Street, Missoula 59801	48	Missoula	Democrat
*Peterson, Bob	3049 Atherton Lane, Butte 59701	42	Silver Bow	Democrat
*Rasmussen, A. T. "Tom"	731 Stuart, Helena 59601	16	Lewis and Clark	Republican
Regan, Pat	204 Mountain View, Billings 59101	31	Yellowstone	Democrat
*Roskie, George F.	3440 6th Avenue S., Great Falls 59405	21	Cascade	Republican
Ryan, Patrick L.	3104 2nd Avenue S., Great Falls 59405	19	Cascade	Democrat
Severson, Elmer D.	Box 28, Route 1, Stevensville 59870	46	Ravalli	Republican
*Smith, Ed B.	Dagmar 59219	1	Sheridan	Republican
*Smith, Richard G.	Box 411, Columbia Falls 59912	8	Flathead	Democrat
Stephens, Stan	422 3rd Street, Havre 59501	4	Hill	Republican
*Stimatz, Lawrence G.	1615 C Street, Butte 59701	43	Silver Bow	Democrat
Story, Pete	Emigrant 59027	37	Park	Republican
*Thiessen, Cornie R.	Box 195, Lambert 59243	27	Richland	Democrat
*Thomas, Bill	3440 12th Avenue S., Great Falls 59405	20	Cascade	Democrat
Towe, Thomas E.	2739 Gregory Drive S., Billings 59102	34	Yellowstone	Democrat
*Turnage, Jean A.	P.O. Box 450, Polson 59860	13	Lake	Republican
*Van Valkenburg, Fred	820 Hart Street, Missoula 59801	50	Missoula	Democrat
*Watt, Robert D.	451 Kensington Avenue, Missoula 59801	49	Missoula	Democrat

*Term Expires Jan., 1981
All Other Terms Expire Jan., 1983

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HOUSE OF REPRESENTATIVES

Harold E. Gerke, Speaker of the House
Joe Brand, Speaker Pro Tempore

55 Democrats
45 Republicans

100 Representatives

NAME	RESIDENCE OR MAILING ADDRESS	DIST. NO.	COUNTY OF RESIDENCE	POLITICS
Anderson, Robert Lewis	Box 8, Bigfork 59911	16	Flathead	Republican
Azzara, James	305 S. 4th West, Missoula 59801	96	Missoula	Democrat
Baeth, William R. (Bill)	805 Minnesota Ave., Libby 59923	21	Lincoln	Democrat
Bardanouve, Francis	Route 1, Box 124, Harlem 59526	6	Blaine	Democrat
Bengtson, Esther G.	Shepherd 59079	59	Yellowstone	Democrat
Bennett, W. F.	P.O. Box 1516, Columbia Falls 59912	15	Flathead	Republican
Bertelsen, Verner L.	Rural Route, Ovando 59854	27	Powell	Republican
Brand, Joe	800 Montana Avenue, Deer Lodge 59722	28	Powell	Democrat
Burnett, James H. "Jim"	Luther 59051	71	Carbon	Republican
Conroy, Thomas R.	607 W. 3rd Street, Hardin 59034	58	Big Horn	Democrat
Cooney, Mike	P.O. Box 3331, Butte 59701	83	Silver Bow	Democrat
Curtiss, Aubyn A.	Box 102, Fortine 59918	20	Lincoln	Republican
Daily, Fred (Fritz)	1057 West Steel, Butte 59701	87	Silver Bow	Democrat
Dassinger, E. N. (Ernie)	Box 206, Forsyth 59327	50	Rosebud	Democrat
Day, William M. (Willie)	Bloomfield Route, Glendive 59330	54	Dawson	Democrat
Donaldson, Eugene C. (Gene)	3890 Helberg Drive, Helena 59601	29	Lewis and Clark	Republican
Dozier, Robert	3923 3rd Avenue S., Billings 59101	61	Yellowstone	Democrat
Dussault, Ann Mary	P.O. Box 8207, Missoula 59807	95	Missoula	Democrat
Ellerd, Robert A.	2206 Bridger Drive, Bozeman 59715	75	Gallatin	Republican
Ellis, Howard L.	Rt. #4, Piltzville, Missoula 59801	93	Missoula	Republican
Ellison, Orval S.	West Boulder Rt., McLeod 59052	73	Park	Republican
Ernst, Gene N.	Box 39, Stanford 59479	47	Judith Basin	Republican
Eudaily, Ralph S.	234 Kensington Ave., Missoula 59801	100	Missoula	Republican
Fabrega, Jay	812 Grizzly Drive, Great Falls 59404	44	Cascade	Republican
Fagg, Harrison G.	1414 Mystic Drive, Billings 59102	63	Yellowstone	Republican
Feda, G. C. "Jerry"	206 2nd Avenue N., Glasgow 59230	4	Valley	Republican
Frates, Gene	1601 Bitterroot Drive, Billings 59101	60	Yellowstone	Democrat
Gerke, Harold E.	202 Mtn. View Blvd., Billings 59101	62	Yellowstone	Democrat
Gesek, Patricia E.	211 Central Ave., Whitefish 59937	19	Flathead	Democrat
Gilligan, Peter J., Jr.	P.O. Box 6413, Great Falls 59406	38	Cascade	Democrat
Gould, R. Budd	2121 35th Avenue, Missoula 59801	98	Missoula	Republican
Hand, Bill	P.O. Box 1298, Dillon 59725	82	Beaverhead	Democrat
Harper, Hal	221 South Cooke, Helena 59601	30	Lewis and Clark	Democrat
Harrington, Dan W.	1201 N. Excelsior, Butte 59701	88	Silver Bow	Democrat
Hayne, Harriet	P.O. Box 285, Dupuyer 59432	14	Pondera	Republican
Hemstad, Andrea "Andy"	P.O. Box 1314, Great Falls 59403	40	Cascade	Republican
Hirsch, Les J.	Broadus Stage, Miles City 59301	52	Custer	Democrat
Holmes, Polly	1620 Avenue F, Billings 59102	67	Yellowstone	Democrat
Huennekens, Herb	3216 Rimrock Rd., Billings 59102	68	Yellowstone	Democrat
Hurwitz, Burt L.	Box 304, White Sulphur Springs 59645	45	Meagher	Republican
Iverson, Dennis	Box 66, Whitlash 59545	9	Liberty	Republican
Jensen, William Ray	P.O. Box 73, St. Ignatius 59865	25	Lake	Republican
Johnson, Vicki	Star Rt., Whitebird, Columbus 59019	72	Stillwater	Democrat
Johnston, George R.	504 3rd St. S.E., Cut Bank 59427	13	Glacier	Democrat
Kanduch, Joe F., Sr.	Barker Creek, Anaconda 59711	89	Deer Lodge	Democrat
Keedy, Michael H.	498 Van Sant Road, Kalispell 59901	18	Flathead	Democrat
Kemmis, Daniel	P.O. Box 8687, Missoula 59807	94	Missoula	Democrat
Kessler, Gerald R.	34 Avenue B, Billings 59101	66	Yellowstone	Democrat
Keyser, Kerry	Box 126, Ennis 59729	81	Madison	Republican
Kropp, Paul K.	Box 520, Malta 59538	5	Phillips	Republican
Kvaalen, Oscar S.	Lambert 59243	53	Richland	Republican
Lien, Edward	SR 231, Box A33, Wolf Point 59201	49	McCone	Democrat
Lory, Earl C.	4795 Miller Creek Rd., Missoula 59801	99	Missoula	Republican
Lund, Art	Box 806, Scobey 59263	2	Daniels	Republican
McBride, Kathleen	3111 Carter Street, Butte 59701	85	Silver Bow	Democrat
Magone, Joseph M.	Rt. 1, Box 5, Superior 59872	24	Mineral	Democrat
Manning, Richard E.	810 7th Avenue N., Great Falls 59401	35	Cascade	Democrat
Manuel, Rex	R.R. 1, Box 42, Fairfield 59436	11	Teton	Democrat
Marks, Robert L. (Bob)	Box 116, Clancy 59634	80	Jefferson	Republican
Menahan, William (Red)	1304 W. 5th Street, Anaconda 59711	90	Deer Lodge	Democrat
Metcalf, Jerry	201 Vawter Street, Helena 59601	31	Lewis and Clark	Democrat
Meyer, Darryl	5306 4th Avenue S., Great Falls 59405	42	Cascade	Republican

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HOUSE OF REPRESENTATIVES

(Continued)

Moore, Jack K.	1200 32nd Street S.#85, Great Falls 59405	41	Cascade.....Republican
Nathe, Dennis G.	Redstone 59257	1	Sheridan.....Republican
Nordtvedt, Kenneth L., Jr.	118 Sourdough Ridge, Bozeman 59715	77	Gallatin.....Republican
Oberg, Danny	612 16th Street, Havre 59501	8	Hill.....Democrat
O'Connell, Helen G.	703 4th Avenue S.W., Great Falls 59404	34	Cascade.....Democrat
Pavlovich, Robert J. "Bob"	1375 Harrison Avenue, Butte 59701	86	Silver Bow.....Democrat
Pistoria, Paul G.	2421 Central Ave., Great Falls 59401	39	Cascade.....Democrat
Porter, Howard C.	2412 Ash Street, Billings 59101	65	Yellowstone.....Republican
Quilici, Joe	3040 Kossuth, Butte 59701	84	Silver Bow.....Democrat
Ramirez, Jack	4042 Pine Cove Road, Billings 59102	64	Yellowstone.....Republican
Reichert, Arlyne	1409 4th Ave S., Great Falls 59405	37	Cascade.....Democrat
Robbins, Hershel M.	915 1st St. East, Roundup 59072	46	Musselshell.....Democrat
Robbins, Ken	Conner 59827	91	Ravalli.....Democrat
Rosenthal, Jonas H.	206 8th St. N., Apt. 12, Great Falls 59401	43	Cascade.....Democrat
Roth, Audrey	P.O. Box 489, Big Sandy 59520	10	Chouteau.....Republican
Sales, Walter R.	R.R. 1, Box 25, Manhattan 59741	79	Gallatin.....Republican
Schultz, James M.	1210 7th Ave. N., Lewistown 59457	48	Fergus.....Republican
Scully, John P.	P.O. Box 1172, Bozeman 59715	76	Gallatin.....Democrat
Seifert, Carl A.	Route 1, Box 45B, Polson 59860	26	Lake.....Republican
Shelden, Arthur H. (Art)	Route 1, Box 1650, Libby 59923	22	Lincoln.....Democrat
Sivertsen, Robert	Box 2226, Havre 59501	7	Hill.....Republican
Smith, Carl M.	Olive 59343	57	Powder River.....Republican
South, Carroll V.	506 Miss. Avenue, Miles City 59301	51	Custer.....Democrat
Spilker, Barbara J. (Bobby)	801 Harrison Ave., Helena 59601	32	Lewis and Clark Republican
Staigmiller, John B.	P.O. Box 422, Cascade 59421	33	Cascade.....Democrat
Stobie, Chris H.	Eddy Route 2, Box 44, Thom. Fls. 59873	23	Sanders.....Republican
Teague, Wes	336 Monroe, Billings 59101	69	Yellowstone.....Democrat
Thoft, Bob	Rural Rt. 1, Box 45, Stevensville 59870	92	Ravalli.....Republican
Tropila, Joe	209 2nd St. N.W., Great Falls 59404	36	Cascade.....Democrat
Uhde, Jack Brian	721 3rd Street W., Kalispell 59901	17	Flathead.....Democrat
Underdal, Melvin	Box 605, Shelby 59474	12	Toole.....Republican
Vincent, John	209 East Lamme, Bozeman 59715	78	Gallatin.....Democrat
Vinger, Orren C.	517 Johnson, Wolf Point 59201	3	Roosevelt.....Republican
Waldron, Steve	2344 West Kent, Missoula 59801	97	Missoula.....Democrat
Williams, J. Melvin "Mel"	511 8th Ave., P.O. Box 245, Laurel 59044	70	Yellowstone.....Democrat
Wood, L.E. (Gene)	221 River Ave., Glendive 59330	55	Dawson.....Republican
Wyrick, Harold A.	Rural Route 3, Baker 59313	56	Fallon.....Republican
Yardley, Dan	P.O. Box 482, Livingston 59047	74	Park.....Democrat

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57		146	An act amending section 39-51-101, MCA, to change the title of the "Unemployment Compensation Law" to "Unemployment Insurance Law" and directing the Code Commissioner to make appropriate terminology changes. ....Page 198

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60	29		An act to amend section 39-3-604, MCA, to delete a reference to a certificate issued under what is now a repealed section. ..... Page 201
61	52		An act to amend the law relating to screening of junkyards; amending section 75-15-222, MCA; and repealing section 75-15-221, MCA. ..... Page 202
62	77		An act to amend section 61-8-207, MCA, to allow a left turn on a red signal from a one-way street to another one-street going left. ..... Page 202
63	140		An act to clarify the role of the workers' compensation judge, defining his jurisdiction and the nature of remedies he may impose; to revise the provisions relating to rescission, alteration, amendment, or compromise of orders, decisions, and awards; and to increase the additional award for unreasonable delay or refusal to pay compensation; amending sections 39-71-204, 39-71-611, 39-71-741, 39-71-2905, 39-71-2907, and 39-71-2909, MCA. ..... Page 204
64		50	An act to transfer the responsibility for actuarial valuations of police reserve funds from the Department of Community Affairs to the Department of Administration; amending section 19-10-205, MCA. ..... Page 206
65		87	An act to amend section 5-11-203, MCA, to modify the distribution of Senate and House journals to the State Historical Library, the Montana State Library, and state officers. ..... Page 207
66		98	An act to remove the provision providing compensation as Governor for the Lieutenant Governor when he is acting Governor; repealing section 2-15-303, MCA. ..... Page 208
67		159	An act to exempt from unemployment compensation coverage casual labor of less than $50 per quarter when such casual labor is not in the course of the employer's trade or business and when the individual is not regularly employed by such employer; amending section 39-51-204, MCA. ..... Page 208
68		192	An act to generally revise and clarify the law relating to environmental protection; amending sections 75-3-103, 75-3-104, 75-3-204, 75-3-301, 75-3-405, 75-5-615, 75-6-111, 75-7-204, 75-10-113, 75-10-121, 75-10-213, 75-10-214, 75-10-232, 75-15-123, 75-15-215, 75-20-408, and 75-20-501, MCA. ..... Page 210
69		202	An act requiring the consideration of using public lands for the location of facilities whenever economically practicable and compatible to environmental factors; amending sections 75-20-301 and 75-20-503, MCA. ..... Page 218
70		215	An act to clarify the fiscal duties of the State Treasurer; amending section 17-1-111, MCA. ..... Page 222
71		231	An act allowing landowners upon whose land a facility under the Montana Major Facility Siting Act is proposed to be located to receive any negotiated payment in annual installments as compensation for use of that land. ..... Page 223
72		296	An act to permit school trustees to receive and use federal funds to supplement the general fund budget without a vote of the electors of the school district; amending sections 20-9-315 and 20-9-353, MCA. ..... Page 223
73		493	An act to amend section 61-4-101, MCA, to provide a grace period for motor vehicle dealer license renewal. ..... Page 225
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75	82		An act to allow the use of metric sizes for packaging and to provide rulemaking by the department. ..... Page 227
76	84		An act establishing procedures for issuance of orders and removal of board members or officers of financial institutions in the event of violation of a law or unsafe practices; providing for informal disposition; and providing penalties. ..... Page 228
77	139		An act to clarify what constitutes the Montana Insurance Code; amending section 33-1-101, MCA. ..... Page 234
78	157		An act to generally revise the laws relating to corporations; requiring a street and number address for the registered office to be included in articles of incorporation

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82	179		An act to amend section 61-3-313, MCA, to put vehicles with personalized license plates on the staggered registration system.....Page 242
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86	328		An act to amend sections 33-17-502 and 33-18-212, MCA, to allow a licensed casualty insurance agent to collect a fee from the insured for placing a policy with the state compensation insurance fund.....Page 244
87		16	An act to amend section 69-14-113, MCA, to revise the provisions related to witness fees and bring them into agreement with similar provisions for witnesses in civil actions before the district court. .....Page 246
88		39	An act to generally revise and clarify the law relating to credit transactions; amending sections 31-1-231, 31-1-243, 31-1-301, 31-2-218, 31-2-224, and 31-2-226, MCA. .....Page 247
89		70	An act to amend section 69-12-505, MCA, to revise and clarify the provisions relating to suspension of proposed revisions of motor carrier rates and classifications, providing for vacating a suspension.....Page 250
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92		188	An act to reduce the number of resident/nonresident determinations to be made by the Department of Revenue regarding public contractors; and repealing sections 18-1-104 and 18-1-105, MCA.....Page 252
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100	35		An act to permit residents who will have reached 12 years of age prior to September 15 of a hunting season to apply for and obtain permits for that season in the same manner as nonresidents; amending section 87-2-701, MCA....Page 258
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110		92	An act to revise and clarify laws relating to the issuance of duplicate bonds, warrants, and coupons; amending sections 7-7-2104 and 7-7-2106, MCA; and repealing section 7-7-2105, MCA. ....Page 275
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114		169	An act to generally revise and clarify the laws relating to public retirement systems. ....Page 281
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120		253	An act to require the Board of Natural Resources and Conservation to issue as part of a certificate a time limit during which a facility must be constructed; amending section 75-20-303, MCA; and providing an effective date. ..... Page 327
121		290	An act to raise the rate of pay from $40 to $56 a day for special deputy state fire marshals; amending section 50-3-106, MCA; and providing an immediate effective date. ..... Page 328
122		300	An act to provide coordination of benefits for law enforcement officers who have combined service in the Sheriffs' Retirement System and the Municipal Police Officers' Retirement System as a result of a city-county consolidation; providing for retroactive application; and an immediate effective date. ..... Page 328
123		306	An act providing for required rehabilitation programs under certain conditions for individuals receiving workers' compensation benefits. ..... Page 329
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127		335	An act providing for a custody hearing, if requested, upon the death of a custodial parent; and amending sections 40-4-219 and 40-6-221, MCA. ..... Page 332
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129		407	An act to amend section 15-30-121, MCA, to specifically provide that individuals may deduct political contributions as determined in accordance with the Internal Revenue Code in computing net income for individual income tax purposes; providing an immediate effective date. ..... Page 334
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131		459	An act to allow the trustees of a school district to set the time and place of the final budget meeting held annually on the fourth Monday of July; amending sections 20-9-115 and 20-9-131, MCA. ..... Page 335
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135		683	An act to eliminate the requirement of certain county financial reports to the State Auditor concerning receipt and disposition of fees by county officials and the requirement that the State Auditor publish such reports; repealing sections 7-6-2215 and 7-6-2216, MCA. ..... Page 339
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139	108		An act permitting the Department of Revenue to license the catering of alcoholic beverages off the premises of a tavern; amending section 16-4-204, MCA. ....Page 356
140	119		An act to generally revise and clarify the laws relating to aeronautics; amending sections 67-1-105, 67-10-101, 67-10-103, 67-10-104, 67-10-201, 67-10-203, 67-10-204, 67-10-207, 67-10-221, 67-10-222, 67-10-231, 67-10-303, 67-10-401, 67-10-402, 67-10-404 through 67-10-406, 67-11-211, and 67-11-303, MCA. ....Page 358
141	123		An act to continue the capitol building and planning committee and reenact the law relating to it; repealing sections 1 through 4 of Chapter 232, Laws of Montana, 1971, section 25 of Chapter 326, Laws of Montana, 1974, and section 54 of Chapter 439, Laws of Montana, 1975. ....Page 367
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143	144		An act to clarify the powers of the Montana Board of Housing to provide staff and facilities to carry out its programs; amending sections 2-15-1008, 90-6-112, and 90-6-126, MCA; and providing an immediate effective date. ....Page 371
144	146		An act to require the Board of Land Commissioners to maintain a central index of all real property and interests in real property held, acquired, administered, leased by, or disposed of by state agencies. ....Page 373
145	148		An act to provide for the release of information in the possession of insurers relating to fire losses; requiring insurers to notify appropriate agencies of suspicious fire losses; exempting insurers from civil liability for furnishing such information or notifying an agency; providing for confidentiality of released information; providing for testimony by agency personnel in civil actions; and amending section 50-3-102, MCA. ....Page 375
146	154		An act to revise and clarify sections 44-1-301, 44-1-302, 44-1-303, 44-1-402, 44-1-601, 44-1-602, and 44-1-705, MCA, transferring to the highway patrol chief certain duties and powers of the Division of Motor Vehicles. ....Page 377
147	175		An act to provide for immunization of pupils in public and private schools; repealing section 20-5-401, MCA. ....Page 379
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150	194		An act to amend section 20-25-312, MCA, relating to traffic fines on university system campuses, to permit the president to set fines of no more than $10 based on a published schedule and to remove the restriction on use of parking meters. ....Page 385
151	197		An act to amend section 46-15-401, MCA, to authorize the use of videotape equipment to record the testimony of the victim in a case arising under section 45-5-502(3), MCA, felony sexual assault; providing an immediate effective date. ....Page 386
152	213		An act to authorize the reproduction of records kept by the Secretary of State pursuant to 2-6-111, MCA; to provide for the disposal of the original records; to provide for identification, indexing, and safekeeping of reproduced records; to provide for the admissibility as evidence of the reproduced copies; amending section 2-6-111, MCA. ....Page 386
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159	379		An act to amend sections 1-11-201 and 2-15-401, MCA, to delete references to divisions within the Legislative Council.....Page 395
160	381		An act to set the maximum finance charge for retail installment sales of any manufactured structure or recreational vehicle at $9 per $100 per year; defining manufactured structure and recreational vehicle; amending sections 31-1-202 and 31-1-241, MCA; and providing an immediate effective date.....Page 396
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163		40	An act to provide for a senior citizen representative on the Board of Nursing Home Administrators; amending section 2-15-1611.....Page 401
164		126	An act to repeal section 85-16-105, MCA, to remove docks and wharves from the jurisdiction of the Public Service Commission.....Page 402
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168		374	An act to permit nonresident boaters 90 days' reciprocity; amending section 23-2-514, MCA.....Page 406
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171		670	An act to require the polls to be open from noon until 8 p.m. for drainage district elections; amending section 85-8-304, MCA.....Page 411
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178	137		An act to permit the Department of Social and Rehabilitation Services, licensed adoption agencies, a natural parent, or an adopted person to have access to necessary birth records in certain situations; amending sections 50-15-112 and 50-15-206, MCA.....Page 424
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198	101		An act to generally revise and clarify the laws relating to insurance and insurance companies; and repealing section 40-1723, R.C.M. 1947. ....Page 470
199	104		An act to give express rulemaking authority for certain programs to the Department of Social and Rehabilitation Services; amending sections 53-2-201, 53-3-102, 53-5-304, and 53-7-302, MCA....Page 491
200	109		An act to clarify the relationship between the Department of Health and Environmental Sciences and local boards of health with respect to the validation by local health officers of certain licenses issued by the Department of Health and Environmental Sciences and to limit certain supervisory functions of the department; amending sections 50-1-202, 50-2-118, 50-50-201, 50-51-201, and 50-52-201, MCA; and repealing section 50-2-102, MCA....Page 493
201	118		An act to generally revise and clarify the laws relating to minerals, oil, and gas; amending sections 82-1-108, 82-4-142, 82-4-252, 82-4-304, 82-4-332, 82-10-201, 82-11-131, and 82-15-202, MCA....Page 497
202	120		An act to generally revise the laws relating to corporations and partnerships; repealing sections 35-10-507 and 35-16-316, MCA....Page 500
203	165		An act to increase the provision setting a maximum value on vehicles for which title may be issued by right of survivorship; amending section 61-3-201, MCA.....Page 507
204	189		An act authorizing the Superintendent of Public Instruction to contract with local school districts or service organizations for the delivery of audiological services to those children allowed by law; amending section 20-7-403, MCA. ....Page 509
205	193		An act to require postsecondary vocational-technical centers to expend nongeneral fund money first and to revert unexpended general fund balances at fiscal year end; amending section 20-7-325, MCA....Page 510
206	196		An act amending section 15-24-1001, MCA, to require a custom combiner's fee for Montana resident custom combiners similar to the fee paid by nonresidents and in lieu of fees presently required. ....Page 511
207	204		An act to amend section 46-9-103, MCA, to provide that there is a rebuttable presumption that a defendant convicted of deliberate homicide is a danger to others and not entitled to bail....Page 512
208	264		An act to authorize the county governing body authority to control and license dogs through adoption of an ordinance; repealing sections 7-23-2101 through 7-23-2107 and 7-23-2111 through 7-23-2117, MCA. ....Page 512
209	281		An act to amend section 61-8-301, MCA, to clarify the requirement that the offense of fleeing or eluding a police officer must include the actions required for the conviction of reckless driving....Page 513
210	287		An act to reduce government paperwork by requiring all state agencies to review forms required of citizens and report progress to the administrative code committee. ....Page 514
211	310		An act to repeal section 7-14-2104, MCA, and Chapter 45, Laws of 1923, relating to sovereign immunity of local governments....Page 515
212	332		An act to generally revise and clarify the local government laws relating to debt management and to permit the Board of Natural Resources and Conservation to issue refunding revenue bonds....Page 515
213	334		An act to amend the local government laws relating to rural fire districts, hospital districts, and cemetery districts to delete taxpayer and freeholder requirements to vote in certain elections and to hold certain offices; amending sections 7-33-2106, 7-34-2113, 7-35-2108, and 7-35-2133, MCA. ....Page 520
214	344		An act to abolish the reporting requirements of the State Treasurer to the Department of State Lands; repealing section 77-1-508, MCA. ....Page 522

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215	382		An act to revise the law relating to time limitations for a proceeding alleging a youth delinquent or in need of supervision; providing that a youth court judge may grant a continuance if the youth is not in custody and the interests of justice so require; amending section 41-5-516, MCA.....Page 522
216	421		An act to permit licensees under the Montana Consumer Loan Act to make loans not exceeding $25,000 and revising allowable charges; amending sections 32-5-102, 32-5-103, 32-5-201, 32-5-306, and 32-5-402, MCA.....Page 523
217		61	An act to insure that statutes imposing new local government duties provide a specific means of financing; amending section 1-2-112, MCA. .....Page 526
218		145	An act to change the name of the Department of Fish and Game to reflect its full responsibilities; and to instruct the Code Commissioner to make necessary changes in the Montana Code Annotated; amending section 2-15-3401, MCA.....Page 527
219		166	An act to amend and clarify the authority of the Department of Health and Environmental Sciences to adopt and enforce rules for the control of communicable diseases and transportation of dead human bodies; amending section 50-1-202, MCA; and repealing section 50-1-205, MCA.....Page 527
220		247	An act to provide for the hunting of moose, sheep, and goat by holders of special bow and arrow licenses when they also hold prerequisite licenses; amending sections 87-1-304 and 87-2-708, MCA.....Page 529
221		276	An act to consolidate the provisions relating to the fixing of municipal salaries; permitting the fixing of salaries by ordinance or resolution; and deleting the provision that a municipal officer may not receive an increase or decrease in pay during a term of office; amending section 7-4-4201, MCA. .....Page 530
222		327	An act to amend section 15-8-104, MCA; eliminating the requirement that a county pay for audits conducted by the Department of Revenue, and providing that the costs of an audit be paid by the department; providing an immediate effective date. .....Page 531
223		328	An act to authorize the charging of tuition to resident and nonresident students at postsecondary vocational-technical centers by the Board of Public Education; authorizing the Board of Public Education to prescribe uses of authorized tuition; and amending section 20-7-332, MCA.....Page 531
224		337	An act to provide minimum retirement allowance payments for certain surviving spouses of retired highway patrolmen who have exhausted their benefits; providing an immediate effective date.....Page 532
225		341	An act to delete the requirement that claims against the county be certified; amending section 7-6-2421, MCA. .....Page 532
226		403	An act to provide for payment of the state's contribution to the highway patrolmen's retirement account directly from the general fund rather than from motor vehicle driver's license fees; and amending section 19-6-404, MCA. ....Page 533
227		500	An act to require a report on the sale or transfer of precursors to controlled substances.....Page 533
228		574	An act to amend section 61-4-102, MCA, to raise the motor vehicle dealer registration fee to $45.....Page 535
229		582	An act to exempt antique aircraft from property taxation; amending sections 15-6-113, 67-3-201, and 67-3-202, MCA. .....Page 536
230		589	An act providing for an increase in licensing and registration fees of pesticide-related activities; amending sections 80-8-201, 80-8-203, 80-8-204, and 80-8-207, MCA.....Page 538
231		610	An act to increase jurors' fees in courts not of record; amending section 3-15-203, MCA.....Page 542
232		644	An act requiring the board of county commissioners to set county surveyor's fees by resolution; amending section 7-4-2821, MCA.....Page 542
233		730	An act to amend section 32-3-804, MCA, to allow a central credit union to borrow an amount not in excess of three times its total assets less notes payable and more than three times its total assets less notes payable with prior approval of the director; and to allow a central credit union to loan an amount not in excess of 20% of its assets to any one member.....Page 542
234		735	An act to generally revise laws relating to butchers and meat peddlers and inspection of hides from slaughtered animals; amending sections 81-9-101, 81-9-112, and 81-9-113, MCA.....Page 543

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235		736	An act requiring preslaughter inspection of livestock at licensed livestock slaughterhouses; amending sections 81-3-203 through 81-3-205, 81-3-211, and 81-3-213, MCA. ....Page 545
236		756	An act to generally revise the law relating to hide dealers; amending sections 81-9-401, 81-9-402, and 81-9-423, MCA. ....Page 550
237		802	An act to amend the Rural Electric and Telephone Cooperative Act to authorize rural telephone cooperatives to establish, maintain, and operate cable television and broadband systems and facilities for the benefit of their telephone customers; amending sections 35-18-102, 35-18-105, and 35-18-106, MCA; and providing an effective date. ....Page 551
238	9		An act to amend section 33-2-111, MCA, relating to deposit requirements of insurers, by increasing deposit requirements of title insurers....Page 554
239	10		An act to repeal sections 33-2-1001 through 33-2-1007, MCA, relating to regulation of insurance holding companies....Page 555
240	59		An act to amend section 20-4-110, MCA, relating to suspension or revocation of teacher certificates by the Board of Public Education....Page 556
241	64		An act to amend section 33-16-203, MCA, relating to filing of insurance rates. ....Page 557
242	152		An act to revise the procedure for hearing and appeal when a youthful offender is alleged to have violated his aftercare agreement; amending section 53-30-229, MCA. ....Page 557
243	153		An act to generally revise and clarify the laws relating to administrative rulemaking; to define "person" to include agencies; to create a revolving fund for paying the expenses of publication of Administrative Rules of Montana and the Register; amending sections 2-3-102, 2-4-102, 2-4-103, 2-4-302, 2-4-303, 2-4-305, 2-4-306, 2-4-307, 2-4-311, 2-4-312, 2-4-313, 2-4-402, 2-4-501, and 2-4-506, MCA....Page 559
244	251		An act to require that a damaged motor vehicle may be disposed of at a wrecking facility when an insurance company settles a claim at total loss less salvage only if the wrecking facility is licensed....Page 567
245	278		An act to generally provide for the use of interpreters for the deaf in certain administrative or judicial proceedings; to repeal section 3-1-316, MCA; and providing an effective date. ....Page 568
246	293		An act to revise the Montana Youth Court Act to provide for restitution as a permissible disposition of a case; amending sections 41-5-102, 41-5-103, 41-5-403, 41-5-522, and 41-5-523, MCA....Page 570
247	296		An act to amend section 40-1-301, MCA, to specifically include tribal judges on the list of officials authorized to solemnize marriage. ....Page 576
248	307		An act to clarify the review of local government bond proceedings and bond issues by requiring review of only general obligation bonds by the Attorney General; amending sections 7-7-101 through 7-7-104, MCA ....Page 577
249	314		An act to generally revise and clarify the local government laws relating to business, agriculture, and livestock services and regulations and to weed and pest control; repealing section 84-3205, R.C.M. 1947....Page 578
250	336		An act to generally revise and clarify the local government laws relating to general provisions and to the creation, alteration, and abandonment of local governments; repealing sections 11-2901 through 11-2921 and 11-3001 through 11-3026, R.C.M. 1947, and section 7-2-2101, MCA....Page 584
251	337		An act to generally revise and clarify the local government laws relating to improvement districts and to utility services. ....Page 592
252	339		An act to generally revise and clarify the local government laws relating to financial administration and taxation; repealing section 7-6-4433, MCA. ....Page 600
253	340		An act to generally revise and clarify the local government laws relating to transportation; to housing and construction; and to culture, social services, and recreation. ....Page 613
254	341		An act to compensate retired judges and justices for temporary service; amending section 19-5-103, MCA. ....Page 624
255	342		An act to regulate the trapping of predators and nongame wildlife by nonresidents; amending section 87-2-103, MCA....Page 625

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Chap. Num.	Senate Bill	House Bill	Title
256	350		An act to clarify the local government laws relating to the administration and investment of money in sinking funds for local government general obligation bonds; amending sections 7-7-123, 7-7-124, 7-7-2261, 7-7-2270, 7-7-4261, and 7-7-4270, MCA, and repealing sections 7-7-2271 and 7-7-4271, MCA.....Page 626
257	376		An act requiring recipients of public assistance to report income not previously declared; requiring recipients to repay the state for assistance overpayments; providing a civil penalty when fraudulent means are used to obtain assistance.....Page 628
258	396		An act to change the maximum levy used to support county livestock protective committees or district cattle protective committees from 25 cents to 50 cents per head; amending sections 81-6-104, 81-6-204, and 81-6-209, MCA.....Page 628
259	407		An act to revise the formula for computing base rental in fixing annual grazing rentals on state lands; amending section 77-6-507, MCA.....Page 629
260	496		An act to allow any individual, partnership, corporation, or association to use an assumed business name and to provide regulations for the registration of an assumed business name; repealing sections 30-13-111 and 35-11-101 through 35-11-103, MCA.....Page 630
261	215		An act to punish the commission of an assault upon a youth less than 14 years old by an adult under certain circumstances by imprisonment in the state prison for a term not to exceed 5 years; amending section 45-5-201, MCA.....Page 635
262	333		An act to generally revise and clarify the local government laws relating to alternative forms of local government; repealing sections 11-3221 through 11-3227 and 11-3541 through 11-3547, R.C.M. 1947.....Page 636
263	338		An act to generally revise and clarify the local government laws relating to general emergency and protective services, to law enforcement, to fire protection, and to cemetery services; repealing sections 11-1935 and 11-2009, R.C.M. 1947.....Page 647
264	408		An act to provide that the officers of a bank may close the bank's offices on any day when the Federal Reserve Bank of Minneapolis is not open for business; to provide that such a closing constitutes a bank holiday; amending sections 32-1-481 and 32-1-563, MCA; and providing an effective date.....Page 652
265	466		An act to exempt publication of the Montana Code Annotated from the law on in-state preference for printers; amending sections 18-7-101 through 18-7-103, MCA, and section 3, Chapter 1, Laws of 1979; and providing an immediate effective date.....Page 653
266		48	An act to generally and substantively revise and clarify the laws relating to land resources and use; revising the procedure to issue bonds for water conservation and flood control projects; providing an effective date.....Page 655
267		80	An act to provide that unrelated business income of exempt corporations, as defined by the Internal Revenue Code, shall be taxed as any other corporate income; amending section 15-31-102, MCA, and providing an effective date.....Page 663
268		85	An act to create a revenue oversight committee and to prescribe its functions; amending sections 2-4-306 and 2-4-402, MCA; and providing an immediate effective date.....Page 664
269		132	An act making the procedure for filling trustee vacancies in third-class school districts uniform with other school districts and requiring vacancies to be filled within 60 days; amending sections 20-3-205 and 20-3-309, MCA.....Page 667
270		209	An act authorizing the Board of Public Education to accredit nonpublic secondary schools; amending section 20-7-102, MCA; and providing for an effective date.....Page 670
271		212	An act relating to collective bargaining of public employees; excepting confidential employees from the definition of a public employee; restricting labor organizations representing employees of the Board of Personnel Appeals to unaffiliated labor organizations; amending section 39-31-103, MCA.....Page 670
272		214	An act to revise the laws relating to apprenticeship programs, requiring the Department of Labor and Industry to provide assistance in developing on-the-job training programs when apprenticeship programs do not exist and to perform duties required by federal regulations when consistent with state law; reducing the hourly employment requirements, changing the instructional provisions, and adding a provision on apprentice: journeyman ratios in apprenticeship agreements; and permitting credit for prior training or experience of apprentices; amending sections 39-6-101 and 39-6-106, MCA.....Page 672

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273		220	An act allowing trustees of any school district or community college to hire legal counsel at their discretion to perform legal services in connection with school or community college board business; amending section 20-1-204, MCA. ..... Page 674
274		224	An act to amend section 45-5-304, MCA, to provide that a person does not commit the offense of custodial interference if he voluntarily returns an individual taken, enticed, or withheld from lawful custody to lawful custody prior to arraignment or, in certain cases, prior to arrest. ..... Page 674
275		229	An act to specifically include district court judges in the county budget law; amending section 7-6-2324, MCA. ..... Page 675
276		238	An act to empower the Department of Social and Rehabilitation Services to impose sanctions on and recover payments from providers who engage in fraudulent, abusive, or improper activities; amending section 53-6-111, MCA. ..... Page 675
277		242	An act creating informal contested case proceedings; providing for joint waiving of formal proceedings; providing for joint waiving of administrative proceedings; restricting modification by the agency of the proposal for decision; and amending sections 2-4-601, 2-4-603, and 2-4-621, MCA. ..... Page 676
278		251	An act to require suppliers of fresh meat to label foreign meat and to raise the penalty for failure to properly label foreign meat or provide required information; and requiring the Department of Health and Environmental Sciences to report on enforcement efforts to the Legislature; amending sections 50-35-103 and 50-35-104, MCA. ..... Page 679
279		264	An act to establish certain requirements for school district facsimile signature machines and their handling; amending section 20-9-221, MCA. ..... Page 680
280		301	An act to revise and clarify the manner of funding for the Office of the Consumer Counsel; amending sections 69-1-223 and 69-1-224, MCA. ..... Page 681
281		318	An act to amend section 15-1-402, MCA; providing that both the officers collecting licenses and taxes or the counties or the municipalities in whose behalf they were collected and the Department of Revenue must be served with summons and complaint in an action to recover tax paid under protest. ..... Page 682
282		325	An act to amend section 45-6-307, MCA, to prohibit the manufacture, assembly, possession, sale, gift, or other transfer of any apparatus, instrument, equipment, or device designed or intended to avoid lawful telecommunications charges. ..... Page 684
283		330	An act to increase the permissive county bridge levy; and amending section 7-14-2502, MCA. ..... Page 685
284		367	An act to exempt wool and sheep pools from corporation license tax; amending section 15-31-102, MCA; and providing an effective date. ..... Page 685
285		368	An act to revise the Reporters' Confidence Act; amending sections 26-1-901, 26-1-902, and 26-1-903, MCA. ..... Page 687
286		378	An act to give the Commissioner of Labor and Industry authority to enforce maternity leave provisions through a district court proceeding. ..... Page 687
287		383	An act to require approval of the trustees of a receiving school district before a transfer of territory from another school district can be made; amending section 20-6-213, MCA. ..... Page 688
288		408	An act allowing school districts to conduct less than the minimum number of school days provided by law; providing definitions and conditions; providing for proportional reductions in school equalization aid; amending sections 20-1-301, 20-6-209, and 20-9-311, MCA; providing an effective date. ..... Page 690
289		412	An act to amend section 32-1-213, MCA, relating to the cost of examination of banks, investment companies, and trust companies. ..... Page 693
290		413	An act to put compensation for loss of salary for injured officers under workers' compensation; mandating a municipality to pay the difference between the officer's full salary and the amount paid by workers' compensation and clarifying the meaning of monthly compensation for purposes of the statewide police retirement system; amending sections 7-32-4132, 7-32-4135, and 7-32-4136, MCA; repealing sections 7-32-4133 and 7-32-4134, MCA. ..... Page 693
291		422	An act to define criminal possession of precursors to certain dangerous drugs, including amphetamine, methamphetamine, and phencyclidine; providing criminal sanctions; providing certain exemptions; and authorizing rulemaking authority for the Board of Pharmacists to grant exemptions. ..... Page 695

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292		431	An act to provide that the Board of Natural Resources and Conservation may require meters on wells in controlled groundwater areas and proposed controlled groundwater areas and wells with a maximum yield in excess of 100 gallons per minute outside such areas; and amending section 85-2-113, MCA.....Page 696
293		445	An act to provide a cost of living increase in certain retirement allowances payable under the Public Employees' Retirement System.....Page 697
294		466	An act to provide uniform collection procedures for the license taxes on telephone companies, express companies, freight line companies, and sleeping car companies; providing for penalties and interest for unpaid taxes and creating a lien upon real property for unpaid taxes; amending sections 15-53-102, 15-54-102 through 15-54-104, 15-56-102, 15-56-103, and 15-56-107, MCA; and repealing sections 15-52-101 through 15-52-103, MCA.....Page 697
295		491	An act to change the employee contribution for creditable service for out-of-state employment; amending section 19-4-402, MCA.....Page 703
296		498	An act to provide that certain payments to the fire department relief association in a city of the first or second class shall be made directly to the Board of Investments to be credited to the account of the association and that the State Auditor shall report to the treasurer of the association the amount of such payments; amending sections 19-11-512, 19-11-514, and 19-11-606, MCA.....Page 703
297		544	An act to revise the eligibility requirements for the driver improvement program; amending section 61-2-302, MCA.....Page 706
298		577	An act revising the brand inspection law by requiring the brand inspection of asses; by increasing the inspection fees for equine-type animals; and amending sections 81-3-201 and 81-3-205, MCA.....Page 707
299		581	An act amending section 15-70-325, MCA, to change the annual and monthly deadline for filing special fuel tax returns from the 25th to the last day of the month. .....Page 709
300		590	An act providing for an increase in licensing or registration and inspection fees for persons warehousing beans, for apiaries, and for nurserymen; and amending sections 80-3-503, 80-6-105, 80-6-202, and 80-7-102, MCA.....Page 710
301		611	An act to amend section 61-8-714, MCA, to provide that on a second conviction of driving while intoxicated the person may be punished by imprisonment for a term not more than 30 days.....Page 712
302		666	An act ceding to the United States concurrent jurisdiction over crimes and offenses under the laws of the state over and within certain lands dedicated to national park purposes; and accepting jurisdiction over federal lands used for national park purposes in Montana that the United States is willing to relinquish.....Page 713
303		668	An act to amend the forcible entry and detainer and unlawful detainer law to provide a standard of due diligence in locating defendants within the state for purposes of service of summons; amending section 70-27-114, MCA.....Page 714
304		738	An act to abolish the requirement that the State Treasurer keep a permanent record of all gifts, donations, grants, legacies, and other contributions to the state of Montana; repealing section 17-6-222, MCA.....Page 715
305		763	An act to amend section 61-8-351, MCA, to require drivers to stop for school buses displaying flashing red signals in towns or cities and to clarify when school bus drivers are to actuate amber and red warning lights within cities or towns.....Page 715
306		846	An act to generally revise the laws relating to real estate brokers and salesmen; amending sections 37-51-102, 37-51-302, 37-51-305, 37-51-308, 37-51-309, and 37-51-311, MCA.....Page 716
307	85		An act to amend section 33-5-401, MCA, increasing the surplus fund requirements of reciprocal insurers.....Page 720
308	149		An act to clarify the Montana Recall Act; amending sections 2-16-614 and 2-16-632, MCA.....Page 720
309	227		An act to require a public hearing on federal land, wetland, or water acquisitions in fee for fish and game purposes; and providing an effective date.....Page 721
310	276		An act to allow state and local educational agencies to administer, plan, develop, operate, and improve programs designed to meet the special needs of gifted and talented children; amending section 20-9-507, MCA.....Page 722

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Chap. Num.	Senate Bill	House Bill	Title
311	305		An act to generally revise and clarify the local government laws relating to the general operation and conduct of business of local governments and to the acquisition, transfer, and management of property and buildings by local governments; repealing section 16-1008, R.C.M. 1947, and section 7-5-2124, MCA.....Page 724
312	367		An act to repeal section 45-8-320, MCA, relating to jurisdiction of the district courts over certain weapons offenses.....Page 728
313	432		An act to revise the law relating to attendance of trial juries in district court; amending sections 3-15-401, 3-15-411, 3-15-501, 3-15-503, 3-15-505, and 3-15-506, MCA.....Page 728
314	441		An act to revise the law regarding conflicts of interest of school board trustees; amending section 20-9-204, MCA.....Page 731
315	467		An act to allow inspection of passenger elevators and escalators by certified inspectors of insurance companies and maintenance companies; providing for certification by the Department of Administration; and requiring reports by companies to the Department of Administration; amending section 50-60-101, MCA.....Page 732
316		234	An act to change the Board of Dentistry to include a dental hygienist; requiring members of the board to be engaged in practice while on the board; requiring the Governor to fill vacancies on the board within 30 days; redefining a quorum for board members; amending sections 2-15-1606 and 37-4-202, MCA. .....Page 734
317		348	An act to provide that the highway patrol shall pay a salary benefit to officers injured in the performance of their duties; to provide for assignment of such an officer to light duty or, with his consent, to another position in the Department of Justice; and to provide for retirement credit and transfers of retirement credit. .....Page 735
318		352	An act to amend section 61-3-403, MCA, to require a county designation sticker on personalized license plates.....Page 737
319		375	An act to amend section 33-4-502, MCA, to increase the specific dollar limitation on the maximum amount of insurance retained by an insurer on a single risk from $25,000 to $35,000.....Page 738
320		463	An act relating to dangerous drugs; amending section 50-32-222, MCA.....Page 738
321		598	An act to reestablish the State Banking Board under existing statutory authority and rules; providing for Senate confirmation of board members; amending sections 2-8-103 and 2-15-1803, MCA; and providing an effective date. .....Page 739
322		618	An act to raise the mandatory minimum sentence for deliberate homicide from 2 years to 10 years; restricting deferment or suspension of the mandatory minimum sentences established in this act; amending sections 45-5-102, 46-18-201, and 46-18-222, MCA.....Page 743
323		711	An act removing the citizenship requirement for a physician's certificate to practice medicine in this state and adding the requirement of being able to communicate in English; amending sections 37-3-303 and 37-3-305, MCA.....Page 745
324		780	An act to authorize the Department of Highways to administer rail planning activities; amending section 60-2-201, MCA; and providing an effective date.....Page 746
325		817	An act to generally revise the laws relating to landscape architecture; to reestablish the Board of Landscape Architects; to provide for two public members on the board and require the chairman to be a public member; to remove qualifications prerequisite to admission to the examination; amending sections 2-8-103, 2-15-1652, 37-66-101, 37-66-103, 37-66-201, and 37-66-304 through 37-66-307, MCA; and providing an effective date.....Page 747
326	40		An act to generally revise and clarify the laws relating to water use; amending sections 85-6-108, 85-7-1507, 85-7-1612, 85-7-1904, 85-7-1906, 85-7-2204, 85-8-101, 85-8-102, 85-8-118, 85-8-119, 85-8-201, and 85-8-624, MCA.....Page 752
327	185		An act to add "sewage effluent" to the definition of water as used in Title 85, chapter 2, MCA; and amending section 85-2-102, MCA.....Page 758
328	288		An act to provide additional authority for converting shares of a corporation on merger or consolidation; amending sections 35-1-801 and 35-1-802, MCA; and providing an effective date.....Page 759
329	322		An act to protect employers from claims for contribution or indemnity asserted by a third person; amending section 39-71-411, MCA. .....Page 760

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Chap. Num.	Senate Bill	House Bill	Title
330		19	An act to amend section 69-12-108, MCA, to reduce the minimum penalty fee for subsequent offense violations by motor carriers.....Page 761
331		67	An act to amend section 69-12-203, MCA, to permit motor carrier supervisors to request production of documents relating to the driver of a vehicle and in so doing to extend the existing authority of the highway patrol and the Department of Highways to have the same power with respect to drivers.....Page 762
332		107	An act to raise the bonded indebtedness limit for county high schools to equal the limit for other high school districts; amending sections 7-7-2203 and 7-14-2524, MCA; and providing an immediate effective date.....Page 762
333		113	An act to clarify responsibilities and procedures for closing out defunct state agencies.....Page 763
334		175	An act establishing uniform age requirements for entrance into all public schools in the state of Montana; providing an effective date; and amending sections 20-1-101, 20-5-101, 20-7-117, and 20-9-313, MCA.....Page 764
335		187	An act revising the report required by section 2-7-102, MCA, to a biennial report; amending section 2-7-102, MCA.....Page 768
336		217	An act clarifying the audit requirements for third-class school districts that do not maintain a high school; amending sections 2-7-503 and 20-9-203, MCA; and providing an effective date.....Page 769
337		233	An act to permit the Board of Dentists to establish examination standards and procedures and to establish examination, license, renewal, and reinstatement fees for dentists and dental hygienists commensurate with costs or within certain limits; to establish certain requirements for applications for licensure; to increase the late renewal fee from $3 to $10; to permit jurisprudence examinations to be given and regional testing services to be utilized; and to exempt bona fide faculty members performing dental procedures in a teaching function and to exempt students performing dental procedures in an assigned teaching curriculum from certain requirements; amending sections 37-4-103, 37-4-301, 37-4-307, 37-4-402, and 37-4-406, MCA.....Page 771
338		270	An act to amend section 70-1-408, MCA, to clarify the statement of the rule against perpetuities.....Page 775
339		332	An act to amend section 46-5-202, MCA, to permit the application for a search warrant to be made by a sworn telephonic statement which is electronically recorded.....Page 775
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341		786	An act to allow and regulate deferral charges by Montana consumer loan licensees.....Page 777
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343	83		An act to provide for the regulation and registration of persons who collect charges or premiums or adjust or settle claims on life or health insurance policies or annuities of residents of Montana.....Page 779
344	92		An act to revise the license fee schedule relating to the insurance industry and to revise the terminology for renewal licenses; amending sections 33-2-708, 33-17-218, and 33-17-231, MCA.....Page 783
345	93		An act to generally revise the laws relating to insurance agents, solicitors, adjusters, and consultants; amending sections 33-17-204, 33-17-211, 33-17-212, 33-17-214, 33-17-216, 33-17-218, 33-17-231, 33-17-401, 33-17-404, 33-17-1101, 33-17-1103, 33-17-1111, and 33-22-813, MCA; and repealing section 33-17-215, MCA.....Page 787
346	94		An act to revise the law relating to standard valuation and standard nonforfeiture in life insurance; providing for adoption of annuity mortality tables and permissible interest rates in valuation of annuity and insurance contracts; adding provisions relating to nonforfeiture in individual deferred annuities; and amending sections 33-2-523 through 33-2-526, 33-20-201, 33-20-206, and 33-20-207, MCA.....Page 794
347	100		An act to revise the laws relating to health care facilities, defining health care facilities to include among other entities home health agencies and adult day-care centers and eliminating existing laws dealing with home health agencies; providing for a certificate of need and for review of applications for certificates of need and appeal

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			procedures, providing guidelines for denial, suspension, or revocation of health care facility licenses; providing for civil penalties; amending sections 50-5-101, 50-5-103 through 50-5-106, 50-5-108, 50-5-109, 50-5-201, 50-5-204, 50-5-207, 50-5-301, 50-5-302, 50-5-304 through 50-5-307, 50-5-402, 50-5-404, 50-5-405, 50-5-408, and 50-5-411, MCA; and repealing sections 50-5-102, 50-5-205, 50-5-206, 50-5-209, 50-5-303, 50-5-401, 50-5-412, and 50-7-101 through 50-7-309, MCA.....Page 804
348	156		An act to revise and clarify the procedure employers in the Public Employees' Retirement System must follow in providing monthly reports and monthly deposits of contributions to the system; to provide a penalty for late deposits; and amending sections 19-3-802 and 19-3-804, MCA. .....Page 816
349	203		An act permitting the trustees to negotiate renewal school bus contracts without calling for bids if contract cost increases do not exceed 8%; amending section 20-10-125, MCA; and providing an immediate effective date. .....Page 817
350	304		An act to amend section 15-70-301, MCA, to provide that the definition of "special fuel dealer" includes any person providing a facility from which more than one special fuel user obtains special fuel. .....Page 818
351	455		An act to generally revise the laws relating to securities regulation; amending sections 30-10-103 through 30-10-105, 30-10-201, 30-10-210, 30-10-303, and 30-10-305, MCA.....Page 820
352		13	An act to require motor carrier rules to reflect differences between all carrier classes, including Class D, and to permit Class D carriers to lease power equipment; amending sections 69-12-205 and 69-12-611, MCA.....Page 831
353		17	An act to amend section 69-12-407, MCA, to subject Class C and Class D motor carriers to recordkeeping and reporting requirements of the section and to permit the extension of filing deadlines for good cause by the commission.....Page 833
354		20	An act to amend section 69-3-501, MCA, to provide that a minimum revenue be derived from Montana sources by certain utilities in order to subject the issuance of securities and creation of liens by the utility to regulation by the Public Service Commission.....Page 833
355		118	An act to waive the qualification requirements of the county superintendent of schools when such office is consolidated with another county office and to provide for contracting of services in such case; amending section 20-3-201, MCA. ...Page 834
356		223	An act to permit supervisory law enforcement personnel to control telephone communications to and from a person holding hostages and to limit the liability of telephone company officials; amending section 45-8-213, MCA.....Page 835
357		241	An act to clarify the meaning of persons and families of lower income under the Housing Act of 1975 and to provide for the consideration of available financial resources; amending section 90-6-103, MCA; and providing an immediate effective date.....Page 836
358		377	An act directing the Department of Natural Resources and Conservation to develop and implement a plan for completing a statewide soil survey and mapping program and providing for the disposition of funds for development of the soil survey plan. .....Page 840
359		439	An act to allow the governing body of a political subdivision with a population of 10,000 or less to dispense with a nonpartisan primary election in certain circumstances; amending section 7-5-302, MCA.....Page 841
360		458	An act to provide that public school district trustees who do not meet on a regular monthly basis are to approve the minutes of each meeting at the next meeting; amending section 20-3-323, MCA.....Page 842
361		513	An act to amend section 61-5-111, MCA, to provide a one-stop licensing procedure for the issuance and payment of fees for drivers' licenses.....Page 843
362		514	An act affirming the validity of deeds of trust and trust indentures; providing that such instruments are subject to the laws concerning mortgages and when recorded provide subsequent purchasers and encumbrancers with constructive notice; and providing an effective date.....Page 844
363		782	An act to require the annual registration of snowmobiles and assessing a registration fee; revising the title requirements for snowmobiles; revising the registration requirements for snowmobile dealers; generally revising fees and their allocation; providing a registration exception for nonresident snowmobile racers; eliminating the discretion of the Department of Fish and Game over decibel standards; and amending

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364		881	An act to reestablish the Board of County Printing; revising the county printing law; amending sections 2-8-103 and 7-5-2411, MCA; and providing an immediate effective date.....Page 851
365	74		An act amending sections 2-15-1005 and 2-18-103, MCA, which relate to the Board of Investments.....Page 855
366		21	An act relating to the introduction of new evidence in an action involving utility regulation and resubmission of the action to the Public Service Commission; amending sections 69-3-402 and 69-3-404, MCA.....Page 856
367		32	An act to amend the laws relating to crime victims' compensation by clarifying terminology, by deleting welfare benefits as a collateral source, by permitting the Division of Workers' Compensation to adopt requirements concerning information on the availability of assistance to victims and the establishment of escrow accounts for funds owed to individuals inflicting injury or death, by permitting the reduction or elimination of compensation when the victim contributes to the injury or death, and by changing a reference to earmarked revenue fund to agency fund; amending sections 53-9-103, 53-9-104, 53-9-109, and 53-9-125, MCA.....Page 858
368		235	An act to facilitate the designation of nonsmoking areas in public places and to provide for enforcement.....Page 861
369		349	An act amending section 39-31-406, MCA, to require issuance of final orders concerning unfair labor complaints within 5 months after submitting the complaint to the hearing officer.....Page 863
370		361	An act to amend section 7-4-2108, MCA, to increase the expenses allowed a member of a board of county commissioners who resides 50 miles or more from the county seat and performs official duties in the county seat.....Page 864
371		399	An act to authorize the board of county commissioners to establish compensation for coroners; amending sections 7-4-2501, 7-4-2902, and 7-4-2911, MCA; and repealing sections 7-4-2921 and 7-4-2922, MCA.....Page 865
372		421	An act to transfer to the general fund of the state all money remaining in the Warm Springs State Hospital sinking account and all money to be deposited in that account in the sinking fund, after all outstanding bonds have been redeemed and all expenses of liquidating the bonds have been paid; amending section 6, Chapter 246, Laws of 1953, to authorize the transfer.....Page 866
373		443	An act to provide that interest on a judgment involving a contractual obligation must be paid at the rate specified in the contractual obligation; amending sections 31-1-107 and 31-1-110, MCA.....Page 867
374		549	An act expanding the definition of theft to include fraudulently obtained public assistance; amending section 45-6-301, MCA.....Page 867
375		558	An act to amend the law regarding the Municipal Police Officers' Retirement System by increasing the contributions to be made by certain members, cities, and the state and providing for reduction of unfunded liabilities; amending sections 19-9-107, 19-9-503, 19-9-601, 19-9-702, and 19-9-703, MCA.....Page 869
376		619	An act providing for gifts and devises to estates and for the creation and exercise of powers to appoint to estates; defining "estates"; and providing an effective date.....Page 871
377		642	An act to prohibit a former state employee from contracting or being employed by a contractor with the state for 6 months following the termination of his employment; and to remove the exception for professional service contracts; amending section 2-2-201, MCA.....Page 872
378		645	An act to clarify the role of the county coroner in the care and disposition of dead bodies.....Page 873
379		648	An act to clarify the responsibilities of the Fish and Game Commission and the Department of Fish and Game in regard to parks and recreation; amending sections 2-15-3402, 70-16-301, 87-1-201, 87-1-209, and 87-1-301, MCA.....Page 873
380		705	An act to amend section 2-3-203, MCA, to require that a meeting of a subcommittee of a public agency be open to the public.....Page 877
381		805	An act to repeal section 39-4-108, MCA, which was declared unconstitutional in Union Pacific Railroad Company v. Woodahl, 308 F. Supp. 1002 (1970), as directly conflicting with 45 U.S.C. 61 through 64.....Page 877

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382		486	An act to permit a licensed wholesaler, subjobber, or retailer to sell cigarettes to a resident or nonresident person, wholesaler, subjobber, or retailer who is exempt from state cigarette taxation provisions; amending sections 16-11-113, 16-11-131, 16-11-132, and 16-11-133, MCA.....Page 878
383	80		An act to provide for the supervision, rehabilitation, and liquidation of insurers; repealing sections 33-2-901 through 33-2-948, MCA.....Page 879
384	126		An act to generally revise the law relating to education; repealing section 20-6-623, MCA.....Page 917
385	394		An act to require extension of certain constitutional rights to a youth detained for investigation or questioning under the Montana Youth Court Act; amending section 41-5-303, MCA.....Page 924
386	454		An act to clarify that a youth may waive the right to counsel unless a petition has been filed under the Montana Youth Court Act; amending sections 41-5-511 and 46-8-102, MCA.....Page 924
387	473		An act to revise the laws relating to Class D motor carriers; amending sections 69-12-314 and 69-12-407, MCA.....Page 925
388	498		An act to generally revise the law relating to architecture; to reestablish the Board of Architects and revise board membership; to redefine "public building"; to revise reexamination provisions; to allow the board to fix reasonable fees; to allow the board to prescribe continuing education programs; amending sections 2-8-103, 2-15-1651, 18-2-101, 37-65-102, 37-65-303, 37-65-304, and 37-65-306, MCA; repealing sections 18-2-115 and 37-65-309, MCA; and providing an effective date.....Page 926
389		591	An act to provide that payment of a disability retirement allowance under the Municipal Police Officers' Retirement System shall commence on the day following the member's last day of membership service; amending section 19-9-902, MCA. .....Page 932
390		600	An act to exclude volunteer ambulance drivers and attendants from liability while performing ambulance runs; amending section 27-1-714, MCA.....Page 932
391		815	An act to exempt the Department of Public Service Regulation, in the exercise of its regulatory authority over rates, from the requirements of the Montana Environmental Policy Act; amending section 75-1-201, MCA; and providing an immediate effective date. .....Page 933
392	32		An act for the general revision of the laws relating to the governance of community college districts so that chapter 15 of Title 20, MCA, will be the primary law governing community college districts; clarifying the definition of the word district as it applies to community college districts; and amending sections 20-3-205, 20-9-101, 20-9-112, 20-9-134, 20-9-161, 20-9-163, 20-9-165, 20-9-201, 20-9-204, 20-9-212, 20-15-103, 20-15-104, 20-15-106, 20-15-210, 20-15-221, 20-15-223, 20-15-225, and 20-15-302, MCA.....Page 934
393	49		An act to revise the law pertaining to the investment of fire department relief association pension funds in municipalities other than first- and second-class cities; and amending sections 19-11-402 and 19-11-403, MCA. .....Page 950
394	54		An act to amend sections 30-14-111 and 30-14-142, MCA, to allow for the use of temporary restraining orders in the enforcement of the Montana Unfair Trade Practices and Consumer Protection Act of 1973. .....Page 950
395	132		An act to allow a recount in certain circumstances if the unsuccessful candidate posts a bond to cover all costs of the recount.....Page 952
396	205		An act to amend section 46-18-222, MCA, to restrict the exception relating to the absence of serious bodily injury to the victim from the list of exceptions to mandatory minimum sentences and certain restrictions on deferred imposition and suspended execution of sentence. .....Page 952
397	208		An act to generally revise and clarify the laws relating to labor; enacting section 39-1-101, MCA; and repealing sections 41-901 through 41-909, 92-613, and 92-1340, R.C.M. 1947. .....Page 953
398	225		An act to modify the grounds for recall of a public officer; amending section 2-16-603, MCA.....Page 992
399	243		An act to revise the statutes regarding the procedure for obtaining and dissolving or modifying preliminary injunctions and temporary restraining orders; providing that temporary restraining orders will expire within 10 days unless renewed; providing for the form and scope of preliminary injunctions and temporary restraining

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			orders; amending sections 27-19-201, 27-19-301, 27-19-303, 27-19-305, 27-19-306, 27-19-313, 27-19-401, 27-19-403, 27-19-405, and 27-19-406, MCA; and repealing sections 27-19-302, 27-19-304, 27-19-311, and 27-19-402, MCA. ....Page 992
400	256		An act to generally revise the laws relating to statewide ballot issues; amending sections 13-27-201, 13-27-202, 13-27-301, 13-27-303, 13-27-306, 13-27-310, 13-27-312, 13-27-313, 13-27-315, 13-27-401, 13-27-405, 13-27-406, 13-27-410, 13-27-501, 13-27-502, and 85-8-624, MCA; and repealing section 13-27-314, MCA. ....Page 996
401	273		An act requiring tuition payment for a high school student attending a high school in a district outside his resident district and creating a high school tuition fund; amending sections 20-5-311 through 20-5-313, MCA. ....Page 1003
402	346		An act to provide more equal access to the courts of Montana by allowing the court to award costs and attorneys' fees to plaintiffs and defendants who are successful in a law suit against a governmental entity if the entity's claim or defense is frivolous or pursued in bad faith; amending sections 18-1-404 and 25-10-103, MCA. ....Page 1006
403	377		An act to require the identification of the actual manufacturer of all drug products in order to facilitate the implementation of the Montana Drug Product Selection Act; amending sections 50-31-301 and 50-31-306, MCA; and providing an effective date. ....Page 1007
404	395		An act to revise and clarify the prohibitions against corporate contributions and expenditures in political campaigns; amending section 13-35-227, MCA. ....Page 1011
405	397		An act to require district court programs funded by the county to be subject to the county budget law; amending sections 7-6-2311, 7-6-2313, and 40-3-114, MCA. ....Page 1011
406	404		An act to change the filing time for a financing statement with respect to a purchase money security interest from 10 days to 20 days and to change the rules on priority over a conflicting security interest in collateral to give a purchase money security interest in collateral priority if it is perfected within 20 days rather than 10 days after the debtor receives possession of the collateral; amending sections 30-9-301 and 30-9-312, MCA. ....Page 1013
407	409		An act generally revising the law relating to assaults and intentional torts occurring between spouses; amending sections 40-2-201 and 45-5-506, MCA. ....Page 1015
408	422		An act to provide for the reestablishment of the Board of Professional Engineers and Land Surveyors for a period of 6 years; to revise the board membership by adding two public members; to reduce board members' terms of office from 5 to 4 years; to limit a board member to three terms; to revise the board quorum requirement; to increase fees; to provide for a 2-year license renewal; to provide for publishing a roster; to provide that charges made must be acted upon within 6 months; providing for verification of competency; amending sections 2-8-103, 2-15-1653, 37-67-201, 37-67-303, 37-67-315, 37-67-318, and 37-67-331, MCA; and providing an immediate effective date. ....Page 1016
409	491		An act to provide that courts not of record do not have jurisdiction over actions that might result in a judgment against the state for the payment of money; amending sections 3-5-302, 3-10-301, 3-11-103, 25-30-101, 25-31-101, 25-31-102, 25-34-105, and 25-35-105, MCA. ....Page 1023
410	516		An act to revise the law concerning custody orders; to allow ex parte temporary custody orders; to delete the 2-year restriction on seeking modification of a custody order; amending sections 40-4-213, 40-4-219, and 40-4-220, MCA. ....Page 1027
411		380	An act amending section 60-2-204, MCA, to clarify that the state of Montana is responsible for the entire cost of construction and maintenance of public highways when the state enters into an agreement with a local governing body to maintain portions of the public highway. ....Page 1029
412		481	An act to exempt four professional positions on the staff of the Board of Oil and Gas Conservation from certain provisions of the state employment classification and pay plan; amending sections 2-15-3303 and 2-18-103, MCA. ....Page 1029
413		696	An act changing the county share of participation in the Aid to Dependent Children grants; amending section 53-4-246, MCA. ....Page 1030
414		755	An act clarifying the compensation of persons who serve on regional councils for the developmentally disabled; requiring the development and continuous maintenance of habilitation plans for the developmentally disabled; and eliminating the requirement that the Department of Social and Rehabilitation Services promote research relating

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415		778	An act to provide that license plates and the gross vehicle weight license of a motor vehicle may be transferred to another motor vehicle without transferring ownership of the first vehicle and that upon such transfer the registration of the first vehicle expires; amending sections 61-3-335 and 61-10-224, MCA. .....Page 1033
416		827	An act to require the Public Employees' Retirement Division of the Department of Administration, in cooperation with the Legislative Council, to study the consolidation of the Montana Highway Patrolmen's Retirement System and the Montana State Game Warden's Retirement System as part of its 1980 actuarial evaluation and to report to the 1981 Legislature.....Page 1034
417		840	An act to provide for justice's court jurisdiction over residential landlord-tenant disputes; and provide that unlawful detainer and certain forcible detainer provisions do not apply to residential landlord-tenant arrangements; amending sections 3-10-302, 70-24-103, and 70-27-101, MCA.....Page 1035
418		874	An act to allow the Department of Administration to exempt the Department of Institutions from the purchase of suitable clothing for residents of the Boulder River School and Hospital; amending section 18-4-104, MCA.....Page 1037
419	28		An act providing that grants from an appropriation made by House Bill 708, Laws of 1977, for the solid waste management project need not be repaid.....Page 1037
420	34		An act to revise the statutes prescribing qualifications for municipality commissioner, mayor, and alderman by deleting freeholder requirements; amending sections 7-3-4346, 7-4-4301, and 7-4-4401, MCA. .....Page 1038
421	113		An act to generally revise and clarify the law relating to motor vehicles; repealing section 61-8-721, MCA; and repealing sections 31-186, 32-1116, 32-1119, 32-2101, 32-2124.2, 32-21-154, 53-134, 53-135, and 53-140 through 53-144, R.C.M. 1947. .....Page 1039
422	224		An act deleting procedures pursuant to awarding a contract for architectural services; repealing section 20-6-632, MCA.....Page 1075
423	260		An act to amend the provisions of the law relating to the disclosure of the proceedings and the related documents of the Judicial Nomination Commission; amending sections 3-1-1007 and 3-1-1010, MCA. .....Page 1075
424	355		An act to provide a minimum compensation for personal representatives of estates; amending sections 72-3-631 and 72-15-301, MCA. .....Page 1076
425	380		An act to revise certain laws relating to casualty insurance and sovereign immunity to make the law consistent with limits set by statute; amending sections 2-9-104, 20-3-331, and 33-23-102, MCA; and repealing section 33-23-101, MCA.....Page 1077
426	426		An act to provide that a criminal offender is considered nondangerous for purposes of parole eligibility unless the sentencing court specifies that the offender is not a nondangerous offender and to revise the requirements for classification as a nondangerous offender; amending section 46-18-404, MCA. .....Page 1078
427	456		An act to remove from the youth court the jurisdiction over violations of traffic and fish and game laws by a youth; amending section 41-5-203, MCA. .....Page 1079
428	461		An act to generally revise the appointment procedures and duties for city attorneys; amending sections 7-4-4201, 7-4-4602, 7-4-4604, and 7-4-4605, MCA.....Page 1079
429	511		An act to provide for the registration and protection of trademarks and service marks; to provide for renewal and assignment of such marks; amending sections 2-6-103 and 2-15-401, MCA; repealing sections 30-13-101 through 30-13-107; and providing an effective date.....Page 1080
430		15	An act to amend section 69-14-311, MCA, to revise and clarify the procedures for revision of classifications, rates, and rules of service by railroads.....Page 1091
431		23	An act to provide the Board of Veterinarians to establish license and examination fees for veterinarians and veterinary technicians and to require applicants for veterinary technician licenses to file applications and fees with the Department of Professional and Occupational Licensing; amending sections 37-18-302, 37-18-303, and 37-18-401, MCA; providing an effective date.....Page 1092
432		179	An act to repeal the program planning and budgeting system; repealing sections 17-7-104 through 17-7-106, MCA. .....Page 1094

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434		381	An act to amend section 7-2-4736, MCA, relating to garbage and solid waste service in the event of annexation.....Page 1095
435		473	An act to change the residency status of military personnel, their spouses, and their dependent children for purposes of in-state tuition for postsecondary vocational-technical education and for the university system; amending sections 20-25-501 and 20-25-503, MCA.....Page 1096
436		516	An act to authorize a revolving fund in the Office of the Superintendent of Public Instruction for the Division of Resources and Assessment.....Page 1098
437		531	An act to amend section 17-6-103, MCA, to authorize the State Board of Investments to accept mortgages and trust indentures on real property as collateral to secure deposits of public funds.....Page 1098
438		578	An act to authorize issuance of a physician's certificate upon certification by the National Board of Examiners for Osteopathic Physicians and Surgeons, Incorporated; amending section 37-3-306, MCA.....Page 1100
439		599	An act to reestablish the Office of the Investment Commissioner in the State Auditor's Office under existing statutory authority and rules; amending section 2-8-103, MCA; and providing an effective date.....Page 1101
440		661	An act to provide for exclusive inspection of small modular home factories by the municipality in which the factory is located.....Page 1104
441		686	An act requiring the deposit of all revenue generated from the sale of store licenses into the general fund; amending section 15-57-109, MCA.....Page 1105
442		687	An act to amend section 10-2-504, MCA, to increase the county contribution for a veteran's gravestone from $20 to $30.....Page 1105
443	335		An act to generally revise and clarify the local government laws relating to local government officers; repealing sections 16-2616, 16-3105, and 25-603, R.C.M. 1947. .....Page 1106
444	410		An act to require irrigation districts and other users of stored water to share the expenses and costs of a water commissioner appointed to admeasure and distribute water stored in a reservoir; amending section 85-5-101, MCA.....Page 1116
445	450		An act to provide for the removal and disposal of abandoned motor vehicles on private property; amending section 61-12-401, MCA.....Page 1117
446		693	An act to authorize the Attorney General to audit and allow the payment of expenses to sheriffs who transport certain prisoners and mentally ill persons; amending sections 7-32-2128, 7-32-2144, and 46-30-411, MCA.....Page 1118
447		698	An act providing that in cities of the first, second, and third classes the city treasurer shall be appointed; providing that the city engineer shall be omitted as an officer that may be appointed by the city council; and amending sections 7-4-4101 and 7-4-4102, MCA.....Page 1119
448		707	An act to protect private motor carriers authorized by the Public Service Commission to provide garbage and solid waste services to a municipality from competition from or replacement by public services without fair compensation for equipment or without a delayed effective date.....Page 1121
449		714	An act to amend section 37-11-201, MCA, by removing the mandatory requirement of an annual mailing of a list of physical therapist licensees.....Page 1121
450		722	An act to remove the requirement that the Department of Social and Rehabilitation Services pay the county share of public assistance for 1 year and to remove the 1-year residency requirement for liability when a recipient of public assistance moves to another county; amending sections 53-2-610, 53-3-306, 53-4-231, and 53-4-247, MCA.....Page 1122
451		741	An act to amend section 61-5-101, MCA, to revise the powers and responsibilities of the Division of Motor Vehicles regarding the licensing of drivers.....Page 1123
452		746	An act to restrict the acceptance by the state of land obtained through condemnation procedures by the United States unless approved by the Montana Legislature; amending section 77-1-211, MCA.....Page 1124

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454	97		An act to authorize the manufacture, sale, possession, and distribution of laetrile; and providing an effective date. ....Page 1125
455	503		An act to establish general provisions and definitions common to all forms of municipal government with general powers; to outline general powers; and to establish basic requirements for public meetings, records, and reports; repealing sections 7-1-4103 and 7-1-4104, MCA....Page 1126
456		316	An act to require food service establishments to distinguish between hamburger and imitation hamburger in advertisement of products for sale and to advertise the list of ingredients in imitation hamburger; and amending sections 50-31-103, 50-31-312, 50-31-506, and 50-31-508, MCA....Page 1136
457		553	An act to require repayment to the Municipal Police Officers' Retirement System of funds advanced to implement section 19-9-1007, MCA, and to provide changes in calculating and reporting procedures under that section; amending sections 19-9-104 and 19-9-1007, MCA....Page 1142
458		219	An act to amend section 20-4-213, MCA, to make the law requiring that certain teachers obtain instruction in American Indian studies permissive rather than mandatory; providing an immediate effective date....Page 1145
459	229		An act to raise the salary for elected county officials at least 7% in 1979 and 7% in 1980 and to add an additional salary category based on taxable valuation; amending sections 7-4-2503 and 7-4-2504, MCA....Page 1146
460		762	An act to allow the Board of Cosmetologists to grant a temporary license pending examination to an applicant who has graduated from a school that is registered in another state; amending section 37-31-307, MCA; and providing an immediate effective date....Page 1148
461		779	An act creating a public airport all-beverages license, and providing an immediate effective date. ....Page 1148
462		810	An act to accelerate the periodic agency evaluation of the Board of Sanitarians, Department of Professional and Occupational Licensing; amending section 2-8-103, MCA....Page 1149
463	232		An act to submit to the qualified electors of Montana an amendment to Article VII, section 11, of the Montana Constitution to allow statutory exceptions to the confidentiality of the documents of the Judicial Standards Commission....Page 1152
464	374		An act to clarify that a divorce decree may be modified to allow maintenance or support even though it was not allowed in the original decree; amending section 40-4-208, MCA....Page 1153
465	431		An act to clarify the notice requirements for denial, suspension, or revocation of a license; amending section 2-4-631, MCA....Page 1154
466	468		An act to generally revise the laws relating to courts of limited jurisdiction; amending sections 3-1-101, 3-1-523, 3-5-303, 3-10-203, 3-11-204, 3-15-701, 3-15-704, and 25-10-105, MCA....Page 1154
467		259	An act permitting an agency to elect to use hearing examiners from the legal services unit within the Attorney General's Office or from another agency; defining the timely filing of an affidavit of bias; providing that the decision of the hearing examiner is final in certain circumstances; amending sections 2-4-611 and 20-3-107, MCA. ....Page 1157
468		260	An act to transfer the authorization for change in classes of positions and increase in salary or wage of class under the state classification and pay plan from the Budget Director to the Department of Administration; amending sections 2-18-205 and 2-18-207, MCA....Page 1159
469		283	An act to exempt education sponsored by trade, business, professional, or fraternal organizations, regardless of attendance and fees for such education, from the provisions of Title 20, chapter 30; amending section 20-30-102, MCA....Page 1159
470		295	An act to clarify residency requirements concerning special education and to clearly fix the financial responsibility for special education costs; amending section 20-7-421, MCA....Page 1160
471		298	An act authorizing special education cooperative contracts; detailing the contents and requirements of the contracts; authorizing school districts to appropriate funds

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			to cooperatives; providing for teacher tenure for special education cooperatives; and providing an immediate effective date. ....Page 1160
472		302	An act to provide arbitration between a public employer and a firefighters' organization or its exclusive representative. ....Page 1163
473		329	An act to reestablish the provisions of Chapter 577, Laws of Montana, 1977, concerning the energy supply alert and vesting energy emergency powers in the Governor; and providing an effective date....Page 1164
474		342	An act to place the law relating to preferential granting of concessions in public buildings to blind and disabled persons under the Department of Social and Rehabilitation Services; providing for rulemaking authority; amending section 49-4-401, MCA....Page 1170
475		350	An act to adopt a Code of Fair Campaign Practices and to provide an opportunity for all candidates to subscribe to that code. ....Page 1171
476		363	An act to amend section 15-30-101, MCA, providing a definition of gross income for the purposes of the individual income tax. ....Page 1172
477		371	An act amending section 15-8-707, MCA, to allow county treasurers to remove duplicate and erroneous tax assessments from the county tax roll upon discovery and verification by the Department of Revenue; and providing that the consent of the county attorney is needed only if litigation is involved....Page 1173
478		420	An act to revise the statutes related to hunting and trapping licenses to modify certain definitions, make permissive the information included on big game licenses, make consistent wording of authority under a license, delete certain licenses, provide individual game species licenses for nonresidents, make restrictions now applicable to nonresident game animal licenses applicable to all hunting licenses, permit the department to determine game animal seasons for which the bow and arrow license is applicable, increase fees for certain nonresident hunting licenses, decrease the fee for resident B-tag deer license, and make such other modifications to the statutes necessary to carry out this revision; amending sections 87-2-101, 87-2-102, 87-2-401 through 87-2-403, 87-2-501, 87-2-504 through 87-2-508, 87-2-601, 87-2-602, 87-2-701 through 87-2-703, 87-2-708, and 87-2-805, MCA; repealing sections 87-2-108, 87-2-502, 87-2-503, 87-2-707, and 87-2-712, MCA; and providing an effective date. ....Page 1174
479		424	An act to revise the television district laws; permitting the creation, alteration, or dissolution of a district by the residents, changing the interest limits on warrants and bonds, eliminating requirements related to ownership of television sets, and authorizing a district to provide and finance FM translator services upon petition; amending sections 7-13-2503, 7-13-2510, 7-13-2522, 7-13-2523, 7-13-2527, 7-13-2528, 7-13-2529, 7-13-2541, and 7-13-2542, MCA; and repealing Chapter 13, Laws of 1979. ....Page 1180
480		438	An act to require an agency to prepare an estimate of the economic impact of proposed rulemaking upon request of the administrative code committee.....Page 1184
481		453	An act removing from special education allowable costs the benefits for teachers' retirement, public employees' retirement, social security, and unemployment compensation; clarifying the procedures for fixing and levying of taxes for these benefits when special education cooperative agreements involve more than one county; providing for special education tuition; establishing procedures if approved budgets exceed appropriations; and amending sections 20-7-421, 20-7-431, and 20-9-501, MCA....Page 1185
482		454	An act to provide for a change in the definition of electrology; amending section 37-32-102, MCA....Page 1191
483		456	An act to change the method of appointment of the Commissioner of Campaign Finances and Practices; to revise the term of office; and to provide for transition by extending the term of the current commissioner to January 1, 1981; amending sections 13-37-102 through 13-37-104, MCA; and providing an immediate effective date....Page 1191
484		460	An act to revise the procedure for determining eligibility for and the amount of increase of a public school district's foundation program due to an anticipated unusual enrollment increase; substituting references to the Superintendent of Public Instruction for obsolete references to the Budget Board; amending section 20-9-314, MCA....Page 1193
485		487	An act to require periodic pharmaceutical or medical reviews of resident medications; establishing stipulations for the release of records; and generally revising and clarifying the laws relating to the developmentally disabled; amending

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			sections 53-20-104, 53-20-114, 53-20-123, 53-20-130, 53-20-142, 53-20-144 through 53-20-146, 53-20-148, 53-20-161, and 53-20-164, MCA. ....Page 1194
486		488	An act to stipulate that interest accruing on the funds of a fire district or department in unincorporated areas must be credited to the account of that fire district or department; and providing an effective date. ....Page 1206
487		490	An act to require county clerks to charge a fee for copies of birth and death certificates; requiring state agencies to pay fees for recording documents; amending section 7-4-2631, MCA. ....Page 1207
488		521	An act revising the laws relating to herd districts to increase the penalties for violations; clarifying the requirement of a reasonably regular and symmetrical boundary; amending sections 81-4-301, 81-4-306, 81-4-308, and 81-4-309, MCA; and providing an effective date. ....Page 1209
489		532	An act to provide for the disqualification of a county superintendent from hearing matters of controversy under certain circumstances; providing for appointment of another county superintendent by the county superintendent of schools; authorizing payment of necessary and proper expenses by the county in which the controversy was initiated; and amending section 20-3-210, MCA. ....Page 1211
490		566	An act to require lending institutions to render annual statements on certain prepaid reserve funds and to limit the amount of such reserve funds; and providing an effective date. ....Page 1212
491		571	An act creating a Board of Physical Therapy Examiners and generally revising the physical therapy laws; amending sections 2-8-103, 37-11-101, 37-11-103, 37-11-201, 37-11-202, 37-11-301, 37-11-303, 37-11-307 through 37-11-309, and 37-11-321, MCA. ....Page 1213
492		579	An act providing that a public employee separated from employment shall receive his final paycheck on the next regular payday for the pay period during which he was separated from employment or 15 days from the date of separation, whichever occurs first; providing for immediate payment upon separation from employment in certain cases; amending section 39-3-205, MCA. ....Page 1222
493		585	An act to revise the disciplinary powers of the Board of Dentists; amending limitations on dental advertising and oral hygiene; requiring identification of dentures; amending sections 37-4-321 through 37-4-323, and 37-4-405, MCA. ....Page 1223
494		596	An act amending section 13-27-103, MCA, to indicate more clearly when a petition signature may be counted. ....Page 1225
495		597	An act to eliminate references to the Board of Institutions; amending sections 53-1-101 and 53-1-407, MCA; repealing sections 2-15-2303 and 53-1-205, MCA; and providing an effective date. ....Page 1225
496		603	An act to exempt the work product of the prosecution, except exculpatory information, from discovery in a criminal action; amending section 46-15-302, MCA. ....Page 1226
497		606	An act providing for regulation of the real estate industry by a Board of Realty Regulation created in the Department of Professional and Occupational Licensing; terminating operation of the Board of Real Estate immediately; eliminating references to the Board of Real Estate; permitting adoption of a fee schedule; amending sections 2-8-121, 37-51-102, 37-51-205, 76-4-1101, 76-4-1202, and 76-4-1203, MCA; repealing sections 2-15-1642 and 37-51-101, MCA; and providing an effective date. ....Page 1227
498		620	An act to revise the procedure for preaudit of liquidated claims by the Department of Administration; amending section 17-8-202, MCA. ....Page 1231
499		621	An act to require the Department of Social and Rehabilitation Services, in cooperation with other agencies and officials, to gather, maintain, and analyze statistics on domestic violence and spouse abuse in the state for a period of 4 years. ....Page 1232
500		688	An act to require that the cost of giving notice under the public utility, motor carrier, and railroad laws shall be paid by the affected utility, carrier, or railroad; amending sections 69-3-204 and 69-12-423, MCA. ....Page 1233
501		699	An act to revise the procedure in the small claims division of justice's court; amending sections 25-35-201, 25-35-203, 25-35-206, and 25-35-207, MCA. ....Page 1234
502		712	An act to clarify the laws relating to the filing of liens on motor vehicles; to limit the number of liens which must be endorsed in detail on the face of the certificate of ownership; to increase the lien filing fee and fee for a copy of a lien on a title

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			to $3; amending sections 61-3-103, 61-3-104, 61-3-202, 61-3-303, and 61-3-322, MCA. ....Page 1236
503		713	An act to prohibit any record of involvement in a traffic accident from being entered on a person's driving record by the Division of Motor Vehicles unless the person was convicted of a traffic violation relating to the accident; and to restrict release of information regarding involvement in a traffic accident; amending section 61-11-102, MCA....Page 1241
504		718	An act to clarify the compulsory enrollment and attendance provisions of school law to make it clear that the compulsory provisions apply until a child reaches his 16th birthday and completes the 8th grade; amending sections 20-5-102 and 20-5-103, MCA....Page 1242
505		749	An act to make sexual abuse of children a criminal offense; defining the offense to include the actual sexual abuse of children and the preparation, distribution, and sale of child pornography. ....Page 1243
506		751	An act to permit election or appointment of city judges in third-class cities; removing the residence requirement for such office; amending sections 7-4-4102 and 7-4-4104 through 7-4-4106, MCA. ....Page 1244
507		797	An act to clarify who is permitted access to youth court records and related documents; amending sections 41-5-603 and 41-5-604, MCA. ....Page 1245
508		819	An act to include within the definition of "bicycle" certain motorized bicycles; exempting bicycles from taxation and amending sections 15-6-201, 61-1-102, 61-1-103, 61-1-105, 61-1-106, 61-1-123, 61-3-321, and 61-8-605, MCA....Page 1247
509		836	An act defining the responsibility and liability of ski area operators and the responsibility and risk borne by skiers. ....Page 1251
510		850	An act to further prohibit the littering of highways and increase the penalty for littering; amending section 61-8-365, MCA. ....Page 1253
511		864	An act to allow the Superintendent of Public Instruction and the Board of Public Education to adopt a specialist certificate; amending sections 20-2-121, 20-3-205, 20-3-362, 20-4-101 through 20-4-106, 20-4-108 through 20-4-111, and 20-4-201 through 20-4-203, MCA. ....Page 1253
512		886	An act to revise the laws relating to employee exemptions from the state pay plan; amending sections 2-18-101, 2-18-103, 2-18-104, and 2-18-201, MCA....Page 1264
513	88		An act to provide for the creation and administration of trusts in favor of unlocatable owners of interests in minerals and to require those holding funds for unlocatable owners to petition for creation of such trusts....Page 1265
514		14	An act to amend section 69-12-102, MCA, to exempt the transportation of certain construction and excavation materials from Title 69, chapter 12, MCA, relating to motor carriers; providing an immediate effective date....Page 1267
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516		57	An act to revise the laws relating to construction standards for utility lines and facilities to conform with the National Electrical Safety Code, increasing the maximum electric potential for certain exemptions from 250 volts to 450 volts and revising the penalty for violations; amending sections 69-4-201, 69-4-203, 69-4-204, and 69-4-205, MCA; and repealing sections 69-4-202 and 69-4-211 through 69-4-241, MCA....Page 1269
517		77	An act to authorize and direct the Department of Institutions to charge reasonable rates for board and room for any residential community correctional programs operated by the department. ....Page 1270
518		82	An act to increase the bond debt limit of the Montana Board of Housing to $375 million; amending section 90-6-111; and providing an immediate effective date. ....Page 1270
519		100	An act to revise the law concerning habitual traffic offenders by reducing the time of accumulation of points from 5 years to 3 years and revising certain point values; amending section 61-11-203, MCA....Page 1271
520		112	An act to improve the delivery of human services through the development and implementation of a plan to provide for one-stop service, multipurpose social worker and team management, colocation of agencies, and information and referral systems. ....Page 1273

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522		176	An act to provide for the sale of bonds by the Montana Board of Housing at prices above or below par and to clarify the bond debt limitation and interest rate; amending section 90-6-111, MCA; and providing an immediate effective date.....Page 1275
523		196	An act establishing a Division of Visual Services in the Department of Social and Rehabilitation Services and providing for a Visual Services Advisory Council; specifying the responsibilities and powers of the Division of Visual Services and of the Visual Services Advisory Council.....Page 1276
524		833	An act to provide for the creation and conveyancing of solar easements. ....Page 1277
525	271		An act to regulate the collection, storage, and dissemination of criminal justice information; to provide for privacy of the information in certain circumstances and procedures for requesting certain information; to require photographing and fingerprinting of persons under certain circumstances; and to repeal sections 44-2-103, 44-2-203, and 44-2-204, MCA.....Page 1277
526	291		An act to revise the laws relating to filling vacancies in county and legislative offices; allowing political parties to nominate candidates in some instances; amending sections 5-2-406, 7-4-2106, and 7-4-2206, MCA.....Page 1288
527	323		An act providing that certain natural gas or crude oil facilities and associated facilities are not within the definition of "facility" under the Montana Major Facility Siting Act; amending section 75-20-104, MCA; and providing an effective date.....Page 1290
528	481		An act to provide that judicial officers and district court reporters shall receive the same mileage and expenses that state employees receive; exempting judicial officers during their current terms of office; amending sections 3-2-104, 3-5-211, 3-5-213 through 3-5-216, 3-5-602, 3-6-203, 3-10-203, 3-10-209, 3-10-234, 3-11-202, 3-11-204, 3-11-205, and 3-12-201, MCA.....Page 1292
529	482		An act to provide for seizure and forfeiture of controlled substances and implements and conveyances used in dangerous drug violations.....Page 1296
530	520		An act to amend the wheat research and marketing law; changing the assessment levied on wheat and barley; authorizing the Department of Agriculture to contract for research and development of fuels and food from wheat and barley; amending section 80-11-206, MCA.....Page 1300
531		675	An act to create the Montana folklife project under the Montana Arts Council; to preserve and present Montana folklife; to prescribe powers and duties of the Montana folklife project; and providing an expiration date.....Page 1301
532		783	An act to provide liens for physicians, nurses, and hospitals for services rendered; repealing sections 71-3-1101 through 71-3-1105, MCA.....Page 1303
533		863	An act to amend laws pertaining to conservation districts to provide for county attorney representation; and to provide compensation for supervisors on special projects; amending sections 7-4-2711, 76-15-313, and 76-15-319, MCA.....Page 1304
534		717	An act directing the Department of Natural Resources and Conservation to dispose of the Daly ditch water project; to cancel and write off accounts receivable on the Daly ditch water project; and providing an effective date.....Page 1305
535		875	An act to require the Department of Agriculture to establish rules for the approval of Dutch elm disease control programs of local governments and establish the eligibility of local governments with approved programs for financial assistance.....Page 1308
536	356		An act to require salaries of county justices not to be less than salaries for the clerk of court; amending section 3-10-207, MCA.....Page 1312
537	425		An act to change the use of the state-owned nursing home at Glendive from the care and treatment of geriatric persons to the care and treatment of any patient population served by the Department of Institutions or the Department of Social and Rehabilitation Services; and providing an immediate effective date.....Page 1312
538	462		An act to stagger elections and terms of office of directors of county water and sewer districts; amending section 7-13-2234; and repealing section 7-13-2224, MCA.....Page 1313

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540	46		An act to generally revise and clarify the laws concerning state finance; repealing section 17-2-203, MCA. ....Page 1315
541	200		An act to provide property tax relief for owners of certain real property destroyed by natural disaster; providing that the Department of Revenue shall adjust the tax on destroyed property on the basis of the number of days the property existed before its destruction; amending section 15-16-601, MCA, and providing an effective date....Page 1319
542	202		An act to provide for a fourth district court judge in the fourth judicial district; amending section 3-5-102, MCA....Page 1321
543	301		An act to generally revise the state laws relating to child abuse, neglect, and dependency; amending sections 41-3-101, 41-3-102, 41-3-104, 41-3-201 through 41-3-205, 41-3-301, 41-3-302, 41-3-404, and 41-4-102, MCA. ....Page 1321
544	317		An act to include valid written interagency or intra-agency service agreements for systems development in fiscal yearend obligations; amending section 17-7-302, MCA. ....Page 1329
545	352		An act to establish a county compensation board which shall develop a compensation schedule....Page 1329
546	390		An act providing for the regulation of the electrical profession by reestablishing the State Electrical Board in the Department of Professional and Occupational Licensing under existing statutory authority and rules; revising the licensure provisions; permitting the board to set fees; creating a class of residential electricians; amending sections 2-8-103, 2-15-1654, 37-68-102, 37-68-103, 37-68-301, 37-68-302, 37-68-305 through 37-68-308, 37-68-310 through 37-68-313, 37-68-321, and 50-60-204, MCA; and providing an effective date....Page 1331
547	393		An act to generally revise the laws relating to the treatment of the mentally ill; amending sections 53-21-102, 53-21-103, 53-21-111, 53-21-112, 53-21-115, 53-21-119, 53-21-120, 53-21-126 through 53-21-128, 53-21-141, 53-21-165, and 53-21-188, MCA. ....Page 1339
548	442		An act to amend section 2-18-617, MCA, relating to accumulation of vacation time for public employees....Page 1348
549	458		An act to reestablish the Board of Plumbers; revising board membership; to define "drainage system" and "plumbing system"; to allow a master plumber to work as a journeyman; to allow the board to prescribe reasonable fees; amending sections 2-8-103, 2-15-1655, 37-69-101, 37-69-305, and 37-69-307, MCA; and providing an effective date for certain sections....Page 1348
550	515		An act to make only those amendments necessary to bring The Montana Strip and Underground Mine Reclamation Act into compliance with Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977; to repeal The Strip-mined Coal Conservation Act; amending sections 70-30-102, 82-4-202 through 82-4-205, 82-4-221 through 82-4-223, 82-4-225, 82-4-227, 82-4-228, 82-4-231, 82-4-232, 82-4-235, 82-4-239, 82-4-251, 82-4-252, and 82-4-254; and repealing sections 82-3-101 through 82-3-110, MCA. ....Page 1353
551		197	An act to authorize presession organizational activities and provide compensation and expenses for Legislators involved; amending sections 5-2-202 and 5-2-203, MCA. ....Page 1383
552		230	An act to provide that the slurry transport of coal is not a beneficial use of water; amending section 85-2-102, MCA....Page 1384
553		244	An act amending the Montana Major Facility Siting Act; requiring local governments entitled to participate in a certification proceeding to file a statement of intent to participate; involving local governments in the long-range planning process; amending sections 75-20-211, 75-20-221, and 75-20-501, MCA....Page 1386
554		411	An act to increase the hospital district mill levy authorization and to clarify that an election must be held before special additional mills may be levied; amending sections 7-34-2134 and 7-34-2135, MCA; and providing an effective date....Page 1388
555		437	An act to establish a program under which the state of Montana may provide its employees with adequate group hospitalization, health, medical, disability, life, and other related group benefits in an efficient manner and at an affordable cost; amending sections 2-18-702 and 5-2-303, MCA; repealing sections 2-15-1012 and

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			2-18-801 through 2-18-807, MCA; and providing an immediate effective date. ....Page 1389
556		494	An act to generally revise, clarify, and amend the laws relating to public water supplies; amending sections 75-6-102 through 75-6-104, 75-6-106, 75-6-107, and 75-6-112, MCA....Page 1393
557		570	An act to require that new motor vehicle dealers be licensed also with the Department of Business Regulation; providing for an earmarked revenue account; and amending section 61-4-202, MCA....Page 1397
558		624	An act to revise the laws relating to special education; changing age requirements for admission and acceptance of certain pupils to school; making school district provision of special education programs permissive in certain cases; and amending sections 20-1-101, 20-5-101, 20-7-411, and 20-7-412, MCA....Page 1398
559		704	An act to clarify the allocation of state funds for public transportation and to revise the allocation formula; amending section 7-14-102, MCA; and providing an effective date....Page 1402
560		716	An act to amend the Clean Air Act of Montana to grant the Board of Health and Environmental Sciences authority to adopt rules required by federal law; to issue orders provided for by federal law; to permit fees to be assessed for environmental impact analysis; to provide notice and hearing in accordance with the Montana Administrative Procedure Act and reduce time required for notification to the Air Pollution Advisory Council; to clarify the board's authority to adopt by rule a simplified permit system for air contaminant sources; to permit fees to be assessed for reviewing permit applications and implementing and enforcing permit requirements; to provide that notice may be given personally or by mail; to establish noncompliance penalty fees; and to increase the maximum civil penalty from $1,000 to $25,000; amending sections 75-2-111, 75-2-112, 75-2-205, 75-2-211, 75-2-301, 75-2-401, and 75-2-413, MCA....Page 1403
561		733	An act to generally revise the laws relating to controlled groundwater areas; amending sections 85-2-501, 85-2-506, and 85-2-507, MCA....Page 1413
562		771	An act to require the Department of Social and Rehabilitation Services to follow priorities established by the Legislature when there are insufficient funds to provide medical care for all eligible persons; amending section 53-6-141, MCA....Page 1417
563		785	An act to revise the laws related to antiquities; creating a preservation review board and an historic preservation office; prescribing the duties of the office and its principal officer; providing for permits; providing for penalties; and repealing sections 22-3-401 through 22-3-413, MCA....Page 1417
564		787	An act to provide for rehabilitation of certain rail facilities; authorizing the issuing of revenue bonds and the making of loans by the Department of Highways; and providing an effective date....Page 1423
565		788	An act to provide financial assistance for the manufacture, purchase, or lease of certain railroad rolling stock; authorizing the issuing of revenue bonds and the making of loans; providing an effective date....Page 1426
566		800	An act generally revising the law regulating livestock markets, dealers, and brokers; repealing sections 81-8-101 through 81-8-109, 81-8-121 through 81-8-133, and 81-8-201 through 81-8-210, MCA....Page 1429
567		813	An act to revise and clarify the roles of the Department of Social and Rehabilitation Services and the county welfare department in conducting investigations, including financial investigations, and preparing reports when a minor is placed in a foster home, child care agency, group home, or private treatment facility pursuant to the laws relating to abused, neglected, or dependent children or the Montana Youth Court Act; providing for an adjudicatory and a dispositional hearing on petitions for abused, neglected, or dependent youth and providing for a court determination of the financial ability of parents or the adequacy of guardianship assets to pay the cost of supporting a minor; amending sections 41-3-105, 41-3-202, 41-3-401, 41-3-404 through 41-3-406, 41-5-522, and 41-5-803, MCA....Page 1439
568		859	An act to clarify and revise the provisions of the state employee classification and benefit laws; amending sections 2-18-101, 2-18-102, 2-18-601, 2-18-603, 2-18-611, 2-18-612, and 2-18-617 through 2-18-619, MCA; and repealing sections 2-18-602 and 2-18-613, MCA....Page 1446
569		860	An act to require a claimant to first permit an alleged libel or slander published in or broadcast by communications media to be corrected before claiming punitive damages; providing a means for such correction and providing for the use of such correction as a defense against punitive damages....Page 1452

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570		887	An act to revise certain laws relating to the regulation of insurance companies; amending sections 33-2-501, 33-2-531, 33-2-822, 33-2-830, and 33-2-832, MCA. ....Page 1453
571	65		An act to generally revise the laws relating to elections; repealing sections 2-15-413, 7-2-4604, 7-2-4605, 7-3-1233, 7-3-1234, 7-3-1272 through 7-3-1280, 7-3-4224 through 7-3-4226, 7-3-4232 through 7-3-4241, 7-3-4263, 7-3-4328 through 7-3-4333, 7-3-4342 through 7-3-4352, 7-5-301 through 7-5-303, 7-5-311, 7-5-2211 through 7-5-2222, 7-5-4211 through 7-5-4225, 7-5-4402 through 7-5-4409, 7-6-4433, 7-6-4435, 7-7-2230 through 7-7-2236, 7-7-4228 through 7-7-4234, 7-13-2223, 7-13-2224, 7-13-2248, 7-13-2250 through 7-13-2253, 7-13-2257, 7-13-2326, 13-1-105, 13-2-101, 13-2-111, 13-2-113, 13-2-121, 13-2-204, 13-2-303, 13-4-204 through 13-4-206, 13-10-101, 13-10-206, 13-10-207, 13-10-210, 13-10-304, 13-10-312 through 13-10-321, 13-10-506, 13-10-603, 13-11-101 through 13-11-103, 13-12-103 through 13-12-105, 13-12-206, 13-12-211, 13-12-213, 13-13-102 through 13-13-110, 13-13-202, 13-13-237, 13-13-238, 13-13-240, 13-13-302, 13-13-303, 13-13-308, 13-14-101 through 13-14-104, 13-14-201 through 13-14-208, 13-15-302, 13-17-202, 13-17-205, 13-17-207, 13-17-302 through 13-17-304, 13-17-307, 13-17-401 through 13-17-404, 13-18-101 through 13-18-106, 13-18-201 through 13-18-210, 13-35-212, 13-35-216, 13-35-219, 13-35-222 through 13-35-224, 13-35-229, 13-35-230, 13-35-232, 20-20-412 through 20-20-414, 85-7-1701, 85-7-1704 through 85-7-1709, 85-7-1711, and 85-9-423, MCA. ....Page 1458
572	155		An act to exempt certain employees from provisions of the overtime compensation law. ....Page 1588
573	265		An act to amend section 72-16-308, MCA, to clarify the extent to which a decedent's joint debts may be deducted in determining clear market value of property passing at death; and providing an immediate effective date. ....Page 1589
574	435		An act to include an auxiliary member on the Board of Pardons and providing an immediate effective date; amending section 2-15-2302, MCA. ....Page 1590
575	477		An act to require a corporation upon dissolution to report as abandoned property the value of all shares owned by shareholders that cannot be located; to subject unclaimed intangible personal property in the custody of the United States to the provisions of Title 70, chapter 9, MCA; to increase from $25 to $50 the requirement that the Department of Revenue publish names of owners of property presumed abandoned; to provide relief from liability for any person who delivers duplicate stock to the department; to permit the department to sell listed stock through a stock dealer rather than by auction; amending sections 70-9-204, 70-9-205, 70-9-302, 70-9-304, and 70-9-308, MCA ....Page 1591
576		402	An act to exempt Montana produced gasohol from taxation under the gasoline license tax; providing a long-term sliding scale for taxation of gasohol; and containing sunset provisions; amending sections 15-70-201 and 15-70-204, MCA; and providing an effective date. ....Page 1594
577		528	An act relating to review of positions and changes in classification under the state classification and pay plan for state employees; amending section 2-18-203, MCA. ....Page 1596
578		803	An act to define confidential health care information; providing for disclosure of the information in certain cases. ....Page 1597
579		853	An act to authorize public financing of political campaigns by providing that funds may be distributed to the nominees for Governor-Lieutenant Governor, Chief Justice, and Justice of the Supreme Court; changing the method of collecting funds; and providing authorized amounts and campaign spending limitations; amending sections 13-37-302, 13-37-303, and 13-37-304, MCA. ....Page 1600
580		870	An act to provide that the existence of a mental state necessary for commission of a criminal offense may be inferred from the acts of the accused and the facts and circumstances connected with the offense; amending section 45-2-103, MCA. ....Page 1602
581		181	An act to generally revise and clarify the laws relating to taxation; repealing sections 84-510, 84-6210, R.C.M. 1947, and sections 15-23-509, 15-24-401, and 15-51-105, MCA. ....Page 1603
582		191	An act to provide financial support for the Montana university system. ....Page 1616
583		334	An act to change the hearing requirements for the issue or transfer of alcoholic beverage licenses; amending sections 16-4-202 and 16-4-207, MCA. ....Page 1617
584		457	An act requiring the Department of Revenue to include in its report of property tax data for the state a breakdown of such data by county and city; amending section 15-1-205, MCA. ....Page 1619

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585		471	An act to provide authority for additional tax assessments and refunds of the resource indemnity trust tax; amending section 15-38-106, MCA. ..... Page 1620
586		489	An act setting a minimum and maximum amount, from $5 to $25, an irrigation district may charge against a separately owned tract of land for an annual fee; amending sections 85-7-2103 and 85-7-2104, MCA ..... Page 1621
587		608	An act to provide increased penalties for criminal sale of dangerous drugs in certain circumstances; amending sections 45-9-101 and 46-18-201, MCA. ..... Page 1622
588		684	An act to generally revise the metal mine reclamation laws; amending sections 82-4-303, 82-4-305, 82-4-331, 82-4-332, 82-4-334, 82-4-335, and 82-4-337, MCA; and repealing section 82-4-333, MCA ..... Page 1624
589		702	An act to designate the Department of Revenue as the party defendant in all actions relating to the department's assessment of property and to provide that local taxing units are not responsible for any costs assessed against the department. ..... Page 1630
590		811	An act to increase the reimbursement rate for school bus and individual and isolated transportation costs; amending sections 20-10-141 and 20-10-142, MCA. ..... Page 1631
591		898	An act to amend section 15-70-330, MCA, to change the penalty for failure of a special fuel dealer or a special fuel user to file a monthly tax return from 25% of the amount of tax due to 10% of the amount of tax due ..... Page 1633
592		708	An act requiring motor vehicle liability protection on motor vehicles as a condition of operation of those vehicles upon the highways or other premises open to use by the public; amending sections 61-6-123 and 61-6-142, MCA ..... Page 1634
593	70		An act to provide that the transportation of buildings under a certificate of public convenience and necessity can be done on a statewide basis and may not be restricted to a particular region of the state; providing rulemaking authority. ..... Page 1637
594	263		An act to revise the cost limits on underground placement of utilities; amending section 7-12-4132, MCA. ..... Page 1637
595	406		An act to permit a dealer in implements of husbandry to transport such implements on Saturday and Sunday; to provide for the purchase of an oversize permit by such dealer for $75 to cover a period of 1 year; amending sections 61-10-121, 61-10-122, and 61-10-124, MCA ..... Page 1638
596		237	An act revising the method by which interim legislative studies and study committees are selected; amending sections 5-5-211, 5-5-216, and 5-11-105, MCA; and repealing sections 5-5-221 and 5-5-222, MCA; and providing an immediate effective date ..... Page 1640
597		482	An act to require competitive bids for leases and rental agreements entered into by the state, except for certain goods or services offered by public utilities; amending sections 18-4-101, 18-4-102, 18-4-201 through 18-4-203, 18-4-213, and 18-4-214, MCA ..... Page 1641
598		634	An act to clarify postsecondary vocational-technical center governance; defining duties of state and local officials; increasing the county mill levy for the support of the centers; authorizing additional school district levies in certain cases; clarifying financial responsibility for maintenance, remodeling, and renovation of centers; amending sections 20-1-101, 20-2-121, 20-3-103, 20-3-104, 20-3-106, 20-7-301, 20-7-303, 20-7-311, 20-7-312, 20-7-314, 20-7-322 through 20-7-325, 20-7-332, and 20-7-333, MCA; repealing section 20-7-302, MCA; and providing an immediate effective date ..... Page 1644
599		727	An act to revise the special fuel user's permit provisions; providing for quarterly filing of special fuel tax returns; amending sections 15-70-302 through 15-70-307, 15-70-325, and 15-70-327, MCA; and providing an effective date. ..... Page 1657
600	164		An act requiring agencies to recodify Administrative Rules of Montana, to change references to the Revised Codes of Montana, 1947, to the Montana Code Annotated, to provide procedures for the accomplishment of recodification, and to biennially review its rules; amending section 2-4-314, MCA; and providing an immediate effective date ..... Page 1661
601	50		An act to simplify the disposition of the fuel permit fee; amending section 15-70-312, MCA ..... Page 1664

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602	71		An act to establish courses of instruction and examination for Department of Revenue appraisers and to require all appraisers to become certified within a year. ....Page 1664
603	75		An act to exempt property tax payment on vehicles owned by nonresidents temporarily employed in Montana; amending section 15-24-301, MCA.....Page 1665
604	78		An act to amend section 2-9-313, MCA, to require service of process in tort actions against the state to be served on the director of the Department of Administration in addition to service required by Rule 4D(2)(h), M.R.Civ.P. .....Page 1666
605	106		An act providing salary increases for probation officers and a minimum salary for deputy probation officers; amending sections 41-5-704 and 41-5-705, MCA. ....Page 1667
606	170		An act to eliminate the use of lists of persons compiled by state and local agencies as mailing lists by private parties; providing a penalty.....Page 1667
607	172		An act to amend section 60-3-201, MCA, to increase the percentage of the receipts of the gasoline dealers' license tax to be deposited in the snowmobile account of the earmarked revenue fund.....Page 1668
608	174		An act to include land used to raise certain animals in a confined area as eligible for valuation as agricultural land; amending section 15-7-202, MCA; and providing effective and applicability dates.....Page 1669
609	177		An act to change the type of security that gasoline distributors, special fuel dealers, and special fuel users may file with the Department of Revenue, amending sections 15-70-202 and 15-70-301, MCA.....Page 1670
610	181		An act to amend section 15-70-322, MCA, to provide that the United States, the state, and other states are exempt from the payments of tax on special fuel. ....Page 1672
611	220		An act to amend section 15-2-301, MCA, providing that the State Tax Appeal Board may utilize a hearings officer and requiring a record of a hearing instead of a transcript under certain conditions; providing a period of effectiveness.....Page 1673
612	221		An act to establish administrative procedures for enforcing support for dependent children.....Page 1674
613	234		An act to permit the governing body of a county to exceed existing mill levy limits if a majority voting on the question are in favor of the additional levy or levies. ....Page 1687
614	235		An act to generally revise the laws that permit the governing body of a municipality to exceed existing mill levy limits in certain cases; repealing section 7-6-4433, MCA. ....Page 1688
615	284		An act to establish reporting requirements for product liability insurers.....Page 1690
616	303		An act to amend section 15-6-201, MCA, governing categories of tax-exempt property to clarify its application to real property owned by certain nonprofit and religious organizations which operate a cemetery or cemeteries.....Page 1691
617	306		An act to clarify certain percentage limits on local government indebtedness; amending sections 7-7-2203, 7-7-4201, 7-7-4202, 7-14-2524, and 7-14-2525, MCA. ....Page 1692
618	319		An act pertaining to supplemental appropriations; providing for the Attorney General to file a complaint when limits on expenditures are exceeded; amending sections 17-8-103 and 17-8-104, MCA.....Page 1694
619	347		An act to further define the criteria for awarding coal impact grants; creating a coal tax oversight subcommittee of the revenue oversight committee; appropriating funds for the expenses of the subcommittee; amending section 90-6-206, MCA. ...Page 1695
620	351		An act to increase and require the Salary Commission to review the salary for the chairman and members of the State Tax Appeal Board; amending section 15-2-102, MCA.....Page 1697
621	358		An act to authorize imposition of a county motor fuel excise tax to derive revenue for streets and roads.....Page 1697
622	370		An act to revise the mileage allowance for noncommercial airplane travel for state business; amending section 2-18-503, MCA.....Page 1698

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623	384		An act amending section 15-30-131, MCA, to allow nonresident taxpayers who reside in a state that does not impose a tax on the income of natural persons residing in that state to deduct either those deductions relating to the production of Montana income or a prorated amount of the deductions allowed under section 15-30-121, MCA, whichever is greater. ....Page 1699
624	401		An act to allow the issuing of alternative renewable energy sources research and development grants for commercial projects; amending section 90-4-101, MCA. ....Page 1700
625	415		An act to require the Department of Revenue to waive the special fuel dealer's or special fuel user's bond requirement upon application of a licensed public contractor; amending section 15-70-304, MCA. ....Page 1700
626	429		An act to require that loans from the general fund or the university unrestricted subfund to university funds bear interest and to deposit the interest in the general fund; to prohibit negative balances in certain funds and subfunds; and amending section 17-2-107, MCA. ....Page 1702
627	459		An act to revise the law relating to the gasoline tax refund; providing that no refund is allowed for motorboat use; providing that only agricultural users may apply for a refund on the basis of estimated off-highway use; revising the method of record-keeping required to claim a refund; amending sections 15-70-201 and 15-70-221 through 15-70-226, MCA. ....Page 1703
628	492		An act to generally revise the Escheated Property Act; eliminating property other than that of estates from coverage under the provisions of that act; providing for disposition of unsold tangible personal property of estates by auction by the county treasurer and delivery of proceeds to the Department of Revenue; shortening the time during which escheated property is held in trust for potential claimants; lengthening the period of time in which to file claims; providing for the determination of inheritance tax by the Department of Revenue; amending sections 72-14-101, 72-14-102, 72-14-205 through 72-14-210, 72-14-302, 72-14-303, 72-14-401, and 72-14-403, MCA; and providing an immediate effective date. ....Page 1707
629	504		An act to make it a misdemeanor to leave snares and traps unattended and to waste fur-bearing animals. ....Page 1710
630	521		An act to extend the period during which county tax appeal boards may meet; providing that taxpayers' applications are granted if a county tax appeal board refuses or fails to hear the application; amending sections 15-15-101 through 15-15-103, MCA. ....Page 1711
631	524		An act to restrict and regulate the appropriation and sale of ground water in Montana; amending sections 69-3-101 and 85-1-101, MCA; and providing an immediate effective date. ....Page 1713
632		63	An act to increase the gasoline license tax and the tax on diesel fuel and volatile liquids by 1 cent and to provide for its distribution; amending sections 15-70-101, 15-70-204, and 15-70-321, MCA. ....Page 1715
633		84	An act to prescribe duties of clerks and recorders with regard to subdivision filing requirements; amending sections 76-3-301 and 76-3-404, MCA. ....Page 1718
634		150	An act changing the method of taxing banks and savings and loan associations for local governments; removing the corporation license tax exemption for interest from state and local obligations; repealing the tax on moneyed capital and shares of banks; providing for a different method of distributing corporation license taxes paid by banks and savings and loan associations; amending sections 7-6-206, 15-1-501, 15-8-104, 15-8-111, 15-24-701, 15-24-801, 15-31-101, 15-31-114, 15-31-502, 17-5-408, 20-9-343, and 32-1-413, MCA; repealing sections 15-6-106, 15-24-501 through 15-24-508, and 15-24-603, MCA; and providing an effective date. ...Page 1719
635		248	An act to revise the laws relating to the prisoner furlough program by allowing more flexibility in the amount of compensation a furloughee must receive, requiring a furloughee to pay for counsel to represent him at hearings, and clarifying eligibility to participate; amending sections 46-23-402, 46-23-405, 46-23-411, 46-23-422, and 46-23-425, MCA. ....Page 1729
636		269	An act to remove the distinction for inheritance tax purposes between a surviving joint tenant who is the spouse of the decedent and one who is an issue; amending section 72-16-303, MCA. ....Page 1731
637		282	An act to provide for expanded day-care assistance; and providing for an appropriation of $375,000. ....Page 1732
638		297	An act relating to the classification of property subject to taxation; providing that land and improvements owned by a nonprofit Montana corporation used for golfing

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			purposes are class fifteen property; amending section 15-6-116, MCA; and providing a termination date. ....Page 1733
639		299	An act providing for special tax treatment for a capital investment in a recognized nonfossil form of energy generation, by exempting a portion of the appraised value from property taxation for 10 years; amending section 15-6-201, MCA; and providing an effective date. ....Page 1734
640		356	An act to provide money to remove the unfunded liability in the state game wardens' retirement account by utilizing money received as fines for fish and game violations; amending sections 19-8-504 and 87-1-601, MCA. ....Page 1735
641		365	An act to streamline annexation by petition by eliminating the election in certain circumstances; to extend the proceeding to all municipalities; and amending section 7-2-4609, MCA ....Page 1736
642		366	An act to streamline the various methods of annexation; establishing that each annexation method is separate and distinct; and amending section 7-2-4718, MCA. ....Page 1737
643		386	An act to provide for travel expenses and meal reimbursement for persons in state service; amending section 2-18-501, MCA ....Page 1738
644		425	An act to authorize the Board of Examiners to issue $12,000,000 in additional long-range building program bonds; amending section 17-5-410, MCA. ....Page 1739
645		432	An act to extend the arrest powers of highway patrolmen to offenses occurring on highway rest areas and state highway properties adjacent to the highway; amending section 44-1-1003, MCA. ....Page 1740
646		436	An act to control the production and use of printed matter of all kinds by state government; requiring full disclosure of the cost of printing and circulation of the printed matter. ....Page 1740
647		442	An act to increase the maximum salaries of district court reporters; amending section 3-5-602, MCA. ....Page 1742
648		461	An act to revise the laws relating to the collection of the individual income tax; adopting "purposely" and "knowingly" as the required mental state; providing for a period of limitation for prosecution; amending sections 15-30-101, 15-30-145, and 15-30-321, MCA; and providing an immediate effective date. ....Page 1743
649		475	An act to amend section 31-1-110, MCA, to change the interest rate on judgments from 6% per annum to 10% per annum. ....Page 1746
650		507	An act to increase the salary for Montana's elected officials for the fiscal year 1980 and following years; amending sections 5-2-301 and 2-16-405, MCA ....Page 1746
651		508	An act to increase the salary for district judges; amending section 3-5-211, MCA. ....Page 1747
652		534	An act to further define "recognized nonfossil forms of energy generation" to include passive solar energy; amending section 15-32-102, MCA. ....Page 1748
653		550	An act to clarify and revise the coal severance tax allocations for acquisition of state parks, recreation areas, monuments, and historical sites and for grants for cultural and aesthetic projects; requiring that the Legislature must approve each purchase or grant; amending section 15-35-108, MCA. ....Page 1749
654		568	An act to revise the fee schedule for transactions relating to the registration of motor vehicles by increasing the fees for registration and clarifying the method of disposition of the fees; and providing for funding of the Law Enforcement Academy Bureau, the Law Enforcement Teletype System Bureau, and the Division of Forensic Science and the Montana Criminal Law Information Center; providing that the fee increases and the funding of the various programs from the fee increases terminates on June 30, 1981; amending sections 61-3-204 and 61-3-321, MCA. ....Page 1751
655		594	An act to reestablish the Office of the Commissioner of Insurance and the Insurance Department in the State Auditor's Office under existing statutory authority and rules; amending section 2-8-103, MCA; and providing an effective date....Page 1753
656		845	An act generally revising and clarifying the laws relating to industrial revenue projects and financing; authorizing additional types of projects; allowing local governments to loan the proceeds of bond sales; amending sections 90-5-101 through 90-5-106 and 90-5-108, MCA ....Page 1756
657		873	An act to require health service corporations to file annual statements....Page 1761

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658		915	An act authorizing the State Board of Examiners, upon recommendation of the Department of Administration, to issue and sell notes in anticipation of taxes and revenues appropriated for expenditure during a fiscal year; providing a limitation on the amount of notes that may be issued and prescribing a method for issuance and payment of the notes; providing that the act is effective on passage by a two-thirds vote of the members of each house of the Legislature and approval by the Governor. ....Page 1761
659	325		An act to establish an appeal procedure for classification of property as air pollution control equipment for property tax purposes; amending section 15-6-119, MCA. ....Page 1762
660	523		An act to establish a special property tax classification for property used in the production of gasohol; amending section 15-8-111, MCA; providing a date of applicability; and providing for coordination with House Bill 213....Page 1764
661		116	An act to revise the allowable cost schedule for special education programs; eliminating certain allowable costs; providing for special education tuition; establishing procedures if approved budgets exceed appropriations; amending sections 20-7-421, 20-7-422, 20-7-423, and 20-7-431, MCA; and providing an effective date.....Page 1767
662		418	An act to increase payment to day-care facilities; amending section 53-4-514, MCA. ....Page 1770
663		639	An act to revise the current method of assessing livestock; requiring that all livestock be assessed and taxed in their home county; providing for proration of property tax on migratory cattle among counties; increasing the penalty for failure to provide assessment information; providing a reserve fund for refunding overpayment of property tax on livestock; amending sections 15-6-207, 15-8-201, 15-24-302, 15-24-903, 15-24-904, 15-24-905, and 15-24-908 through 15-24-910, MCA; and repealing section 15-24-907, MCA. ....Page 1770
664		646	An act providing domestic insurers an alternative method of computing premium tax due based on investment of assets in Montana; amending sections 15-31-101, 33-1-201, 33-2-311, and 33-2-705, MCA; and providing an effective date.....Page 1775
665		647	An act to generally revise the laws concerning adult services; amending sections 53-5-101, 53-5-302, and 53-5-303, MCA. ....Page 1779
666		649	An act to allow public utilities and financial institutions to make low-interest loans for installation of recognized nonfossil forms of energy generation systems; amending section 15-32-107, MCA. ....Page 1781
667		669	An act relating to the creation and financing of urban renewal projects; revising the methods of creating urban renewal plans and calculating and using tax increments; amending sections 7-15-4216, 7-15-4217, 7-15-4221, 7-15-4260, 7-15-4283, 7-15-4285 through 7-15-4287, 7-15-4289, 7-15-4290, and 7-15-4301, MCA; and providing an effective date. ....Page 1782
668		678	An act to provide that the public and the media may not be excluded from youth court proceedings in which a youth is alleged to be delinquent or in need of supervision unless the court determines that a closed hearing is in the youth's best interest; amending section 41-5-521, MCA. ....Page 1786
669		682	An act to allow county commissioners in certain counties to establish the office of county attorney as a full-time position; to increase the salary of certain county attorneys; and to provide for the rendition of county legal services by persons other than the county attorney; amending section 7-4-2503, MCA. ....Page 1787
670		759	An act to revise and clarify the laws related to forest fire hazard reduction; to increase hazard reduction withholding rates and make them more enforceable; and amending sections 76-13-404, 76-13-407, 76-13-409, and 76-13-410, MCA....Page 1790
671		760	An act to revise the fee for housing federal and state prisoners in county jails; amending sections 7-32-2206 and 7-32-2209, MCA. ....Page 1792
672		761	An act authorizing and consenting to the acquisition, construction, equipping, and financing by the Board of Regents of Higher Education of improvements to the student union building and certain physical education, athletic, and recreational facilities at Montana State University and to the physical education, athletic, and recreational facilities at Eastern Montana College; authorizing the issuance and sale of long-range building program bonds by the Board of Examiners; and appropriating the proceeds of such bonds for this purpose. ....Page 1793
673		768	An act to exempt the transfer of property of a member of the armed forces who dies from wounds received in a combat zone from Montana's inheritance and estate taxes; providing an effective date. ....Page 1795

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Chap. Num.	Senate Bill	House Bill	Title
674		770	An act to authorize the state, local government units, and Montana corporations to apply for the right to operate foreign-trade zones under the laws of the United States; providing jurisdictional guidelines for foreign-trade zones; and clarifying taxation within foreign-trade zones. ....Page 1795
675		851	An act to provide procedures for alteration of existing forms of local government. ....Page 1796
676		883	An act to generally revise the law relating to major facilities and siting; amending sections 75-20-103, 75-20-104, 75-20-203, 75-20-211, 75-20-213 through 75-20-216, 75-20-217 through 75-20-222, 75-20-301, 75-20-302, 75-20-304, 75-20-401, 75-20-402, 75-20-406, 75-20-408, 75-20-501, and 75-20-503, MCA; and repealing sections 75-20-1101 through 75-20-1105, MCA. ....Page 1804
677		868	An act to provide a battered spouses and domestic violence grant program administered by the Department of Social and Rehabilitation Services; providing a source of funding; providing an appropriation; and amending section 40-1-202, MCA. ....Page 1822
678		891	An act to establish state employee compensation and provide pay schedules for fiscal years 1980 and 1981; appropriating funds therefor; amending sections 2-18-101, 2-18-106, 2-18-301, 2-18-303, 2-18-304, 2-18-305, 2-18-311, 2-18-312, 2-18-701, and 2-18-703, MCA; and repealing section 2-18-307, MCA. ....Page 1824
679		900	An act to increase the membership of the Board of Oil and Gas Conservation by adding two landowners not actively associated with the oil and gas industry; amending section 2-15-3303, MCA. ....Page 1834
680		910	An act to reaffirm the intent of the Legislature regarding the status of taxes or license fees paid to the state under protest; amending section 15-1-402, MCA; providing an immediate effective date. ....Page 1835
681		916	An act to amend section 15-30-203, MCA, to make officers and employees of corporations liable for payment of tax withheld by a corporation from employees. ....Page 1836
682		923	An act to transfer responsibility for the custody of postsecondary vocational-technical center money from the county treasurer to the State Treasurer; providing that a school district board of trustees may authorize the expenditure of funds from the state treasury for postsecondary vocational-technical center programs; amending sections 20-3-324, 20-7-322, 20-7-325, 20-7-333, and 20-9-212, MCA; and providing an effective date. ....Page 1837
683	286		An act to increase, for an 8-year term, the number of associate justices on the Supreme Court by election; to clarify that a majority of all the justices must concur in any decision of the court; amending sections 3-2-101, 3-2-302, and 13-14-101, MCA. ....Page 1842
684	489		An act to reestablish the Board of Public Accountants and to generally revise the authority of the board with regard to certification and licensing; amending sections 2-8-103, 2-15-1641, 37-50-102, 37-50-201 through 37-50-203, 37-50-301, 37-50-302, 37-50-305, 37-50-308, 37-50-309, 37-50-314, 37-50-315, 37-50-321, 37-50-331 through 37-50-335, MCA; and repealing sections 37-50-306 and 37-50-307, MCA; and providing an effective date. ....Page 1843
685		190	An act to revise the unemployment compensation laws relating to the taxable wage base, employer contributions, and employer classification and experience rating; amending sections 39-51-401, 39-51-1103, 39-51-1108, and 39-51-1301, MCA; repealing sections 39-51-1106, 39-51-1107, 39-51-1201 through 39-51-1203, and 39-51-1205, MCA; repealing section 39-51-1204, MCA, retroactively; and providing a retroactive effective date. ....Page 1855
686		643	An act to require that all operating property owned by centrally assessed companies be assessed by the Department of Revenue and to apply a single property tax rate to that property; providing that this act applies to taxable years after December 31, 1979; amending sections 15-6-108, 15-6-111, 15-6-115, 15-8-111, 15-8-407, 15-23-101, 15-23-105, 15-23-202, 15-23-403, MCA; repealing section 15-23-302, MCA; and providing for coordination with House Bill 213. ....Page 1865
687		652	An act to amend the law relating to sexual assault by providing that consent is ineffective in certain circumstances; amending section 45-5-502, MCA. ....Page 1870
688		766	An act to revise the unemployment compensation laws relating to the minimum weekly benefit amount, the duration of benefits, and disqualification of benefits; amending sections 39-51-2105, 39-51-2201, 39-51-2204, 39-51-2302, 39-51-2303, and 39-51-2304, MCA. ....Page 1871

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689		842	An act to permit the reallocation and appropriation of water reserved for purposes of maintaining minimum flow, level, or quality of water; limiting minimum flow reservations; amending section 85-2-316, MCA; providing an effective date. ....Page 1874
690	2		An act relating to the school foundation program; providing for changes in financial schedules for the maximum general fund budgets for elementary and high schools; amending sections 20-9-316 through 20-9-319, MCA; and providing an effective date. ....Page 1876
691	448		An act to authorize the Board of Regents to establish and contract for the operation of a guaranteed student loan program; creating a student loan advisory council; establishing a guaranteed student loan account within the state treasury; and providing an immediate effective date. ....Page 1879
692	463		An act to provide a county mill levy for district court costs; allowing the Department of Administration to make emergency assistance grants to district courts and providing application and administrative procedures for these grants; providing for a period of applicability. ....Page 1882
693		213	An act to generally revise the property tax classification system; amending sections 15-1-101, 15-6-101, 15-7-202, 15-8-111, 15-23-501, 15-23-505, 15-24-102, 15-24-301, 15-24-1102, 15-24-1103, 15-24-1308, 15-24-1311, and 20-9-407, MCA; and repealing sections 15-6-102 through 15-6-121 and 15-7-121, MCA. ....Page 1884
694		427	An act amending section 15-35-108, MCA, to allocate a portion of the proceeds of the coal severance tax for certain library services; appropriating funds for those services; and providing an effective date. ....Page 1897
695	67		An act to exempt irrigation, drainage, and sprinkler irrigation facilities from taxation; and repealing section 15-7-216, MCA. ....Page 1899
696		830	An act to revise the laws relating to the inheritance tax; exempting all property transferred to a surviving spouse; amending sections 72-16-313 and 72-16-321, MCA; and providing an immediate effective date. ....Page 1899
697	76		An act to adjudicate claims of existing water rights in Montana; amending sections 3-5-111, 85-2-102, 85-2-112, 85-2-113, 85-2-114, 85-2-401, and 85-2-406, MCA; repealing sections 85-2-201 through 85-2-210, MCA; and providing an effective date. ....Page 1901
698		925	An act to enact the Montana Property and Income Tax Relief Act; providing for a direct property tax relief payment to a person subject to property tax on his principal residence for the calendar years 1979 and 1980; increasing the individual income tax deduction for exemptions, the standard deduction, and the minimum filing requirement; providing a mechanism for increasing the exemption deduction for taxable years beginning after December 31, 1978, and before January 1, 1981; amending sections 15-30-112, 15-30-114, 15-30-122, and 15-30-142, MCA....Page 1917
699	99		An act to authorize the Department of Revenue to buy, import, and sell table wine; allocating the tax on wine; amending sections 1, 2, 4, 5, and 9 of Initiative No. 81; and sections 16-1-302, 16-1-303, and 16-1-304, MCA. ....Page 1922
700	182		An act to allocate yearly increases in the oil and gas severance tax collected in each county to the local governments in the county from which the tax was collected; correcting an erroneous reference to the oil producer's license tax; amending section 15-1-501, MCA. ....Page 1930
701	250		An act to provide that a notice of buyer's interest in real property may be recorded with the county clerk and recorder; amending sections 7-4-2613 and 7-4-2619, MCA. ....Page 1931
702	389		An act to allow an owner of residential property to file an application to insure that his property will be appraised as residential; requiring him to sign a statement that the property will be used for residential purposes only; imposing a rollback tax upon a change in use; and providing an effective date. ....Page 1935
703	412		An act to waive park dedication requirements for any division that creates only one additional lot; amending section 76-3-606, MCA. ....Page 1936
704	497		An act providing for a permit system for the aerial hunting of predatory animals. ....Page 1937
705	508		An act to revise the laws relating to the determination and payment of the Montana inheritance tax; providing that certain farm and other real property may be valued on the basis of its use at the time of the decedent's death; providing an election for a 15-year installment payment method for the transfer of certain farm or closely

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			held business interests; amending section 72-16-308, MCA; providing an immediate effective date. ....Page 1938
706		398	An act to amend section 15-6-116, MCA, to provide a graduated tax for class fifteen property, based on the income of the owner; providing an effective date. ....Page 1953
707		692	An act to ensure that Medicaid eligible persons may not receive county medical assistance; amending section 53-3-103, MCA; providing an immediate effective date. ....Page 1955
708		745	An act to establish a water resources and adjudication oversight committee; appropriating funds for committee support; and providing an immediate effective and expiration date. ....Page 1956
709		775	An act to allow attorneys' fees to the prevailing party in a contested case hearing under the Human Rights Act; amending section 49-2-505, MCA....Page 1957
710		796	An act to generally revise the laws governing the property tax appraisal and appeal process; requiring the revenue oversight committee to consider Department of Revenue rules governing appraisal and allowing it to poll the Legislature concerning these rules; and amending sections 15-7-102 and 15-7-103, MCA, and section 4 of Chapter 458, Laws of 1977. ....Page 1958
711		844	An act to generally revise the laws relating to alcoholism treatment programs and the distribution of revenues from the liquor license tax proceeds; amending sections 16-1-404, 53-24-103, 53-24-108, 53-24-204, and 53-24-206 through 53-24-208, MCA; and repealing section 53-24-203, MCA....Page 1960
712		848	An act to provide a fee in lieu of property tax for motor homes, travel trailers, snowmobiles, and campers; amending sections 15-6-101, 15-6-110, 15-6-111, 15-6-201, 15-8-201, 15-8-202, 23-2-611, 23-2-612, 23-2-616 through 23-2-618, 23-2-642, 61-3-303, 61-3-317, 61-3-322, 61-3-441, 61-3-442, 61-3-501 through 61-3-504, and 61-3-509, MCA; repealing sections 15-6-121 and 15-8-203, MCA. ....Page 1966
713		877	An act to abolish the defense of mental disease or defect in criminal actions and to provide an alternative sentencing procedure to be followed when a convicted defendant is found to have been suffering from a mental disease or defect at the time of the commission of the offense of which he was convicted; amending sections 46-14-101, 46-14-201 through 46-14-203, 46-14-212, 46-14-213, 46-14-221, 46-14-222, 46-14-301, 46-14-401, and 46-15-301, MCA; and repealing section 46-14-211, MCA. ....Page 1979

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HB	1	An act appropriating money for the operation of the Forty-sixth Legislature and providing an immediate effective date....Page 1987
HB	9	An act appropriating $135,000 to the Board of Crime Control for the purpose of funding the operation of the Montana Criminal Law Information Research Center (MONTCLIRC) at the University of Montana School of Law; providing that the Board of Crime Control may contract with the university for the operation of MONTCLIRC; and requiring MONTCLIRC to provide a centralized legal research facility and make quarterly reports to the board....Page 1987
HB	79	An act to appropriate $250,000 to the Legislative Council for the fiscal year ending June 30, 1979; and providing an immediate effective date. ....Page 1988
HB	122	An act to appropriate money from the general fund for preservation of Montana's original constitutions....Page 1989
HB	273	An act to appropriate $350,000 to the Department of Health and Environmental Sciences for completion of the health effects and monitoring study of ambient air pollution concentrations in Butte-Anaconda, Missoula, Billings, Columbia Falls, Hardin, Colstrip coal development area, and the East Helena area; and providing a termination date....Page 1989
HB	284	An act to appropriate funds for the purpose of providing increased payment for foster care and specifying the manner of payment....Page 1989
HB	317	An act to appropriate supplemental money for capital projects for the biennium ending June 30, 1979; providing an immediate effective date....Page 1990
HB	354	An act to appropriate money to the Office of the Consumer Counsel for the fiscal year ending June 30, 1979; providing an effective date....Page 1991
HB	410	An act to appropriate funds to the Montana Agricultural Experiment Station to provide additional support for the biological weed control research program at the Western Agricultural Research Center at Corvallis....Page 1991

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HB 415 An act to increase agency budgets during the biennium ending June 30, 1979, with funds received through the month of January, 1979, which would usually be added by budget amendment; and providing an effective date. ..... Page 1992

HB 416 An act to appropriate money to various state agencies for the fiscal year ending June 30, 1979; providing for other matters relating to the appropriations; and providing an effective date. ..... Page 1993

HB 417 An act to appropriate money for capital projects for the biennium ending June 30, 1981; providing for other matters relating to the appropriations; and providing an immediate effective date. ..... Page 1995

HB 483 An act appropriating money to various state agencies for the biennium ending June 30, 1981; and providing an immediate effective date. ..... Page 2001

HB 537 An act to provide additional funding for secondary vocational and industrial arts programs. ..... Page 2038

HB 556 An act to appropriate $145,200 to Makoshika State Park located south of Glendive for emergency road repair and maintenance; and providing an immediate effective date. ..... Page 2039

HB 754 An act to appropriate $35,000 to the Montana Arts Council, Montana folklore program, for the biennium ending June 30, 1981, from coal severance tax revenue allocated under section 15-35-108(2)(h), MCA. ..... Page 2039

HB 807 An act to appropriate to the Department of Natural Resources and Conservation the sum of $320,984.05 or so much thereof as may be necessary to satisfy the judgment entered on September 21, 1976, by the district court of the first judicial district of the state of Montana, in and for the county of Lewis and Clark, in Cause No. 38155. ..... Page 2040

HB 824 An act to appropriate money to the Department of Natural Resources and Conservation from the renewable resource development clearance fund account for various projects under the renewable resource development program and specifying certain conditions upon the appropriations. ..... Page 2040

HB 841 An act to appropriate funds to the Department of Natural Resources and Conservation to contract for geotechnical and economic studies concerning the High Tongue Dam and the New Tongue Dam. ..... Page 2042

HB 890 An act to appropriate funds to pay for legal costs involved in developing and pursuing Montana's position with regard to reorganization and bankruptcy proceedings of the Milwaukee Railroad. ..... Page 2042

HB 894 An act to appropriate funds to the Department of Natural Resources and Conservation to rehabilitate the Cooney Dam of the Rock Creek Project located near Red Lodge in Carbon County. ..... Page 2043

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HB 896 An act to appropriate money for the purpose of providing an extension or reenlistment incentive bonus for enlisted members of the Montana National Guard ..... Page 2046

HB 897 An act appropriating money to the Legislative Council to complete the editing and publishing of the 1972 Constitutional Convention proceedings; providing an immediate effective date. ..... Page 2047

HB 903 An act to appropriate money to the Department of Fish and Game for recreational improvements to Giant Springs State Park, located near Great Falls. ..... Page 2048

HB 905 An act to appropriate, for commemorative wall niches, $5,000 to the Montana Arts Council for the biennium ending June 30, 1981, from coal severance tax revenue allocated under section 15-35-108(2)(h), MCA. ..... Page 2048

HB 908 An act to appropriate funds to the Department of Natural Resources and Conservation from the resource indemnity trust interest account to conduct siting, energy need, facility integration, environmental, and socio-economic impact studies for the possible construction of a magnetohydrodynamics engineering test facility in Montana. ..... Page 2049

HB 913 An act appropriating $100,000 to the Montana Historical Society for the restoration and protection of murals in the state capitol. ..... Page 2050

HB 919 An act to appropriate money for the purpose of funding a statewide cancer tumor registry. ..... Page 2050

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SJR 24 A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing an amendment to Rule 40-3.98(6)-S9885 of the Administrative Rules of Montana to delete the requirement that when a franchise name is used, a real estate broker/franchisee's name must constitute at least 50% of the entire combined surface area covered by both the broker's name and the franchise name or logotype. ..... Page 2091

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SESSION LAWS

CHAPTER NO. 1

AN ACT TO ADOPT THE MONTANA CODE ANNOTATED; AMENDING SECTION 1-11-301, MCA, TO PROVIDE FOR DEPOSIT OF PROCEEDS FROM SALES OF THE CODE INTO THE REVOLVING FUND AND TO TRANSFER THE AUTHORITY TO LET BIDS FOR PUBLICATION FROM THE DEPARTMENT OF ADMINISTRATION TO THE CODE COMMISSIONER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Adoption of code.** (1) The Montana Code Annotated (1978) as recodified and published by the code commissioner under the authority of Chapter 419, Laws of 1975, as amended by Chapter 1, Laws of 1977, is adopted as prima facie the law of Montana.

(2) The Montana Code Annotated may be cited as "MCA" and shall be given effect as provided in section 6, Chapter 419, Laws of 1975, as amended by section 4, Chapter 1, Laws of 1977, and set forth in 1-11-103, MCA.

Section 2. **Effect of publishing supreme court rules.** (1) The legislature recognizes the supreme court's authority pursuant to Article VII, section 2, of the Montana constitution to make rules governing procedure and practice before the courts.

(2) The legislature also recognizes that the practice of printing such rules with the Montana statutes is of benefit to code users and facilitates implementation of Article VII, section 2(3), of the Montana constitution concerning disapproval by the legislature.

(3) Therefore, the Montana Rules of Civil Procedure, printed as chapter 20, Title 25, MCA; the Montana Rules of Appellate Civil Procedure, printed as chapter 21, Title 25, MCA; and the Montana Rules of Evidence, printed as chapter 10, Title 26, MCA, appear only for the purpose of facilitating use of the code. Neither this act nor publication of the rules may be construed as an attempt to readopt or promulgate the rules.

Section 3. Section 1-11-301, MCA, is amended to read:

"1-11-301. Publication and sale of Montana Code Annotated. (1) The legislative council with the advice of the code commissioner shall decide on the quantity, quality, style, format, and grade of all publications prior to having the *code commissioner* contract for their publication. *The code commissioner shall follow the requirements of state law relating to contracts and bids except as herein provided.*

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(2) The methods of sale to the public of the Montana Code Annotated and supplements or other subsequent and ancillary publications thereto may be included as an alternative specification and bid and as a part of a contract to be let by bids by the *code commissioner.*

(3) The sales price to the public shall be fixed by the legislative council but *may* not exceed the cost price plus 20%. All revenues generated from the sale of the Montana Code Annotated *or ancillary publications* shall be *deposited in the revolving fund, from which fund* appropriations *may be* made for the use of the office and facilities of the legislative council under this chapter.

(4) Sets of the Montana Code Annotated purchased by the state or local governmental agencies that are supported by public funds shall be for the cost price of the sets."

Section 4. **Effective date.** This act is effective on passage and approval.

Approved January 10, 1979.

CHAPTER NO. 2

AN ACT TO MAKE THE BOND VALIDATING ACT APPLY TO BONDS ISSUED AND PROCEEDINGS TAKEN PRIOR TO THE EFFECTIVE DATE OF THIS ACT; AMENDING SECTIONS 17-5-204 AND 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-204, MCA, is amended to read:

"17-5-204. Period of application. (1) This part does not apply to or affect any action or appeal instituted on or before the date to which it has most recently been extended, in which the validity of any such proceeding or of any such bonds is at issue.

(2) The application of this part may be extended by act of the legislature to any date provided therein."

Section 2. Section 17-5-205, MCA, is amended to read:

"17-5-205. Application. The application of the Bond Validating Act, Title 17, chapter 5, part 2, as hereby amended, is extended to bonds issued and proceedings taken prior to *[the effective date of this act]."*

Section 3. **Effective date.** This act is effective upon passage and approval.

Approved January 15, 1979.

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CHAPTER NO. 3

AN ACT TO AMEND SECTION 22-3-105, MCA, RELATING TO THE COMPENSATION OF THE BOARD OF TRUSTEES OF THE MONTANA HISTORICAL SOCIETY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-3-105, MCA, is amended to read:

"22-3-105. Compensation and expenses of trustees. Each member of the board of trustees is entitled to be paid $25 for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for their travel expenses."

Approved January 30, 1979.

CHAPTER NO. 4

AN ACT TO AMEND SECTION 33-1-303, MCA, RELATING TO EMPLOYMENT OF ASSISTANTS TO THE INSURANCE COMMISSIONER.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-303, MCA, is amended to read:

"33-1-303. Deputies and assistants — employment, compensation, and termination. (1) The commissioner shall appoint a chief deputy insurance commissioner who shall be in charge of the insurance department under the direction and control of the commissioner.

(2) The commissioner may appoint additional deputy insurance commissioners for such purposes as he may designate.

(3) The commissioner may employ a competent insurance actuary to perform actuarial duties, if any, of the department, to take charge of or assist in the examination of insurers, and to perform other duties assigned to him.

(4) The commissioner may appoint or employ such examiners to conduct or assist in examinations of insurers and others provided for under the code as may be competent, because of experience or special education or training, to fulfill the responsibilities of an insurance examiner.

(5) The commissioner *may* appoint and employ a field investigator whose primary duty it shall be, as directed by the commissioner, to make investigations in this state of violations or claimed violations of this code.

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(6) The commissioner may appoint a chief clerk for the insurance department and employ such other assistants and clerks as may be necessary to assist him properly to discharge the duties imposed upon him under this code.

(7) The commissioner may at any time terminate the appointment, designation, or employment of any such deputy, actuary, chief clerk, or other employee.

(8) The commissioner may from time to time contract for and procure, on a fee or part-time basis, or both, such actuarial, technical, or other professional services as he may require for the discharge of his duties.

(9) The compensation of all such personnel so appointed, employed, or contracted for by him shall be as fixed by the commissioner but in the aggregate shall not exceed current funds appropriated by the legislature to the insurance department or otherwise currently available for the purpose."

Approved January 30, 1979.

CHAPTER NO. 5

AN ACT TO GENERALLY REVISE AND CLARIFY TITLE 16, MCA, RELATING TO ALCOHOL AND TOBACCO; AMENDING SECTIONS 16-1-103, 16-1-106, 16-1-403, 16-6-302, AND 16-10-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-103, MCA, is amended to read:

"16-1-103. Policy as to retail sale of liquor. It is the policy of the state that it is necessary to further regulate and control the sale and distribution of alcoholic beverages within the state and to ensure the entire control of the sale of liquor in the department of revenue. It is advisable and necessary, in addition to the operation of the state liquor stores now provided by law, that the department be empowered and authorized to grant licenses to persons qualified under this code to sell liquor purchased by them at state liquor stores at retail posted price in accordance with this code and under rules promulgated by the department and under its strict supervision and control and to provide severe penalty for the sale of liquor except by and in state liquor stores and by persons licensed under this code. The restrictions, regulations, and provisions contained in this code are enacted by the legislature for the protection, health, welfare, and safety of the people of the state."

Section 2. Section 16-1-106, MCA, is amended to read:

"16-1-106. Definitions. As used in this code, the following definitions apply:

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(1) "Agency agreement" means an agreement between the department and a person appointed to sell liquor as a commission merchant rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than .5% of alcohol by volume.

(4) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(5) "Brewer" means a person who produces malt beverages.

(6) "Department" means the department of revenue.

(7) "Immediate family" means a spouse, dependent children, or dependent parents.

(8) "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

(9) "Liquor" means an alcoholic beverage except beer.

(10) "Malt beverage" means an acoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom and with or without other wholesome products suitable for human food consumption.

(11) "Package" means a container or receptacle used for holding an alcoholic beverage.

(12) "Posted price" means the retail price of liquor as fixed and determined by the department and in addition thereto an excise and license tax as provided in this code.

(13) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(14) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(15) "Rules" means rules published by the department pursuant to this code.

(16) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(17) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling liquor.

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(18) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(19) "Warehouse" means a building or structure owned or operated by a licensed wholesaler for the receiving, storage, and distribution of beer as permitted by this code.

(20) "Wine" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains not less than 7% or more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine *and* labeled and sold as wine in accordance with federal regulations are also wine."

Section 3. Section 16-1-403, MCA, is amended to read:

"16-1-403. Excise tax accounting methods — report forms. (1) The method provided in 16-1-402 shall be presumed to determine fairly and correctly the liquor purchased outside this state and sold for consumption within this state. Any carrier aggrieved by the application of *the* method may petition the department for use of some other method. Thereupon, if the department finds that the application of *the* method will be unjust to the carrier, it may allow the use of the method petitioned for by the *carrier* or may use such other method as will fairly reflect the liquor purchased outside this state and served for consumption within this state.

(2) The department shall prescribe report forms which shall be used by the carriers in reporting their sales and computing their liability for excise taxes and markup. Report forms shall be filed and payment of excise taxes and state markup shall be made on a quarterly basis. The filing of report forms and payment of excise taxes and state markup shall be made not later than the last day of the month immediately following the close of each quarterly period."

Section 4. Section 16-6-302, MCA, is amended to read:

"16-6-302. Penalty for sale of alcoholic beverage without license. Any person who has not been issued a license under this code who *sells* or *keeps* for sale any alcoholic beverage *is* guilty of a felony and upon conviction thereof *is punishable by a fine of* not less than $1,000 or more than $5,000 or *by imprisonment* in the state prison for not less than 1 or more than 5 years or *by* both such fine and imprisonment."

Section 5. Section 16-10-102, MCA, is amended to read:

"16-10-102. Declaration of policy. *The* advertising, offering for sale, or sale of cigarettes below cost in the retail and wholesale trades with the intent of injuring competitors or lessening competition is an unfair and

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deceptive business practice. It is the policy of the state to promote the public welfare, and it is the purpose of this *chapter* to carry out that policy in the public interest, stabilize the sale of cigarettes, and maximize and protect the state revenues from this source."

Approved January 30, 1979.

CHAPTER NO. 6

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS; AND REPEALING SECTIONS 91-104.1, 91-104.2, 91-219, 91-519, 91-523, AND 91-4312, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-2-305, MCA, is amended to read:

"72-2-305. Who may witness — effect of witness by beneficiary. (1) Any person generally competent to be a witness may act as a witness to a will.

(2) A will is not invalid because the will is signed by an interested witness.

(3) All beneficial devises made in any will to a subscribing witness thereto are void unless there are two other competent subscribing witnesses to the same, but a mere charge on the estate of the testator does not prevent his creditors from being competent witnesses to his will.

(4) If a witness to whom any beneficial devise void under *subsection (3)* is made would have been entitled to any share of the estate of the testator if the testator had died intestate, such witness succeeds to so much of the share as would be distributed to him under intestate succession, not exceeding the devise or bequest made to him in the will."

Section 2. Section 72-3-309, MCA, is amended to read:

"72-3-309. Testimony of attesting witnesses in contested cases — presumptions for self-proved will. (1) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the state *and* competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

(2) If the will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed, subject to rebuttal, without the testimony of any witness, upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit."

Section 3. Section 72-3-803, MCA, is amended to read:

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"72-3-803. Nonclaim — limitations on presentation of claims — exceptions. (1) *With the exception of claims for taxes and claims founded on tort, all* claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent unless presented as follows:

(a) within 4 months after the date of the first publication of notice to creditors if notice is given in compliance with 72-3-801, provided claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state; or

(b) within 3 years after the decedent's death if notice to creditors has not been published.

(2) *With the exception of claims for taxes and claims founded on tort, all* claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent unless presented as follows:

(a) a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due;

(b) any other claim, within 4 months after it arises.

(3) Nothing in this section affects or prevents:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance."

Section 4. Section 72-3-916, MCA, is amended to read:

"72-3-916. Distribution to trustee — registration — bond. (1) Before distributing to a trustee, the personal representative may require that the trust be registered, if the state in which it is to be administered provides for registration, and that the trustee inform *in writing* the *current* beneficiaries *and, if possible, one or more persons who under 72-1-303 may represent beneficiaries with future interests of his name and address and provide each with a copy of the terms of the trust which describe or affect his interest and with relevant information about the assets of the trust and the particulars relating to the administration.*

(2) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might

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jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

(3) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections (1) and (2)."

Section 5. Section 72-5-414, MCA, is amended to read:

"72-5-414. Resignation or removal of conservator for cause — successor conservator. The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. *After his death, resignation, or removal, the court may appoint another conservator.* A conservator so appointed succeeds to the title and powers of his predecessor."

Section 6. Section 72-5-422, MCA, is amended to read:

"72-5-422. Power of court to authorize particular protective arrangements or transactions without appointing conservator. (1) If it is established in a proper proceeding that a basis exists as described in 72-5-409 for affecting the property and affairs of a person, the court without appointing a conservator may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include but are not limited to:

(a) payment, delivery, deposit, or retention of funds or property;

(b) sale, mortgage, lease, or other transfer of property;

(c) entry into an annuity contract, a contract for life care, a deposit contract, *or* a contract for training and education; or

(d) addition to or establishment of a suitable trust.

(2) When it has been established in a proper proceeding that a basis exists as described in 72-5-409 for affecting the property and affairs of a person, the court without appointing a conservator may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

(3) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who, *upon appointment, has* the authority conferred by the order and *serves* until discharged by order after report to the court of all matters done pursuant to the order of appointment."

Section 7. Section 72-5-425, MCA, is amended to read:

"72-5-425. Title by appointment as conservator — appointment not transfer for certain purposes. (1) The appointment of a

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conservator vests in *him* title as trustee to all property of the protected person presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys-in-fact.

(2) The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator."

Section 8. Section 72-10-101, MCA, is amended to read:

"72-10-101. No requirement for orders and judgments to recite jurisdictional facts. Orders and judgments made by the court or judge in probate proceedings need not recite the existence of facts or the performance of acts upon which the jurisdiction of the court or judge may depend, but it *is* only necessary that they contain the matters ordered, except as otherwise provided in *this title*."

Section 9. Section 72-10-104, MCA, is amended to read:

"72-10-104. Service on guardian equivalent to service on ward interested in estate. Whenever *a minor, mentally ill,* or incompetent person has a guardian of his estate residing in this state, personal service upon the guardian of any process, notice, or order of the court or judge concerning the estate of a deceased person in which the ward is interested is equivalent to service upon the ward, and the guardian *shall* attend to the interests of the ward in the matter. Such guardian may also appear for his ward and waive any process, notice, or order to show cause which an adult or a person of sound mind might do."

Section 10. Section 72-10-107, MCA, is amended to read:

"72-10-107. Proceeding in chambers — jury trial. (1) All orders mentioned in *this title* and all proceedings in matters of probate may be made or heard either before the court or the judge thereof in chambers.

(2) When a jury is needed, the court or judge may order the trial to take place in court as provided in Title 25."

Section 11. Section 72-10-109, MCA, is amended to read:

"72-10-109. Citation — how issued. The citation may be issued by the clerk, upon the application of any party, without an order of the judge, except in cases in which such order is *expressly required* by the provisions of *this title*."

Section 12. Section 72-10-110, MCA, is amended to read:

"72-10-110. Citation — how and when served. (1) The citation must be served in the same manner as a summons in a civil action.

(2) When no other time is specifically prescribed in *this title*, citations must be served at least 5 days before the return day thereof."

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Section 13. Section 72-10-111, MCA, is amended to read:

"72-10-111. Costs — discretion of court in ordering payment. When it is not otherwise prescribed in *this title*, the district court or supreme court on appeal may, in its discretion, order costs to be paid by any party to the proceedings or out of the assets of the estate, as justice may require. Execution for costs may issue out of the district court."

Section 14. Section 72-10-202, MCA, is amended to read:

"72-10-202. Recorded order to impart notice from date of filing. When it is provided in *this title* that any order of the court or judge or a copy thereof must be recorded in the office of the county clerk, *notice of its contents,* from the time of filing *it* for record, is imparted to all persons."

Section 15. Section 72-12-802, MCA, is amended to read:

"72-12-802. Time limitations — effect of vacancy in administration. The time during which there *is* a vacancy in the administration *is* not included in any limitations prescribed *in this title.*"

Section 16. Section 72-14-101, MCA, is amended to read:

"72-14-101. Short title. Parts 1 through 3 of this chapter are to be known as the "Escheated Property Act"."

Section 17. Section 72-14-102, MCA, is amended to read:

"72-14-102. When title to escheated property vests in state. (1) Whenever the title to any property, either real or personal or mixed, fails for any reason, including want of heirs or next of kin, such title *vests* in the state of Montana immediately upon the death of the owner without an inquest or other *similar* proceeding and there *is* no presumption that such owner died leaving heirs or next of kin.

(2) In relation to property other than estates, title *is* presumed to have failed whenever the owner, beneficial owner, or person entitled to any such property within this state *remains* unknown for a period of 20 successive years, and during such period whenever the whereabouts of such owner, beneficial owner, or *person remains* unknown and during such period whenever any personal property wherever situated *remains* unclaimed, then in such event such personal property *escheats* to the state."

Section 18. Section 72-15-101, MCA, is amended to read:

"72-15-101. Other provisions to supplement chapter. When no direction is given in this chapter for the government or guidance of a public administrator in the discharge of his duties or for the administration of an estate in his hands, the provisions of *this title* must govern."

Section 19. Section 72-16-201, MCA, is amended to read:

"72-16-201. Powers of department generally — duty to supervise administration of tax laws — reports. (1) The department of revenue in the conduct of inheritance tax affairs *has* the same powers for gathering information and making investigations as is conferred by law on the department in the performance of its other duties.

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(2) *The* department *shall* supervise the administration of the inheritance tax laws and *investigate* such particular estates to which the inheritance tax laws apply throughout the various counties of the state and cause to be made and filed in its office reports of such *investigations*, together with specific information and facts as to particular estates, that may seem to require special consideration and attention by the department of *justice*; but no information so acquired *may*, in advance of legal action, be disclosed to anyone except proper officials and persons interested in such estate."

Section 20. Section 72-16-208, MCA, is amended to read:

"72-16-208. Powers and duties of department as to nonresident estates. The department of revenue shall also gather information and make investigations and reports concerning the estates of nonresident decedents within the provisions of the inheritance tax laws and shall especially investigate the probate and other records for such probable estates without the state and report thereon from time to time to the department of *justice* and to the proper district court for appropriate legal action; but no information so acquired *may*, in advance of legal action, be disclosed to anyone except proper officials and persons interested in such estate."

Section 21. Section 72-16-210, MCA, is amended to read:

"72-16-210. Duty of justice department. *The* department of *justice shall* carry out and enforce the recommendations and directions of the department of revenue in all matters pertaining to the conduct of inheritance tax affairs."

Section 22. Section 72-16-306, MCA, is amended to read:

"72-16-306. Recording date prima facie date of transfer — transfers recorded after death. *Recorded papers evidencing a transfer* of property, real, personal, or mixed, or of any interest therein coming within the provisions of *parts 1 through 8 are* prima facie proof, for the purposes of *parts 1 through 8, that it was* made as of the date upon which *such* papers *were* recorded. *Any* such *transfer*, if recorded after the death of the person or persons making such transfer, whatever the form of such transfer, *is considered*, for the purposes of taxation under the provisions of *parts 1 through 8*, to have been made by will."

Section 23. Section 72-16-312, MCA, is amended to read:

"72-16-312. Exemption — transfers for charitable or public purposes. (1) The following transfers are totally exempt:

(a) all property transferred to the state or any of its institutions or to *local governments* within the state for strictly *local government or other public* purposes;

(b) all property transferred to any society, corporation, institution, or association, in trust or otherwise, or to any foundation or trust organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual and no substantial part of

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the activities of which is carrying on propaganda or otherwise attempting to influence legislation, if any of the following conditions is present:

(i) the society, corporation, institution, foundation, trust, or association is organized solely for religious, charitable, scientific, literary, or educational purposes under the laws of this state or of the United States;

(ii) the property transferred is limited for use within this state;

(iii) the society, corporation, institution, foundation, trust, or association is organized or existing under the laws of another state of the United States or of a foreign state or country and at the date of the decedent's death any one of the following conditions existed:

(A) the other state, foreign state, or foreign country did not impose a legacy, succession, or death tax of any character in respect to property transferred to a similar society, corporation, institution, foundation, trust, or association organized or existing under the laws of this state;

(B) the laws of the other state, foreign state, or foreign country contained a reciprocal provision under which property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country was exempt from legacy, succession, or death taxes of every character, if the other state of the United States or foreign state or country allowed a similar exemption in respect to property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country;

(C) the society, corporation, institution, foundation, trust, or association owns or operates a hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are without discrimination gratuitously admitted and treated and the property transferred is limited for use at such hospital.

(2) The tax imposed by 72-16-301 does not apply to transfers to corporations of this state organized under its laws or voluntary associations organized solely for religious, charitable, or educational purposes, which use the property so transferred exclusively for the purposes of their organization within the state."

Section 24. Section 72-16-423, MCA, is amended to read:

"**72-16-423. Court order to be delivered and taxes paid before final judgment in estate.** A copy of the court order referred to in 72-16-422 shall be delivered or mailed to the county treasurer, the administrator or executor, and the department of revenue, and no final judgment *may* be entered in such estates until due proof is filed with the court that such copies have been so delivered or mailed and receipts are filed with *the* court showing the payment of all such taxes or proof is filed showing that the *permission for deferral of payment* authorized by 72-16-438 has been given."

Section 25. Section 72-16-437, MCA, is amended to read:

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"72-16-437. Personal representative not entitled to closing unless tax paid or bond filed. No personal representative or trustee *is* entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of parts 1 through 8 unless he *produces* such receipt or a certified copy thereof or unless *permission for deferral of payment has been granted as provided in* 72-16-438."

Section 26. Section 72-16-443, MCA, is amended to read:

"72-16-443. Collection of unpaid taxes. (1) If any county treasurer, *the* state treasurer, or the department of revenue *has* reason to believe that any tax is due and unpaid under the provisions of parts 1 through 8, after the refusal or neglect of any person liable therefor to pay the same, he or it shall notify the attorney general in writing of such failure or neglect; and the attorney general, if he *has* probable cause to believe that such tax is due and unpaid, shall apply to the district court for a citation citing the person liable to pay such tax to appear before the court on the day specified, not more than 3 months from the date of such citation, and show cause why the tax should not be paid.

(2) The judge of the district court, upon such application and whenever it *appears* to him that any such tax accruing under parts 1 through 8 has not been paid as required by law, shall issue such citation. *The* service of such citation and the time, manner, and proof thereof and the hearing and determination thereof shall conform as near as may be to the provisions of the laws governing probate practice of this state.

(3) Whenever it *appears* that any such tax is due and payable and the payment thereof cannot be enforced under the provisions of parts 1 through 8 in *such* district court, the person or corporation from whom the same is due is hereby made liable to the state for the amount of such tax; and the attorney general, in the name of the state, *shall* sue for and enforce the collection of such tax, and the county attorney of the county *shall* appear for and act on behalf of any county treasurer who *is* cited to appear before any district court under the provisions of parts 1 through 8."

Section 27. Section 72-16-704, MCA, is amended to read:

"72-16-704. Apportionment of deductions when property partly within and partly without the state. Whenever a tax *is* due from the estate, or the beneficiaries therein, of any resident or nonresident decedent upon the transfer of any property when the property or the estate left by such decedent is partly within and partly without this state or upon any stocks, bonds, mortgages, or other securities representing property or estate partly within and partly without this state, any beneficiary of such estate *is* entitled to deduct only his proper proportion of that portion of the total debts and expenses of administration which the gross estate in Montana or within its jurisdiction bears to the gross estate both within and without this state. As to his Montana exemption, each beneficiary *is* entitled to deduct only that portion represented by the ratio between his interest in the property in this state or within its jurisdiction and his interest in the entire estate."

Section 28. Section 72-16-801, MCA, is amended to read:

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"72-16-801. Exemption of intangible personal property of nonresident decedent — when. The tax imposed by parts 3, 7, *and* 9 and this part in respect of personal property, except tangible personal property having an actual situs in this state, *is* not payable if:

(1) the decedent is a resident of a state or territory of the United States which at the time of the transfer did not impose a transfer tax or death tax of any character in respect of personal property of residents of this state, except tangible personal property having an actual situs in that state or territory; or

(2) the laws of the state or territory of residence of the nonresident decedent at the time of the transfer contained a reciprocal provision under which nonresidents of that state were exempted from transfer *taxes* or death taxes of every character in respect of personal property, except tangible personal property having an actual situs in that state, *provided* the state or territory of residence of such nonresident decedent allowed a similar exemption to residents of this state."

Section 29. Section 72-16-906, MCA, is amended to read:

"72-16-906. Required filings. *The* personal representative of the estate of any decedent whose estate *is* subject to the payment of a United States estate tax *shall* file duplicates of the United States estate tax returns with the district court of the county in which such estate is being probated and with the department of revenue. He shall also file with such court and with the department a certificate or other evidence from the internal revenue *service* showing the amount of the United States estate tax as computed by that *agency*."

Section 30. Section 72-20-409, MCA, is amended to read:

"72-20-409. Appeal. The decree so rendered *is* a final order from which any party in interest may appeal as in civil actions to the *supreme* court of the state of Montana."

Section 31. Section 72-24-103, MCA, is amended to read:

"72-24-103. For what purposes express trusts may be created. Express trusts may be created for any of the following purposes:

(1) to sell real property and apply or dispose of the proceeds in accordance with the instrument creating the trust;

(2) to mortgage or lease real property for the benefit of annuitants or other legatees or for the purpose of satisfying any charge thereon;

(3) to receive the rents and profits of real property and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family during the life of such person or for any shorter term, subject to *Title 70, chapter 1, part 4*; or

(4) to receive the rents and profits of real property and to accumulate the same for the purposes and within the limits prescribed by *Title 70, chapter 1, part 4*."

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Section 32. Section 72-26-201, MCA, is amended to read:

"72-26-201. Manner of making gift. (1) An adult person may, during his lifetime, make a gift of a security or money to a person who is a minor on the date of the gift:

(a) if the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person (an adult member of the minor's family, a guardian of the minor), or a trust company, followed in substance by the words "as custodian for ... (name of minor) under the Montana Uniform Gifts to Minors Act";

(b) if the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor (an adult member, other than the donor, of the minor's family, a guardian of the minor) or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

GIFT UNDER THE MONTANA UNIFORM GIFTS TO MINORS ACT

I, ... (name of donor), hereby deliver to .... (name of custodian) as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act, the following security(ies):

(*insert* an appropriate description of the security or securities delivered sufficient to identify it or them)

.....(signature of donor)

..... (name of custodian) hereby acknowledges receipt of the *above-described* security(ies) as custodian for the above minor under the Montana Uniform Gifts to Minors Act.

Dated: .....

.....*(signature* of custodian)

(c) if the subject of the gift is money, by paying or delivering it to a broker or a domestic financial institution for credit to an account in the name of the donor, another adult (an adult member of the minor's family, a guardian of the minor), or a trust company, followed in substance by the words "as custodian for.... (name of minor) under the Montana Uniform Gifts to Minors Act".

(2) Any gift made in a manner prescribed in subsection (1) may be made to only one minor, and only one person may be the custodian.

(3) A donor who makes a gift to a minor in a manner prescribed in subsection (1) shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this subsection nor his designation of an ineligible person as custodian nor renunciation by the person designated as custodian affects the consummation of the gift.

(4) If the subject *of* the gift is a life insurance policy or annuity contract, an adult person may, during his lifetime, make a gift thereof to a person who is a minor on the date of the gift by causing the ownership

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of the policy or contract to be registered with the issuing insurance company in the name of the donor, another adult, an adult member of the minor's family, a guardian of the minor, or a trust company, followed in substance by the words "as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act"."

Section 33. Section 72-26-402, MCA, is amended to read:

"72-26-402. Designation of successor by custodian or minor. (1) A custodian may designate his successor by executing and dating an instrument of designation before a subscribing witness other than the successor; the instrument of designation may but need not contain the resignation of the custodian. If the custodian does not so designate his successor before he dies or becomes legally incapacitated and the minor has attained the age of 14 years, the minor may designate a successor custodian by executing an instrument of designation before a subscribing witness other than the successor.

(2) The designation of a successor custodian as provided in subsection (1) takes effect as to each item of the custodial property when the custodian resigns, dies, or becomes legally incapacitated and the custodian or his legal representative:

(a) causes the item, if it is a security which is custodial property and in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian, followed in substance by the words "as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act"; and

(b) delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian.

(3) A custodian who executes an instrument of designation of his successor containing the custodian's resignation as provided in subsection (1) shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection (1) by the custodian or, if none, by the minor if he has no guardian and has attained the age of 14 years or in the possession and control of the guardian of the minor if he has a guardian. If the custodian has executed as provided in subsection (1) more than one instrument of designation, his legal representative shall treat the instrument dated on an earlier date as having been revoked by the instrument dated on a later date.

(4) If a person designated as custodian or as successor custodian by the custodian as provided in subsection (1) is not eligible, dies, or becomes legally incapacitated before the minor attains the age of 18 years and if the

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minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in subsection (1), a donor *or* his legal representative, *the legal representative* of the custodian, or an adult member of the minor's family may petition the court for the designation of a successor custodian."

Section 34. Section 72-30-204, MCA, is amended to read:

"72-30-204. Allowable investments — retention of property. In addition to an investment otherwise authorized by law or by the applicable gift instrument and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or *in* the applicable law other than law relating to investment by a fiduciary, may:

(1) invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations; shares in or obligations of associations, partnerships, or individuals; and obligations of any government or subdivision or instrumentality thereof;

(2) retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(3) include all or part of any institutional fund in any pooled or common fund maintained by the institution; and

(4) invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board."

Section 35. **Repealer.** Sections 91-104.1, 91-104.2, 91-219, 91-519, 91-523, and 91-4312, R.C.M. 1947, are repealed.

Approved January 30, 1979.

CHAPTER NO. 7

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO LAW ENFORCEMENT AND FORENSIC SCIENCE; REPEALING SECTIONS 31-102, 80-2001, AND 89-3902, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-1-404, MCA, is amended to read:

"44-1-404. Status of replacements for patrolmen who enter the armed forces. Patrolmen filling vacancies caused by the incumbents'

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entrance into the armed forces of the United States shall, on the return of the incumbents, be placed in the patrol reserve without pay, *except that* they shall hold their probationary or permanent appointments while there are sufficient operating funds. Reserve patrolmen shall be used for future replacements in the permanent patrol."

Section 2. Section 44-1-501, MCA, is amended to read:

"44-1-501. Payment of salaries. All salaries of members of the highway patrol shall be paid out of *the highway department's account in* the earmarked revenue fund."

Section 3. Section 44-1-601, MCA, is amended to read:

"44-1-601. Probationary training and service — patrolmen. *A* new *patrolman* shall be placed under probationary training and service for a period of 6 months to 1 year. *If the division fails to recommend a permanent appointment by the end of the probationary period,* the probationary *patrolman* will automatically be discharged."

Section 4. Section 44-1-602, MCA, is amended to read:

"44-1-602. Probationary training and service — supervisory personnel. All newly appointed supervisory personnel shall be placed under probationary training and service for a period of 6 months to 1 year. *If the division fails to recommend a permanent appointment by the end of the probationary period,* the *probationary* supervisory personnel will automatically revert to their previous ranks without prejudice."

Section 5. Section 44-1-612, MCA, is amended to read:

"44-1-612. Cause for suspension, demotion, or discharge. Cause for suspension, demotion, or discharge *is*:

(1) conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment;

(2) gross neglect of duty or willful violation or disobedience of orders or regulations;

(3) loitering about or entering places of ill fame or ill repute or *in which illegal* gambling is known to be conducted or to be in progress, except in the immediate discharge of duty;

(4) conduct unbecoming an officer;

(5) drinking intoxicating liquor while using state-owned cars or in uniform or being intoxicated in a public place;

(6) sleeping while on duty;

(7) incapacity or partial incapacity materially affecting ability to perform official duties;

(8) gross inefficiency in performing duties; *or*

(9) willful disobedience of rules adopted by the division governing the conduct and discipline of members of the patrol."

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Section 6. Section 44-1-801, MCA, is amended to read:

"44-1-801. Notice of hearing. (1) The division shall, at least 10 days before the time appointed for a hearing, serve written notice *on the accused patrolman,* specifying the charge or charges filed and stating the name of the person or persons making the charge or charges.

(2) *If the accused patrolman is located within the state and his whereabouts is known, the service required by subsection (1) shall be made personally. If the accused patrolman is located outside the state and his whereabouts is known, service may be made by mailing the written notice to his place of residence.* If, at the time, the whereabouts of the accused patrolman is unknown, service may be made upon him by mailing the written notice to him at his last-known place of residence in Montana."

Section 7. Section 44-1-805, MCA, is amended to read:

"44-1-805. Reinstatement and backpay upon exoneration. If after the hearing the division finds that the charge or charges made against the patrolman *are* not true, the division shall reinstate the accused patrolman to his position and rank and shall order the payment of any salary withheld pending the determination of the charge or charges."

Section 8. Section 44-1-806, MCA, is amended to read:

"44-1-806. Disciplinary action. If after a hearing the division finds that any charge or charges made against the patrolman *are* true, it may punish the offending party by reprimand, suspension without pay, demotion, or discharge."

Section 9. Section 44-1-807, MCA, is amended to read:

"44-1-807. Length of suspension. *A* member under suspension shall be on leave without pay for a period not to exceed 30 days."

Section 10. Section 44-1-901, MCA, is amended to read:

"44-1-901. Right to appeal. (1) Any patrolman who is suspended, demoted, or discharged *has* a right of appeal to the district court of Lewis and Clark County.

(2) *The* appeal must be made within 10 days after *the* decision or determination of the division."

Section 11. Section 44-1-903, MCA, is amended to read:

"44-1-903. Reinstatement and backpay upon reversal or modification. If the decision or determination of the division *is* finally reversed or modified by the district court, the accused patrolman *must* be reinstated in his position. *Upon reinstatement,* the division shall pay to the patrolman any salary or wages withheld from him pending the determination of the charge or charges or *take such action* as may be directed by the court."

Section 12. Section 44-1-1001, MCA, is amended to read:

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"44-1-1001. Offenses for which patrolmen may make arrests. *(1) The* highway patrol chief and all patrolmen may make arrests for the offenses *listed in subsection (2) under the following circumstances:*

(a) the offense is committed in the presence of the chief or any patrolman;

(b) the offense is committed in a rural district and a request for assistance is made by a peace officer; or

(c) the offense is committed in a city or town with a population of less than 2,500 and a request for assistance is made by a peace officer or the mayor of the city or town.

(2) Offenses for which arrests may be made under subsection (1) are:

(a) deliberate homicide;

(b) assault with a deadly weapon;

(c) arson;

(d) criminal mischief;

(e) burglary;

(f) theft;

(g) kidnapping;

(h) illegal transportation of narcotics; or

(i) violation of the Dyer Act regarding the transportation of stolen automobiles."

Section 13. Section 44-1-1005, MCA, is amended to read:

"44-1-1005. Enforcement of motor carriers' licensing law. A highway patrolman has the same authority to enforce provisions of the motor carriers' licensing law as that granted the public service commission under 69-12-203. The *division* shall cooperate with the public service commission and the department of highways to assure minimum duplication and maximum coordination of enforcement effort."

Section 14. Section 44-1-1101, MCA, is amended to read:

"44-1-1101. Duty of patrolman upon making an arrest. *Upon* making an arrest, *a patrolman* shall:

(1) deliver the offender to the nearest justice of the peace during office hours or to the county jail;

(2) give the offender a summons describing the nature of the offense with instructions thereon for the offender to report to the nearest justice of the peace; or

(3) accept *bail determined pursuant to Title 46, chapter 9, part 3."*

Section 15. Section 44-1-1102, MCA, is amended to read:

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"44-1-1102. Procedure when patrolman accepts bail. *If* the patrolman accepts bail, he shall give a signed receipt to the offender, setting forth the amount received. The patrolman shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the patrolman for the amount of bail money delivered. After *the* filing of the complaint and *the* appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further bail bond."

Section 16. Section 44-2-115, MCA, is amended to read:

"44-2-115. Powers and duties of agents. An agent shall:

(1) assist city, county, state, and federal law enforcement agencies at their request by providing expert and immediate aid in investigation and solution of felonies committed in the state;

(2) assist *any* law enforcement *school* held in the state for law *enforcement* officers when requested;

(3). act as a peace officer, as defined in the laws of Montana, when engaged in assisting or acting under the direction of city, county, state, and federal law *enforcement* agencies as provided in this section."

Section 17. Section 44-2-201, MCA, is amended to read:

"44-2-201. Establishment of state system. The department of justice shall cooperate with and assist sheriffs, chiefs of police, and other law *enforcement* officers in the establishment of a complete state system of criminal identification."

Section 18. Section 44-2-202, MCA, is amended to read:

"44-2-202. Assistance to and instruction of local officers. The department shall assist and, when practicable, instruct sheriffs, chiefs of police, and other law *enforcement* officers in establishing efficient local bureaus of identification in their districts and in making them proficient in procuring and maintaining fingerprint records."

Section 19. Section 44-2-303, MCA, is amended to read:

"44-2-303. Federal cost sharing. The attorney general *shall* contact federal law enforcement agencies or officials relative to federal cost sharing in the teletypewriter communications system, and if such funds are available from federal sources, the attorney general *may* sign agreements with the federal agencies. Any federal funds received in any biennium for which Montana funds have been appropriated shall be deposited *in the system's account* and shall be used, if at all possible, to reduce the spending of *money* appropriated from the general fund."

Section 20. Section 44-2-313, MCA, is amended to read:

"44-2-313. Payment of charge. Such charge shall be billed monthly to the agencies. Payments made as a result of the billing shall be remitted to the attorney general and deposited by him in a special account in the state *treasury*."

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Section 21. Section 44-2-316, MCA, is amended to read:

"44-2-316. Assessment for personnel. A special *prorated* assessment shall be made against all participating agencies for personnel necessary to assist in the operation at one central location or key point at which there is a federal intertie. This assessment shall be made monthly *the same* as the operational *charge*. It shall be transmitted, deposited, and drawn by warrant as are other warrants as provided in 44-2-312 through 44-2-315, except that the assessment *may* not be levied against the one central station for which the assessment is made."

Section 22. Section 44-3-213, MCA, is amended to read:

"44-3-213. Report to county attorney. When the cause of death has been established within reasonable medical certainty by the state medical examiner or his associate, whether by review of a coroner's report or by personal examination, *the state medical examiner* shall make available in writing to the county attorney his determination as to the cause of death."

Section 23. Section 44-3-404, MCA, is amended to read:

"44-3-404. Criminal penalty. A person is guilty of a misdemeanor and may be fined not more than $500 or imprisoned in the county jail for not more than 1 year, or both, if he:

(1) *purposely* fails to report or conceals a death;

(2) refuses to make available prior medical or other information in a death investigation; or

(3) without an order from the coroner or state medical examiner, *purposely* touches, removes, or disturbs a corpse, its clothing, or anything near the corpse under investigation with the intent to alter the evidence or circumstances surrounding the death."

Section 24. Section 44-4-101, MCA, is amended to read:

"44-4-101. Position established. There is created within the department of justice *the position of* training coordinator for county attorneys."

Section 25. Section 44-4-103, MCA, is amended to read:

"44-4-103. Functions. The training coordinator shall perform the functions assigned by the *attorney general*. The functions may include but are not limited to the following:

(1) providing local training in current aspects of the criminal law for county attorneys and other law enforcement personnel;

(2) assisting in developing and disseminating standards, procedures, and policies which will insure that criminal laws are applied consistently and uniformly throughout Montana;

(3) consolidating present and past information on important aspects of the criminal law and providing a pool of official opinions, legal briefs, and other relevant criminal law information;

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(4) providing assistance with research, briefs, or other technical services requested by a county attorney or law enforcement official;

(5) applying for and disbursing federal funds available to aid the prosecutorial function."

Section 26. Section 44-11-202, MCA, is amended to read:

"44-11-202. Employing entity to pay normal expenses of assisting officer — reimbursement. (1) The law enforcement entity employing a peace officer who renders assistance shall make all wage, pension, and disability payments and payments for damage to clothing and equipment due to the officer as a result of the rendering of assistance and shall pay any medical expense incurred by the officer in rendering assistance for which the officer is not otherwise entitled to reimbursement by operation of law or a contract. The employing entity shall also provide workers' compensation coverage for its employees while *they are* rendering assistance.

(2) *If it so requests, the* law enforcement entity *must* be reimbursed by the law enforcement entity that requested the services for all payments made for wages and damage to clothing and equipment and for any medical expense for which neither the employing entity nor the officer is otherwise entitled to reimbursement by operation of law or a contract."

Section 27. Section 39-72-606, MCA, is amended to read:

"39-72-606. Autopsy. Upon the filing of a claim for compensation for death caused by an occupational disease *if* an autopsy is necessary to determine the cause of death, an autopsy shall be ordered by the division. The autopsy shall be made under the supervision of the county coroner *or a medical examiner.* The division may designate a duly licensed physician who is a specialist in such examinations to perform or attend the autopsies and to certify his findings thereon. The findings shall be examined by the physicians submitting reports under the provisions of 39-72-604 and 39-72-605 before the final reports under those sections are submitted to the division."

Section 28. Section 50-15-403, MCA, is amended to read:

"50-15-403. Preparation of certificate when death medically attended. A person in charge of interment shall:

(1) obtain personal data required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate;

(2) *(a)* present the death certificate to the physician last in attendance upon the deceased, the coroner having jurisdiction, *or the state medical examiner,* who shall certify the cause of death according to his best knowledge and belief; *or*

(b) present the fetal death certificate to the physician, midwife, or other person in attendance, who shall certify the fetal death and supply any pertinent additional medical data;

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(3) notify the local registrar if the death or fetal death occurred without attendance or if the physician last in attendance failed to sign the death certificate;

(4) file the death or fetal death certificate with the local registrar within 3 days after the occurrence."

Section 29. Section 50-15-404, MCA, is amended to read:

"50-15-404. Preparation of certificate when death not medically attended. (1) If the death or fetal death occurred without medical attendance or the physician last in attendance failed to sign the death certificate, the local registrar may complete the certificate on the basis of information received from persons having knowledge of the facts.

(2) If it appears the death or fetal death resulted from other than natural causes, the local registrar shall notify the coroner *and the state medical examiner* for investigation and certification."

Section 30. Section 50-15-405, MCA, is amended to read:

"50-15-405. Permit for disposition of body. (1) No dead body *may* be disposed of or removed from a registration district until a permit for disposition or removal has been issued by the local registrar.

(2) No permit *may* be issued until a death certificate, fetal death certificate, or notice of delay as required in subsection (3) of this section has been filed with the local registrar.

(3) If the cause of death or fetal death cannot be determined within 3 days after the occurrence, the attending physician, coroner, *or medical examiner* shall give the local registrar written notice of the reason for delay so that a permit may be issued for disposition of the body."

Section 31. Section 61-7-111, MCA, is amended to read:

"61-7-111. Accident report forms. (1) The division shall prepare and, upon request, supply to police departments, coroners, *medical examiners,* sheriffs, garages, and other suitable agencies or individuals forms for accident reports required hereunder, appropriate with respect to the persons required to make such reports and the purposes to be served. The written reports to be made by persons involved in accidents and by investigating officers shall call for sufficiently detailed information to disclose with reference to a traffic accident the causes, conditions then existing, and the persons and vehicles involved.

(2) Every accident report required to be made in writing shall be made on the appropriate form approved by the division and shall contain all of the information required therein unless not available.

(3) The division may suspend the license or permit to drive of any resident *or the* nonresident operating privilege of any person failing to report an accident as herein provided until such report has been filed. Any person convicted of failing to report an accident by the quickest means of communication or failing to forward a written report as required herein *is* guilty of a misdemeanor and *punishable* by a fine of not more than $25."

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Section 32. Section 61-7-112, MCA, is amended to read:

"61-7-112. Coroners and medical examiners to report. *Each* coroner, *medical examiner,* or other official performing like functions shall, on or before the 10th day of each month, report in writing to the division the *deaths* of *all persons* within his *respective* jurisdiction during the preceding calendar month as the result of traffic *accidents,* giving the time and place of *each* accident and the circumstances relating thereto."

Section 33. **Repealer.** Sections 31-102, 80-2001, and 82-3902, R.C.M. 1947, are repealed.

Approved February 3, 1979.

CHAPTER NO. 8

AN ACT TO REVISE THE LAW RELATING TO CONDEMNATION; AMENDING SECTIONS 70-30-207 AND 70-30-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-30-207, MCA, is amended to read:

"70-30-207. Appointment of commissioners — qualifications — affidavit. (1) Immediately upon making and entering the preliminary condemnation order, the judge must meet with the respective parties or their attorneys of record for the purpose of appointing condemnation commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner or other persons interested in such property by reason of the appropriation of such property. *The appointment of condemnation commissioners and the commission hearing may be waived by written consent of both parties, in which case the proceeding shall be conducted in the district court as if the case had been appealed from an award by such commissioners.*

(2) The court must thereupon appoint three qualified, disinterested condemnation commissioners, *unless appointment has been waived.* One of such commissioners shall be nominated by the party or parties plaintiff. One of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and shall be nominated by the two commissioners previously nominated. However, if said two commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge.

(3) Each commissioner shall possess the following qualifications:

(a) a citizen of the United States and over 18 years of age;

(b) that he is not more than 70 years of age;

(c) that he is in possession of natural faculties, of ordinary intelligence, and not decrepit;

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(d) that he is possessed of sufficient knowledge of the English language;

(e) that he was assessed on the last assessment roll of a county within the judicial district in which the action is pending;

(f) that he has not been convicted of malfeasance in office or any felony or other high crime;

(g) that he is not related within the sixth degree to any party;

(h) that he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent or partner or surety as to any party.

(4) At the time of such meeting and nominations, there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows:

(a) that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants;

(b) that he has no enmity against or bias in favor of any party and has not discussed, communicated, or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded, or to be awarded;

(c) that if selected as a condemnation commissioner, he is willing to serve and will well and truly try the issues of compensation and render a true decision according to the evidence and in compliance with the instructions of the court;

(d) that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court."

Section 2. Section 70-30-305, MCA, is amended to read:

"70-30-305. Condemnor to make offer upon appeal — award of expenses of litigation. (1) The condemnor shall, within 30 days after an appeal is perfected from the commissioner's award or report *or not more than 60 days after waiver of appointment of condemnation commissioners,* submit to condemnee a written final offer of judgment for the property to be condemned, together with necessary expenses of condemnee then accrued. If at any time prior to 10 days before trial the condemnee serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service thereof, and thereupon judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible at the trial except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(2) In the event of litigation and when the private property owner prevails by receiving an award in excess of the final offer of the condemnor, the court shall award necessary expenses of litigation to the condemnee."

Approved February 3, 1979.

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CHAPTER NO. 9

AN ACT TO AMEND SECTION 33-18-202, MCA, RELATING TO MISREPRESENTATION OF INSURANCE POLICIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-18-202, MCA, is amended to read:

"33-18-202. Misrepresentation and false advertising of policies prohibited. No person shall make, issue, circulate, or cause to be made, issued, or circulated any estimate, *illustration,* circular, *sales presentation, omission, comparison,* or statement *which:*

(1) misrepresents the benefits, advantages, *conditions, or terms of any insurance policy;*

(2) misrepresents the dividends or share of the surplus to be received *on any insurance policy;*

(3) makes any false or misleading statement as to the dividends or share of surplus previously paid on *any insurance policy;*

(4) is misleading or *is a* misrepresentation as to the financial condition of any *person* or as to the legal reserve system upon which any life insurer operates;

(5) uses any name or title of any *insurance* policy or class of *insurance* policies misrepresenting the true nature thereof;

(6) is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(7) misrepresents any insurance policy as being shares of stock."

Approved February 3, 1979.

CHAPTER NO. 10

AN ACT TO REVISE THE LAW RELATING TO CRIMES; AMENDING SECTION 45-2-101, MCA, TO CLARIFY ITS APPLICATION; AND REPEALING SECTION 34-112, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply *in this title*:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action.

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(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Conduct" means an act or series of acts and the accompanying mental state.

(9) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(10) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(11) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true;

(b) fail to correct a false impression which the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

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(12) "Defamatory matter" means anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or *to* injury to his or its business or occupation.

(13) "Deprive" means to withhold property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value;

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(14) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(15) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(16) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(17) A "frisk" is a search by an external patting of a person's clothing.

(18) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(19) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare he is interested.

(20) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(21) "Human being" means a person who has been born and is alive.

(22) An "illegal article" is an article or thing which is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(23) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(24) "Intoxicating substance" means any controlled substance as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing ½ of 1% or more of alcohol by volume. The foregoing definition *does* not extend to dealcoholized wine or to any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than ½ of 1% of alcohol by volume.

(25) An "involuntary act" means any act which is:

(a) a reflex or convulsion;

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(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(26) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(27) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(28) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(29) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as a result of the influence of an intoxicating substance.

(30) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or *a* fine, or both, or the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(31) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists or *when* he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(32) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(33) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or sale, conveyance, or transfer of title to, interest in, or possession of property.

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(34) "Occupied structure" means any building, vehicle, or other place *suitable* for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(35) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(36) "Offense" means a crime for which a sentence of death or of imprisonment or *a* fine is authorized. Offenses are classified as felonies or misdemeanors.

(37) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(38) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with such proceeding.

(39) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(40) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(41) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(42) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(43) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(44) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

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(45) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(46) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(47) "Premises" includes any type of structure or building and any real property.

(48) "Property" means anything of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments which represent or embody rights concerning anything of value, including labor or services, or which are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things which are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish which ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof; and

(j) any other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement.

(49) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has *no* authority to defeat or impair, even though the offender himself may have an interest in the property.

(50) "Public place" means any place to which the public or any substantial group thereof has access.

(51) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

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(52) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(53) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It includes serious mental illness or impairment.

(54) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(55) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(56) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(57) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(58) "Statute" means any act of the legislature of this state.

(59) "Stolen property" means property over which control has been obtained by theft.

(60) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(61) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(62) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

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(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause such action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(63) (a) "Value" means the market value of the property at the time and place of the crime or, if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be *considered* the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be *considered* the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(b) When it cannot be determined if the value of the property is more or less than $150 by the standards set forth in subsection (63)(a) above, its value shall be *considered* to be an amount less than $150.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(64) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provision for transport of an operator.

(65) "Weapon" means any instrument, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(66) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 2. **Repealer.** Section 34-112, R.C.M. 1947, is repealed.

Approved February 3, 1979.

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CHAPTER NO. 11

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO MORTGAGES, PLEDGES, AND LIENS; AMENDING SECTIONS 71-1-213, 71-1-229, 71-3-401, 71-3-1003, AND 71-3-1201, MCA; AND REPEALING SECTIONS 45-1112, 45-1113, AND 52-111, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-1-213, MCA, is amended to read:

"71-1-213. Discharge or release by other than mortgagee. (1) *If the* discharge or release is made by the personal representative of the mortgagee, it *must* be accompanied by a certified copy of his authority unless such authority is already of record in the office of the county clerk and recorder where *the* mortgage is recorded.

(2) *If the* discharge or release is made by an assignee, it must be accompanied by the assignment of *the* mortgage unless *the* assignment is already of record in the office of the county clerk and recorder where *the* mortgage is recorded.

(3) *If the* discharge or release is executed by an attorney in fact, *the* discharge or release *must* have attached to it the power of attorney under which it is made unless *the* power of attorney is already of record in the office of the county clerk and recorder where *the* mortgage is recorded.

(4) *If the* discharge or release is executed by the heir or heirs of the mortgagee, *the* discharge or release must be accompanied by a certified copy of an order or decree of *a* court of competent jurisdiction showing such authority unless *the* order or decree is already of record in the office of the county clerk and recorder where *the* mortgage is recorded.

(5) Foreign administrators and executors may *discharge or release* mortgages of record in Montana *if* the *discharge or release* of mortgages *is* accompanied by an authenticated copy of their letters of administration or letters testamentary, with the certificate of the clerk of the court in which the appointment was made that the same have not been revoked and are in full force, which certificate and certified copy of letters shall be recorded with the *discharge or release* of the mortgage. When presented and recorded, *the discharge or release has* the same effect as if the mortgage was *discharged or released* by the mortgagee."

Section 2. Section 71-1-229, MCA, is amended to read:

"71-1-229. Possession of lands prior to foreclosure upon default and during period of redemption. The purchaser of lands at mortgage foreclosure is not entitled to the possession thereof as against the execution debtor during the period of redemption allowed by law while *the* execution debtor personally occupies the land as a home for himself and his family. It *is* unlawful to insert in any mortgage of real estate any provision intended to constitute a waiver by the owner of real estate personally occupying land as a home for himself and family of the provision of this

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section or any provision intended to give the mortgagee possession of the land or premises prior to foreclosure upon default of tax, principal, or interest payments. The intention hereof *is* to insure to such owner the possession of his land prior to foreclosure and during the year of redemption."

Section 3. Section 71-3-401, MCA, is amended to read:

"71-3-401. Who may have lien — priority. (1) Any person who performs services for another in the capacity of a farm or ranch laborer *has* a lien on all crops of every kind grown, raised, or harvested by the person for whom the services were performed during *that* time as security for the payment of any wages due or owing to such persons for services so performed.

(2) *The* lien *has* priority over all other liens, chattel mortgages, or encumbrances except feed sufficient for 3 months for 1 horse, 2 cows and their calves, 4 hogs, and 50 domestic fowls *and* seed grain and threshers' liens. The wages for which a lien may be claimed *may* not be in excess of *$1,000* or for a period of time exceeding 60 days next preceding the date of filing the lien. In case any such person without cause quits his employment before the expiration of the time for which he is employed, he *is* not entitled to a lien as herein provided.

(3) If several persons have or obtain liens under the provisions of this part against property of the same employer, they have no priority among themselves but all must be paid pro rata from the proceeds of any foreclosure sale according to the provisions of this part."

Section 4. Section 71-3-1003, MCA, is amended to read:

"71-3-1003. Lien for labor or supplies furnished for contractor. Any person, partnership, or corporation *that furnishes* materials or services as a subcontractor or to a contractor or a subcontractor or any person who *performs* labor under a subcontractor with a contractor or who, as an artisan or day laborer in the employ of such contractor or subcontractor, *performs* any such labor *has* a lien upon all the property upon which the lien of an original contractor may attach to the same extent as an original contractor, and the lien provided for in this section *attaches* to all materials and fixtures owned by such original contractor or subcontractor for whom the labor is performed or *materials* or services furnished and used or employed or furnished to be used or employed in the drilling or operating of such oil and gas wells or in the construction of such pipeline."

Section 5. Section 71-3-1201, MCA, is amended to read:

"71-3-1201. Who may have lien. (1) *If there is an express or implied contract for keeping, feeding, herding, pasturing, or ranching stock, a* ranchman, farmer, agister, herder, hotelkeeper, livery, or stablekeeper to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted has a lien upon such stock for the amount due for keeping, feeding, herding, pasturing, or ranching the *stock* and *may* retain possession thereof until the sum due is paid.

(2) Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant thereof

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by labor or skill employed for the making, repairing, protection, improvement, safekeeping, or carriage thereof has a special lien thereon, dependent on possession, for the compensation, if any, *that* is due to him from the owner or lawful claimant for such service and for material, if any, furnished in connection therewith."

Section 6. **Repealer.** Sections 45-1112, 45-1113, and 52-111, R.C.M. 1947, are repealed.

Approved February 9, 1979.

CHAPTER NO. 12

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO REMEDIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-107, MCA, is amended to read:

"27-1-107. Kinds of relief — when given. As a general rule, compensation is the relief or remedy provided by the law of this state for the violation of private rights and the means of securing their observance. *Specific* and preventive relief may be given *only in those cases specified by statute.*"

Section 2. Section 27-1-223, MCA, is amended to read:

"27-1-223. Damages for injuries or death inflicted in a duel. If any person slays or permanently disables another person in a duel in this state, *he* must provide for the maintenance of the spouse *and minor children* of the person slain or permanently disabled in such manner and at such cost, either by aggregate compensation in damages to each or by a monthly, quarterly, or annual allowance, *as is* determined by the court *and he* is liable for and must pay all debts of the person slain or permanently disabled."

Section 3. Section 27-1-303, MCA, is amended to read:

"27-1-303. Limitation of damages for breach of obligation. *No* person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides *unless a greater recovery is specified by statute.*"

Section 4. Section 27-1-311, MCA, is amended to read:

"27-1-311. Breach of contract. For the breach of an obligation arising from contract, the measure of damages, except *when* otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment *which was* proximately caused thereby or in the ordinary course of things would be likely to result therefrom. *Damages* which are not clearly ascertainable in both their nature and origin *cannot be recovered for a breach of contract.*"

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Section 5. Section 27-1-314, MCA, is amended to read:

"27-1-314. Breach of agreement to convey real property. The detriment caused by the breach of an agreement to convey an estate in real property is *considered* to be the price paid and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon. *If the breach was in* bad faith *and the agreed price was less than the value of the estate, the detriment is also considered to include* the difference between the *agreed* price and the value of the estate at the time of the breach and the expenses properly incurred in preparing to enter upon the land."

Section 6. Section 27-1-320, MCA, is amended to read:

"27-1-320. Conversion of personal property. (1) The detriment caused by the wrongful conversion of personal property is presumed to be:

(a) the value of the property at the time of its conversion with the interest from that time or, *when* the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict without interest, at the option of the injured party; and

(b) a fair compensation for the time and money properly expended in pursuit of the property.

(2) The presumption declared by subsection (1) cannot be repelled in favor of one whose possession was wrongful from the beginning by his subsequent application of the property to the benefit of the owner without *such owner's* consent."

Section 7. Section 27-1-501, MCA, is amended to read:

"27-1-501. Survival of cause of action or defense — death or disability or transfer of interest. An action, cause of action, or defense *does* not abate *because of the* death or disability of a party or the transfer of any interest therein, but *whenever the* cause of action or defense arose in favor of such party prior to his death or disability or transfer of interest therein, *it survives* and *may* be maintained by his representatives or successors in interest. *If the* action has not been begun or defense interposed, the action may be begun or defense *interposed* in the name of his representatives or successors in interest. *If* the action has been begun or defense *interposed*, the action or proceeding *may* be continued *as provided in Rule 25, M.R.Civ.P.*"

Section 8. Section 27-1-606, MCA, is amended to read:

"27-1-606. Criminal penalty. Any person who *violates* any of the provisions of this part *is punishable* upon conviction therefor by a fine of not less than $100 or more than $1,000 or imprisonment for a term of not less than 1 year or more than 5 years, in the discretion of the court."

Section 9. Section 27-1-701, MCA, is amended to read:

"27-1-701. Liability for negligence as well as willful acts. *Everyone* is responsible not only for the *results* of his willful acts but also

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for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person except so far as the latter has willfully or by want of ordinary care brought the injury upon himself."

Section 10. Section 27-1-811, MCA, is amended to read:

"27-1-811. When owner of radio station not liable for material broadcast. No person, firm, or corporation owning or operating a radio broadcasting station *is* liable under the law of defamation on account of having made its broadcasting facilities available to any person, *including but not limited to* a candidate for public office, for discussion of controversial or other subjects in the absence of proof of actual malice on the part of such owner or operator."

Section 11. Section 27-1-813, MCA, is amended to read:

"27-1-813. Liability of person broadcasting — liability of owner for broadcast prepared by station. Nothing in 27-1-811 or 27-1-812 *may* be construed to relieve any person broadcasting over a radio station from liability under the law of defamation *or* to relieve any person, firm, or corporation owning or operating a radio broadcasting station from liability under the law of defamation on account of any broadcast prepared or made by such person, firm, or corporation or by any officer or employee thereof in the course of his employment. *Whenever such an owner or operator is liable* on account of *a* broadcast *and* two or more broadcasting stations were connected simultaneously or by transcription, film, metal tape, or other approved or adapted use for joint operation in the making of *the* broadcast, liability *is* limited solely to the person, firm, or corporation owning or operating the radio station which originated *the* broadcast."

Section 12. Section 27-2-101, MCA, is amended to read:

"27-2-101. Definition of action. The word "action", as used in this chapter, is to be construed, whenever it is necessary *to do* so, as including a special proceeding of a civil nature."

Section 13. Section 27-2-102, MCA, is amended to read:

"27-2-102. When action commenced. *For the purposes of statutes relating to the time within which an action must be commenced, an* action is commenced when the complaint is filed."

Section 14. Section 27-2-103, MCA, is amended to read:

"27-2-103. Actions by state subject to limitations. The limitations prescribed in *part 2 of this chapter* apply to actions brought in the name of the state or for the benefit of the state in the same manner as to actions by private parties."

Section 15. Section 27-2-105, MCA, is amended to read:

"27-2-105. Periods of limitation. *All civil actions must be commenced within the* periods prescribed *in part 2 except when another statute specifically provides a different limitation.*"

Section 16. Section 27-2-202, MCA, is amended to read:

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"27-2-202. Actions based on contract or other obligation. (1) The period prescribed for the commencement of an action upon any contract, obligation, or liability founded upon an instrument in writing is within 8 years.

(2) The period prescribed for the commencement of an action upon a contract, account, *or* promise not founded on an instrument in writing is within 5 years.

(3) The period prescribed for the commencement of an action upon an obligation or liability, *other than a contract, account, or promise,* not founded upon an instrument in writing is within 3 years."

Section 17. Section 27-2-204, MCA, is amended to read:

"27-2-204. Tort actions — general and personal injury. (1) The period prescribed for the commencement of an action upon *a* liability not founded upon an instrument in writing is within 3 years.

(2) The period prescribed for the commencement of an action to recover damages for the death of one caused by the wrongful act or neglect of another is within 3 years.

(3) The period prescribed for the commencement of an action for libel, slander, assault, battery, false imprisonment, or seduction is within 2 years."

Section 18. Section 27-2-211, MCA, is amended to read:

"27-2-211. Actions to enforce penalty or forfeiture or other statutory liability. (1) Within 2 years is the period prescribed for the commencement of an action upon:

(a) a statute for a penalty or forfeiture when the action is given to an individual or to an individual and the state, except when the statute imposing it prescribes a different limitation;

(b) a statute or an undertaking in a criminal action for a forfeiture or penalty to the state;

(c) a liability created by statute other than a penalty or forfeiture.

(2) The period prescribed for the commencement of an action by a municipal corporation for the violation of any city or town ordinance is within 1 year.

(3) *Notwithstanding any other provision of this chapter,* actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed or to enforce a liability created by law must be brought within 3 years after the discovery by the aggrieved party of the facts upon which the penalty of forfeiture attached or the liability was created."

Section 19. Section 27-2-213, MCA, is amended to read:

"27-2-213. Actions against banks. *(1) Except as provided in subsection (2), there are no time limitations on the commencement of* actions to recover money or other property deposited with any bank, banker, trust company, or savings and loan corporation, association, or society.

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(2) Any action to obtain, set aside, or question in any manner any stated or settled account between any bank, banker, trust company, or savings *and* loan corporation, association, or society and any depositor with such bank, banker, trust company, or savings *and* loan corporation, association, or society must be commenced within 5 years from the date of the statement of such account. Any action based upon or arising from the payment *by* any bank, banker, *trust* company, *or savings and loan* corporation, association, or society of a forged, raised, or otherwise altered check, order, or promissory note out of the deposit, money, or property of the plaintiff *must* be *commenced* within 3 years from the day on which the plaintiff *or* his agent, assignee, or personal representative *was* notified of such payment or received such check, order, or note marked "paid"."

Section 20. Section 27-2-215, MCA, is amended to read:

"27-2-215. Other actions. An action for relief not *otherwise* provided for must be commenced within 5 years after the cause of action *accrues*."

Section 21. Section 27-2-303, MCA, is amended to read:

"27-2-303. Actions for waste, trespass, or injury committed during mining work or exploration. When waste, trespass, or injury is committed by reason of underground work upon any mining claim or seismic exploration, location, spacing, drilling, equipping, producing, or other operation related to exploration or production of oil, gas, water, geothermal *resources*, or other minerals, the cause of action *is* not *considered* to have accrued until the discovery by the aggrieved party of the facts constituting such waste, trespass, or injury."

Section 22. Section 27-2-304, MCA, is amended to read:

"27-2-304. Actions involving personal property accruing after death and before issuance of letters of administration. *The* time within which an action must be commenced by an executor or administrator to recover personal property taken after the death of a testator or intestate and before the issuing of letters of administration or to recover damages for taking, detaining, or injuring personal property within the same period *shall be computed from:*

(1) the time of issuing such letters if they are issued within 5 years of the death;

(2) 5 years after the death if the letters have not then been issued."

Section 23. Section 27-2-401, MCA, is amended to read:

"27-2-401. When person entitled to bring action is under a disability. (1) If a person entitled to bring an action mentioned in part 2, except 27-2-211(3), *is*, at the time the cause of action *accrues*, either *a minor, seriously mentally ill,* or imprisoned on a criminal charge or under *a* sentence for a term less than for life, the time of such disability is not a part of the time limited for commencing the action. *However* the time so limited cannot be extended more than 5 years by any such disability except *minority* or, in any case, more than 1 year after the disability ceases.

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(2) *If* an action is barred by 27-2-304, any of the *heirs, devisees,* or creditors who at the time of the transaction upon which *the action* might have been founded was *under one of the disabilities mentioned in subsection (1)* may, within 5 years after the cessation of such disability, maintain an action to recover damages. *In such action* he may recover such sum or the value of such property as he would have received upon the final distribution of the estate if an action had been seasonably commenced by the executor or administrator.

(3) No person *may* avail himself of a disability unless it existed when his right of action or entry accrued.

(4) When two or more disabilities coexist at the time the right of action or entry accrues, the limitation does not attach until they are *both* removed."

Section 24. Section 27-2-408, MCA, is amended to read:

"27-2-408. Effect on counterclaim of termination of action. *Whenever* a defendant in an action has interposed an answer in support of which he would be entitled to rely at the trial upon a defense or counterclaim then existing in his favor the remedy upon which, at the time of the commencement of the action, was not barred by *any provision of this code* and the complaint is dismissed or the action is discontinued or abates *because* of the plaintiff's death, the time between the commencement and the termination of the action is not a part of the time limited for the commencement of an action by the defendant to recover for the cause of action so interposed as a defense or to interpose the same defense in another action brought by the same plaintiff or a person deriving title from or under him."

Section 25. Section 27-2-409, MCA, is amended to read:

"27-2-409. Acknowledgment of debt or part payment. No acknowledgment or promise is evidence of a new or continuing contract *sufficient to cause the relevant statute of limitations to begin running anew* unless the same is contained in some writing signed by the party to be charged thereby. *However,* this section does not alter the effect of any payment of principal or interest, which payment is equivalent to a new promise in writing, duly signed, to pay the residue of the debt."

Section 26. Section 27-5-303, MCA, is amended to read:

"27-5-303. When award has effect of a judgment. After the expiration of 5 days from the filing of the award, upon the application of a party *who also files* an affidavit showing that notice of filing the award has been served on the adverse party or his attorney at least 4 days prior to such application and that no order staying the entry of judgment has been served, *the clerk must enter* the award in the judgment book and thereupon *it* has the effect of a judgment."

Section 27. Section 27-6-402, MCA, is amended to read:

"27-6-402. Selection of panelists. (1) Application for review shall be promptly transmitted by the director to the directors of the health care provider's state professional society or association and the state bar, which

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shall each select three panelists within 30 days from the date of transmittal of the application.

(2) If no state professional society or association exists or if the health care provider does not belong to such a society or association, the director shall transmit the application to the health care provider's state licensing board, which shall in turn select three persons from the health care provider's profession and, where applicable, *from* persons specializing in the same field or discipline as the health care provider."

Section 28. Section 27-6-503, MCA, is amended to read:

"27-6-503. Conclusion of hearing — supplemental hearing. (1) At the conclusion of the hearing, the panel may take the case under advisement or may request that additional facts, records, witnesses, or other information be obtained and presented to it at a supplemental hearing, which shall be set for a date and time certain, not longer than 30 days from the date of the original hearing unless the *claimant or his attorney* consents in writing to a longer period.

(2) Any supplemental hearing shall be held in the same manner as the original hearing, and the parties concerned and their attorneys may be present."

Section 29. Section 27-6-605, MCA, is amended to read:

"27-6-605. Decision to be filed and copies sent to parties, attorneys, and licensing board. The decision shall be communicated in writing to the parties and attorneys concerned, and a copy thereof shall be retained in the permanent files of the panel. *A* copy of the *decision* shall be sent to the health care provider's professional licensing board."

Section 30. Section 27-6-704, MCA, is amended to read:

"27-6-704. Panel proceedings and decision privileged from disclosure in court actions. (1) No panel member may be called to testify in any proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

(2) No statement made by any person during a hearing before the panel may be used as impeaching evidence in court. The *decision* of the medical review panel is not admissible as evidence in any action subsequently brought in any court of law."

Section 31. Section 27-7-103, MCA, is amended to read:

"27-7-103. Entry of judgment — costs. Judgment must be entered in the judgment book as in other cases but without costs for any proceeding prior to the trial."

Section 32. Section 27-8-204, MCA, is amended to read:

"27-8-204. Declarations concerning administration of trusts and estates. Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, heir, or cestui que trust in the administration of a trust or of the estate of a decedent,

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minor, seriously mentally ill person, or insolvent may have a declaration of rights or legal relations in respect thereto:

(1) to ascertain any class of creditors, devisees, heirs, or others;

(2) to direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(3) to determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings."

Section 33. Section 27-9-101, MCA, is amended to read:

"27-9-101. When and in what courts judgment may be confessed. *Subject to 28-2-709, a* judgment by confession may be entered without action, either for money due or to become due or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter. Such judgment may be entered in any court having jurisdiction for like amounts. Judgment upon confession may be entered up in any justice's court specified in the confession, as provided in this chapter."

Section 34. Section 27-9-103, MCA, is amended to read:

"27-9-103. Filing and costs — district court. The statement must be filed with the clerk of the court in which the judgment is to be entered, who *shall* endorse upon it and enter in the judgment book a judgment of such court for the amount confessed, with $10 costs."

Section 35. Section 27-9-104, MCA, is amended to read:

"27-9-104. Filing and costs — justice's court. In a justice's court *which* has authority to enter the judgment, the statement may be filed with the justice, who *shall* thereupon enter in his docket a judgment of his court for the amount confessed, with costs. If a transcript of such judgment *is* filed with the clerk *of the district court*, a copy of the statement must be filed with it."

Section 36. Section 27-15-102, MCA, is amended to read:

"27-15-102. Availability of provisional remedies to defendant interposing counterclaim. *Whenever* the defendant interposes a counterclaim and thereupon demands an affirmative judgment against the plaintiff, his right to a provisional remedy is the same as *it would be* in an action brought by him against the plaintiff for the cause of action stated in the counterclaim and demanding the same judgment. *For* the purpose of applying to such a case the provisions of chapters 15 through 20 *of this title* and *chapter 8 of* Title 25, the defendant is *considered* the plaintiff, the plaintiff is *considered* the defendant, and the counterclaim so set forth in the answer is *considered* the complaint."

Section 37. Section 27-16-101, MCA, is amended to read:

"27-16-101. Exclusive procedure for prejudgment arrest in civil action. No person *may* be arrested *before judgment* in a civil action except as prescribed by this chapter."

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Section 38. Section 27-16-102, MCA, is amended to read:

"27-16-102. When defendant may be arrested. The defendant may be arrested in the following cases:

(1) in an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the state with intent to defraud his creditors;

(2) *in an* action for willful injury to person *or* character or to property *which the defendant knew belonged* to another;

(3) in an action for a fine or penalty or for money or property fraudulently misapplied or converted to his own use by a public officer, an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity; for misconduct or neglect in office or in a professional employment; or for a willful violation of duty;

(4) in an action to recover possession of personal property unjustly obtained, when the property or any part thereof has been concealed, removed, or disposed of so that it cannot be found or taken by the sheriff;

(5) when the defendant has been guilty of fraud in contracting the debt *or* incurring the obligation for which the action is brought or in concealing or disposing of the property for *the* taking, detention, or conversion of which the action is brought;

(6) when the defendant has removed or disposed of his property or is about to do so with intent to defraud his creditors."

Section 39. Section 27-18-102, MCA, is amended to read:

"27-18-102. What property subject to attachment. (1) *Except as provided in subsection (2), the* rights or shares which the defendant *has* in the stock of any corporation or company, together with the interest and profits thereon, all debts due *the* defendant, and all other property in this state of *the* defendant not exempt from execution may be attached and, if judgment *is* recovered, sold to satisfy the judgment and execution. *Property exempt from execution is exempt from attachment.*

(2) In any action *in which* the amount sued for is $10 or less, the wages *and* earnings of the debtor or defendant for his personal services rendered at any time within 30 days *before* the commencement of the action are exempt from attachment."

Section 40. Section 27-18-301, MCA, is amended to read:

"27-18-301. Form and content of writ — defendant's undertaking to prevent levy. *(1)* The writ must be directed to the sheriff of any county in which property of such defendant may be and must require him to:

(a) attach and safely keep all the property of such defendant within his county, not exempt from *attachment*, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint; *or*

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(b) if the defendant *gives* him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached, take such undertaking.

(2) The undertaking *must* be to the plaintiff in the action and *must* be approved in writing on the back thereof by the plaintiff or his attorney or, upon their refusal, by the judge of the district court of the same county as the residence of the sheriff."

Section 41. Section 27-18-304, MCA, is amended to read:

"27-18-304. When sheriff may require written specification of property to be levied upon. No written specification of property to be levied upon *may* be required by the sheriff, except as to property referred to in 27-18-403 and 27-18-405(2)."

Section 42. Section 27-18-410, MCA, is amended to read:

"27-18-410. Corporate stock — service on secretary of state. In addition to the method prescribed in 27-18-409 for attaching *stock* or shares or interest therein of any corporation or company, if the president or other head of the same or the secretary, cashier, or other managing agent thereof does not live *or cannot be found* in Montana and an affidavit is filed in the office of the clerk of the court in which the action is pending setting forth that *such officer or* agent does not live or cannot be found *in Montana*, the clerk shall make an order directing the writ to be served upon the secretary of state of Montana or, in his absence from his office, upon the deputy secretary of state. When such order has been made, the writ of attachment shall be served upon the secretary of state or deputy secretary of state by leaving with him a copy of *the* writ and a notice that the stock *or shares* or interest therein of *such corporation or company belonging to* the defendant is attached in pursuance of *the* writ."

Section 43. Section 27-18-413, MCA, is amended to read:

"27-18-413. Personal property subject to a security interest. Personal property subject to a security interest may be taken on attachment issued at the suit of a creditor *(other than the secured party)* of the debtor under the security agreement; but before the property is taken, the officer levying the writ must pay or tender to the secured party the amount of the security agreement debt and interest or must deposit the same with the county treasurer of the county in which the financing statement covering the security agreement is filed if such statement is filed with a county clerk and recorder or, if such statement is filed with another filing officer pursuant to law, with such other filing officer, payable to the order of the secured party."

Section 44. Section 27-18-1504, MCA, is amended to read:

"27-18-1504. Form and content of writ — defendant's undertaking to prevent levy. *(1)* The writ may be directed to the sheriff or any constable of the county or the sheriff of any other county and must require him to:

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(a) attach and safely keep all the property of the defendant in his county, not exempt from *attachment*, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint; *or*

(b) if the defendant *gives* him security by the undertaking of two sufficient sureties in an amount sufficient to satisfy such demand, besides costs, take such undertaking.

(2) The undertaking *must* be to the plaintiff and *must* be approved in writing on the back thereof by the plaintiff or his attorney or, upon their refusal, by the justice issuing *the* writ."

Section 45. Section 27-18-1506, MCA, is amended to read:

"27-18-1506. Applicability of procedure in district court. Part 1; 27-18-207, 27-18-303 through 27-18-308; parts 4, 5, and 6; 27-18-711 through 27-18-713, 27-18-721 through 27-18-732; and parts 8 and 9, except 27-18-901, are applicable to attachments issued in justices' courts, the word "constable" being substituted for the word "sheriff" whenever the writ is directed to a constable, and the word "justice" substituted for "judge"."

Section 46. Section 27-19-204, MCA, is amended to read:

"27-19-204. Issuance without bond. *The* injunction *provided for in 27-19-202* shall issue without bond, upon the application of the county attorney of the county in which *the* action is pending or upon the application of the attorney general in the name of the state of Montana, upon a prima facie showing that an action *described in 27-19-202* has been instituted and is pending."

Section 47. Section 27-19-303, MCA, is amended to read:

"27-19-303. Time of granting injunction, evidence required. The injunction order may be granted at the time of issuing the summons upon the complaint or at any time afterward before judgment upon affidavits. In the one case, the complaint, with or without affidavits to support it, and, in the other, the affidavits *must* show satisfactorily that sufficient grounds exist *for the order*. An injunction order *may* not be granted on the complaint alone unless:

(1) it *is* duly verified; *and*

(2) the material allegations of the complaint setting forth the grounds *for the order are* made positively and not upon information and belief."

Section 48. Section 27-19-306, MCA, is amended to read:

"27-19-306. Security for damages. (1) *Except* when the state, a county, or any subdivision thereof or a municipal corporation or a married person in a suit for divorce against his or her spouse is a plaintiff, *on granting an injunction or restraining order, the court or judge may require* a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such

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damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction if the court finally *decides* that the plaintiff was not entitled thereto.

(2) Within 5 days after the service of the injunction, the defendant may except to the sufficiency of the sureties. If *he* fails to do so, *he waives* all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than 2 or more than 5 days, must justify before a judge or clerk in the same manner as upon bail on arrest. *If they fail* to justify or if others in their place fail to justify at the time and place appointed, the order granting *the* injunction *must* be dissolved."

Section 49. Section 27-19-402, MCA, is amended to read:

"27-19-402. Evidence at hearing. *At* the hearing *on the application* to *dissolve* or modify an injunction order, a verified answer has the effect only of an affidavit. If the application *is* made upon affidavits on *the* part of *the* defendant, but not otherwise, the plaintiff may oppose the same by *oral testimony or* affidavits in addition to those on which the injunction order was granted. The defendant may also use oral testimony."

Section 50. Section 27-19-403, MCA, is amended to read:

"27-19-403. New undertaking for security following hearing. Upon the hearing, the court or judge may require a new undertaking, in the same or a different sum, to be given by the plaintiff, with like sureties and to the like effect as *the undertaking executed* upon *the* granting of the original order. The persons executing the new undertaking become liable thereon as if they had executed it upon the granting of the original order. The persons who executed the original undertaking remain liable thereon until the new undertaking is given and approved, and no longer."

Section 51. Section 27-19-404, MCA, is amended to read:

"27-19-404. When injunction dissolved or modified. If upon *the hearing* it satisfactorily *appears* that there *are* not sufficient *grounds* for the injunction order, *the order must* be dissolved; or if it satisfactorily *appears* that the extent of the injunction order is too great, *the order must* be modified."

Section 52. Section 27-19-405, MCA, is amended to read:

"27-19-405. Defendant's undertaking for security upon dissolution. *If the injunction order is dissolved because the alleged injury is not irreparable and is capable of being adequately compensated for in money*, the court or judge *shall require the defendant to execute* an undertaking in such form and amount and with such sureties as the court or judge *may* direct, conditioned to indemnify the plaintiff against loss sustained by reason of *the dissolution*."

Section 53. Section 27-20-301, MCA, is amended to read:

"27-20-301. Oath and undertaking to faithfully discharge duties. Before entering upon his duties, the receiver must be sworn to perform them faithfully and *shall execute an undertaking*, with one or more sureties approved by the court or judge, to such person and in such

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sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action and obey the orders of the court therein. The court may at any time direct him to give new bonds with new sureties with the like effect."

Section 54. Section 27-25-103, MCA, is amended to read:

"27-25-103. Application of rules of procedure. Except as otherwise provided in this chapter, the provisions of *Title 25* are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter. The provisions of *Title 25* relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in *this* chapter."

Section 55. Section 27-26-103, MCA, is amended to read:

"27-26-103. Application of rules of procedure. Except as otherwise provided in this chapter, the provisions of *Title 25* are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter. The provisions of *Title 25* relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in *this* chapter."

Section 56. Section 27-26-303, MCA, is amended to read:

"27-26-303. Jury trial. (1) If an answer *is* made which raises a question as to a matter of fact essential to the determination of the motion and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court or judge may, in its or his discretion, order the question to be tried before a jury and postpone the argument until *the* trial can be had. The question to be tried must be distinctly stated in the order for trial. The order may also direct the jury to assess any damages which the applicant may have sustained *if it finds* for him.

(2) If the proceeding is in the district court or before a district judge, the trial must take place as in other cases. If a jury *is* required in the supreme court, a jury must be drawn and selected from the jury *box* of *Lewis and Clark County* and the clerk of the district court of *that* county *shall* place *the box* in the custody of the clerk of the supreme court for that purpose. The conduct of the trial *must* be the same as in the district court, and the clerk of the supreme court *has* the same authority to issue process *and* enter orders and judgments as the district *court* clerk has in like cases."

Section 57. Section 27-26-402, MCA, is amended to read:

"27-26-402. Judgment for applicant. If judgment *is* given for the applicant:

(1) he may recover the damages which he has sustained, as found by the jury or as determined by the court or referees, *if* a reference *was* ordered, together with costs;

(2) *an execution may issue* for such damages and costs; and

(3) a peremptory mandate must be awarded without delay."

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Section 58. Section 27-28-207, MCA, is amended to read:

"27-28-207. Procedure when action brought in supreme court. Actions under this chapter commenced in the supreme court *must* be conducted in the same manner as if commenced in the district court, and the clerk of the supreme court *has* the same authority to issue summons and other process and to enter orders and judgments as the clerk of the district court has in like cases. All pleadings and the conduct of the trial *must* be the same as in the district court. If a jury is required to determine an issue of fact, a jury *must* be drawn and selected from the jury *box* of *Lewis and Clark County* and the clerk of the district court of *that* county *shall* place *the* jury *box* in the custody of the clerk of the supreme court for that purpose."

Section 59. Section 27-28-505, MCA, is amended to read:

"27-28-505. Powers and duties of trustees — liability. *(1)* The trustees shall *immediately* demand all money, property, and papers within the custody or control of the officers of the corporation belonging to the corporation or in *any way* necessary for the settlement of its affairs or for the discharge of its debts and liabilities; and they may sue for and recover the demands and property of the corporation.

(2) The trustees are jointly and severally liable to the creditors and stockholders *of the corporation* to the extent of its property and effects which come into their hands."

Section 60. Section 27-31-102, MCA, is amended to read:

"27-31-102. Petition for change of name of nonprofit corporation. Any religious, benevolent, literary, *or* scientific corporation or any corporation bearing or using or being known by the name of any benevolent or charitable order or society may by petition apply to the district court of the county in which its articles of incorporation were originally filed or in which *its* property is situated for a change of its corporate name. Such petition must be signed by a majority of the directors or trustees of the corporation and must specify the date of the formation of the corporation, the name proposed, and the reason for *the* change of name. Upon *the* filing *of the* petition, the same *procedure* shall be *followed* as upon applications for changes of names of natural persons."

Section 61. Section 27-31-205, MCA, is amended to read:

"27-31-205. Annual report of name changes by clerk to legislative council — publication. Each *January the* clerk of the district court shall *report* to the *legislative council* all changes of names made *during the preceding year* in the district court of his county under this chapter. *The report must* show the date of the judgment, original name, name decreed, and residence. *The reports must* be published in tabular form with the statutes first published thereafter."

Section 62. **Repealer.** Sections 93-6501 through 93-6517 and 93-9011, R.C.M. 1947, are repealed. Sections 27-1-814 through 27-1-817, MCA, are repealed.

Approved February 9, 1979.

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CHAPTER NO. 13

AN ACT TO AUTHORIZE TELEVISION DISTRICTS TO PROVIDE AND FINANCE FM TRANSLATOR SERVICES UPON PETITION; AMENDING SECTIONS 7-13-2510, 7-13-2527, 7-13-2528, AND 7-13-2529, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Authorization for FM translator.** (1) A television district may construct and operate a broadcast FM translator facility (88 to 108 megahertz) as provided in this section.

(2) (a) A request to provide FM translator services may be initiated by a petition signed by at least 51% of the registered electors of the television district who are owners of units capable of receiving FM broadcasts (88 to 108 megahertz), and presented to the board of county commissioners which initially established the district. The petition, its filing, and its processing are governed by 7-13-2503, 7-13-2504, and 7-13-2505.

(b) Upon receiving a certified petition, the board of county commissioners is to give notice and hold a hearing as provided in 7-13-2506 and 7-13-2507. After the hearing, the board of county commissioners shall approve or deny the petition by resolution. If the decision is to approve the petition, the resolution shall authorize the board of trustees of the district to provide the requested services and shall describe the proposed system, including the type of construction, proposed location, and estimated costs.

Section 2. Section 7-13-2510, MCA, is amended to read:

"7-13-2510. Powers of district. A television district organized under this part, acting through its board of trustees herein provided for, may:

(1) perform all the acts and take all the necessary or proper steps to assure that there will be a fair, efficient, and equitable distribution of television services within the area in order that all persons within such service area shall be supplied by means of an appropriate electrical or electronic system for television program distribution, such authorized system to provide such flexibility as to permit radical improvements in technical quality without rendering inoperative receivers therein, but discontinuance of service by the district for improvements or repairs for a temporary period shall not be construed as rendering inoperative;

(2) if necessary or proper in the furtherance of the objects of this part, acquire, build, construct, repair, own, maintain, and operate any necessary stations transmitting simultaneous visual and aural signals intended to be received by the general public, relay stations, pickup stations, or any other necessary electrical or electronic system;

(3) make contracts to compensate any owner of land or other property for the use of such property for the purposes of this part;

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(4) make contracts with the United States, any state or municipality, or any department or agency of those entities for carrying out the general purposes for which the district is formed;

(5) acquire, by gift, devise, bequest, lease, or purchase, real and personal property, tangible or intangible, including lands, rights-of-way, and easements, necessary or convenient for its purposes;

(6) to make contracts of any lawful nature (including labor contracts or those for employees' benefits) and employ engineers, laboratory personnel, attorneys, other technical or professional assistants, and any other assistants or employees necessary to carry out the provisions of this part;

(7) issue warrants, payable at the time stated therein, to evidence the obligation to repay money borrowed or any other obligation incurred by the district, warrants so issued to draw interest at a rate fixed by the board, not to exceed 5% per year, payable annually or semiannually as the board may prescribe;

(8) contract indebtedness or borrow money for corporate purposes and issue revenue bonds therefor to be repaid from rates and charges, bearing interest at a rate not exceeding 6% per annum payable semiannually, the bonds not to be sold for less than par and accrued interest;

(9) prescribe tax rates for the providing of services throughout the area in accordance with the provisions of this part;

(10) prescribe such installation or ready-to-serve charges to be used for any costs connected with preparation, acquisition, or construction of the system;

(11) apply for, accept, and be the holder of any permit or license issued by or required under federal or state law; *and*

(12) provide FM translator services if authorized as provided in [section 1]."

Section 3. Section 7-13-2527, MCA, is amended to read:

"**7-13-2527. List of television or FM receiver owners.** (1) A copy of the order creating the district shall be delivered to the county assessor of each county within the district. *If a district is authorized to provide FM translator services, a copy of the resolution authorizing the services is to be delivered to the county assessor of each county within the district.*

(2) The assessor shall, on or before August 1 of any given year, prepare and certify a list of all persons owning television sets within *the* district *and the county* and deliver a copy of *the* list to the board of trustees of *the* district. *At the same time, if FM translator services are authorized, the assessor shall prepare and certify a list of all persons owning units capable of receiving FM broadcasts (88 to 108 megahertz) within the district and the county and deliver a copy of the list to the district board of trustees.*

(3) If the county assessor incurs additional expenses because of the preparation of a list required by this section, the district shall pay those additional expenses."

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Section 4. Section 7-13-2528, MCA, is amended to read:

"7-13-2528. Financial administration of district. (1) The board of trustees shall, from *any* list prepared by the county assessor *as required by 7-13-2527*, remove the names of any persons who have claimed exemption under this part and shall prepare a budget for the expenses for the next year.

(2) The budget, together with the list of such persons residing in the district and subject to the special tax after all exemptions have been allowed as provided in this part, shall be presented by September 1 to the board of county commissioners, who shall levy the tax requested by said trustees. *In preparing the budget, the board of trustees shall maintain separate budgets for television services and for FM translator services and shall specify the tax to be levied on owners of television sets and on owners of units capable of receiving FM broadcasts (88 to 108 megahertz).* The board shall levy such tax in accordance with the request herein mentioned. The tax shall be certified to the county clerk and recorder and entered on the assessment books as against such persons and collected by the county treasurer as all other taxes are collected.

(3) The county treasurer shall be the treasurer for said district and hold said taxes, as collected, in a separate fund to be disbursed by him upon warrants drawn by the trustees, at least two of whom shall sign any warrant for the disbursement of such funds by the county treasurer."

Section 5. Section 7-13-2529, MCA, is amended to read:

"7-13-2529. Exemption for nonbenefited taxpayers. (1) The taxpayers in the television district who do not receive the signal of the television translator station or who receive direct reception from the television station from which the television translator repeats a signal or receive service through the medium of a community antenna system on which they are a subscriber in good standing will be exempt from the payment of the tax for the support of the *television services of the* television district, provided they file an affidavit setting forth any of the grounds above mentioned. The affidavit shall be filed with the board of trustees, who shall upon the receipt of such affidavit have the names of such persons so exempted from the tax *for television services* stricken from the list of taxpayers certified to the board of county commissioners. The exempted persons shall not be liable for such tax.

(2) A similar exemption is available with respect to FM translator services. The procedure provided in subsection (1) shall be utilized for the FM exemption.

(3) Any person or persons who shall make a false or fraudulent claim for exemption as provided in this section shall be guilty of a misdemeanor."

Section 6. **Codification.** It is intended that section 1 be codified as an integral part of Title 7, chapter 13, part 25, and the provisions of Title 7, chapter 13, part 25, apply to section 1.

Approved February 9, 1979.

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CHAPTER NO. 14

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO LIVESTOCK; REPEALING SECTIONS 3-2491, 46-1701, AND 46-1703, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-2-105, MCA, is amended to read:

"81-2-105. Authority of municipal corporations. *Nothing in this title prevents* the governing authority of a municipal corporation from enacting or enforcing ordinances for the inspection of slaughterhouses, meat depots, meat markets, meat food products, creameries, butter or cheese factories, dairies, or dairy products located, sold, or offered for sale in the limits of the municipal corporation. An ordinance may not be enforced in conflict with the powers of *this title* delegated to the department and its officers or agents."

Section 2. Section 81-3-231, MCA, is amended to read:

"81-3-231. Penalties. (1) A person is guilty of a misdemeanor and *is* punishable as provided in subsection (6) of this section *if* he removes livestock or causes livestock to be removed from a county in this state:

(a) without having the livestock inspected before removal *if* an inspection is required by law;

(b) without obtaining a market consignment permit or transportation permit *if* the permits are *required* by law;

(c) and does obtain a market consignment permit for livestock but does not deliver the livestock transported thereunder to the livestock market designated in the market consignment permit;

(d) and does obtain a transportation permit for the livestock but does not deliver the livestock transported thereunder to the destination as shown on the transportation permit and fails to have the livestock so transported inspected at the point of destination or does not file a loading tally with the carrier as provided in 81-4-607.

(2) A person who sells livestock or offers livestock for sale at a livestock market without having the livestock inspected or removes livestock or causes livestock to be removed from a livestock market without obtaining a release is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(3) A person who ships by railroad carrier and the railroad carrier transporting livestock for which a loading tally has been filed as provided by 81-4-607 and for which shipment of livestock an inspection has not been made *which* after shipment causes or permits the livestock to leave the custody of the railroad carrier at a place other than where this state regularly maintains a stock inspector is guilty of a misdemeanor and *is* punishable as provided in subsection (6) of this section.

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(4) A person who has in his charge livestock being removed from a county in the state for which an inspection certificate, a market consignment permit, or a market release certificate has been issued and fails to have in his possession accompanying the livestock the inspection certificate, market consignment permit, or a market release certificate as issued for the livestock, or who, having the certificate of inspection, market consignment permit, or market release certificate, fails to exhibit it to a sheriff, deputy sheriff, constable, highway patrolman, state stock inspector, or deputy state stock inspector at his request is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(5) Except as specifically otherwise provided, a person violating any of the provisions of this part is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(6) Upon conviction *under this section*, a person, firm, association, or corporation shall be fined not less than $50 or more than $500 or imprisoned in the county jail for a period of not more than 6 months or both fined and imprisoned. Of all fines assessed and collected under this section, 50% shall be paid into the state treasury and credited to the earmarked revenue fund for the use of the department and 50% shall be paid into the general fund of the county in which the conviction occurred."

Section 3. Section 81-4-309, MCA, is amended to read:

"81-4-309. Unlawful introduction of livestock into herd district a misdemeanor — penalty. Any person not the owner or person in charge of any livestock who *causes* any livestock *to enter* any herd district established under the provisions of 81-4-301 through 81-4-309 *is* guilty of a misdemeanor and upon conviction thereof *is* subject to a fine of not less than $50 or *confinement* in the county jail not less than 60 days or both such fine and imprisonment and *is* liable for all damages and costs occurring from such trespass. For the purposes of this section, each separate animal so moved *constitutes* a separate offense."

Section 4. Section 81-5-102, MCA, is amended to read:

"81-5-102. Driving animals upon railroad track. *If a* person willfully drives *an* animal upon *a* railroad track with intent to injure the corporation or persons owning the railroad and such animal is killed or injured thereby, *the person* is punishable by imprisonment in the state prison not exceeding 5 years *and is* liable for all injury or damage occasioned by reason of such act."

Section 5. Section 81-7-115, MCA, is amended to read:

"81-7-115. Duty of county clerk. (1) The county clerk shall, on receipt of each certificate, file the certificate in the order in which it is received and safely keep it until the arrival of the skin or skins mentioned in the certificate. On receipt of the skin or skins he shall call to his assistance either the county treasurer or, in his absence, the clerk of the district court who, with both present in order to prevent fraud, shall examine each scalp *or mountain lion lower jaw skin.* If the examination discloses that the scalps *or lower jaw skins* agree with the number and kind of scalps or lower jaw *skins* mentioned in the certificate, the county clerk

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shall, in the presence of the treasurer or clerk of the district court, destroy the scalps *or lower jaw skins* by fire.

(2) The county clerk shall then make out and deliver to the person named in that certificate a second certificate showing the statement of the facts contained in the certificate to the sheriff, undersheriff, or deputy sheriff, with the additional statement of the examination made by him and that he found the scalps *or lower jaw skins* to agree with the number and kind mentioned in the certificate of the sheriff, undersheriff, or deputy sheriff. In no case may a bounty certificate be issued by the county clerk for more scalps *or lower jaw skins* than are actually received and counted by him.

(3) The county clerk shall receive, for each scalp or *skin of a* mountain lion lower jaw which he accounts for, the sum of 5 cents to be paid quarterly by the state treasurer out of the bounty fund.

(4) The county clerk shall keep a record of all certificates received and issued, showing the date and description of the number and kind of hides and the names of the persons presenting the hides, and this record is an official record. County clerks are required to send a report and statement to the department on or before the 20th of each month."

Section 6. Section 81-7-119, MCA, is amended to read:

"81-7-119. County license money to be used for predator control. For the purpose of providing for *predator control*, 5% of all license money collected by the several county treasurers of the state, *as provided in 7-21-2105, as amended* shall be paid over by *the* county treasurers to the state treasurer and shall be deposited by the latter in the earmarked revenue fund."

Section 7. Section 81-7-121, MCA, is amended to read:

"81-7-121. Falsifying certificates or affidavits — penalty. Any person who falsely *makes, alters, forges*, or *counterfeits* any of *the* certificates or orders and any person who falsely *swears* to any affidavit provided for by 81-7-111 through 81-7-122 or *procures* the same to be done by another, with the intent of obtaining any one of *the* certificates or orders, *is punishable as provided in Title 45.*"

Section 8. Section 81-7-402, MCA, is amended to read:

"81-7-402. Liability of owner of dog for damages to livestock or poultry. (1) The owner of livestock or poultry injured or killed by any dog may recover as liquidated damages from the owner of the dog the actual value of the animals killed or the value of the damages sustained by reason of the injuries as the case may be. If two or more dogs kept by two or more owners or keepers injure or kill any livestock or poultry at the same time, the owners or keepers of the dogs are jointly and severally liable for such damages. It *is* no defense to *the* action that the owner or keeper of the dog had no knowledge of the dog's whereabouts at or prior to the time when the dog injured or killed livestock or poultry or that the owner or keeper of the dog had no knowledge of the dog's disposition or inclination to worry, kill, or injure livestock or poultry.

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(2) The word "owner" when used in this section in relation to property *interest* in or possession of dogs *includes* every person who owns, harbors, or keeps a dog."

Section 9. Section 81-8-311, MCA, is amended to read:

"81-8-311. Range stock — taking possession under process. Whenever it is necessary for an officer or person charged with the service of process out of any of the courts of this state to take possession of any cattle or horses running at large and commonly known as range stock, between November 1 and the next succeeding May 15, it is a sufficient service of such process for the officer or person *within 15 days after receiving the process for service* to file a copy thereof *with the county clerk of the county wherein such property is running at large*, with a notice appended thereto *stating* the number as near as may be and a description of *the* stock by marks and brands, *and stating* that such property or a portion thereof, as the case may be, is attached or levied upon in pursuance of such process. *Such officer or person* shall make due return of *the service of* process."

Section 10. Section 81-8-609, MCA, is amended to read:

"81-8-609. Receipt of gifts, grants, or donations for research purposes. The department of livestock *may* receive gifts, grants, or donations for any research *or* scientific inquiries conducted under authority of this part and use and expend the same in compliance with the conditions, if any, of such grants, gifts, and donations *if* such conditions are valid under the laws of Montana and in aid of the purposes of this part."

Section 11. Section 81-9-424, MCA, is amended to read:

"81-9-424. Sufficiency of pleading and proof in criminal prosecution. In any prosecution for the violation of the provisions of 81-9-423 it is not necessary for the state to allege in the complaint or information the ownership of the hide or of the animal from which the hide was removed, but it is sufficient to allege in the complaint or information that the owner of the hide or of the animal from which the hide was removed is unknown and *the hide or animal is* not the property of the defendant."

Section 12. Section 81-22-101, MCA, is amended to read:

"81-22-101. Definitions. For the purpose of this chapter, the following definitions are adopted:

(1) "Agent" means a person who is authorized by another person to act for him in dealing with a third person.

(2) "Butter" is the clean, nonrancid product made by gathering the fat of fresh ripened milk or cream into a mass which also contains a small portion of the other milk constituents, with or without salt, and must contain not less than 80% of milk fat. No tolerance for deficiency in milk fat is permitted. Butter may also contain added coloring matter.

(3) "Cheese" is the sound, solid, and ripened product made from milk or cream by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning, and must contain in the water-free

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substance not less than 50% of milk fat and not more than 39% of moisture. Cheese may also contain added coloring matter.

(4) "Cheese factory" means a place where cheese, including cream cheese, cottage cheese, creamed cottage cheese, cheese curd, cottage cheese dressing, and low-fat counterparts of cheese, either cultured or directly acidified, is made for commercial purposes.

(5) "C.I.P." means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation when this procedure meets the 3-A accepted practices for permanently installed sanitary product-pipelines and cleaning systems.

(6) "Code of Federal Regulations" refers especially but is not limited to Title 21 which contains the definitions and standards of identity for products as established by the food and drug administration, United States department of health, education, and welfare.

(7) "Cream" means the milk fat which rises to the surface when milk is allowed to stand or which is separated from milk by centrifugal force when sold, used, or intended for use in a manufactured product.

(8) "Creamery" means a place where butter is made for commercial purposes.

(9) "Culture" means the harmless lactic acid fermenting bacteria which are added to milk or cream to make manufactured dairy products like cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese, butter, and other similar products.

(10) "Dairy" or "dairy farm" means a place where one or more cows or goats are kept, a part or all of the milk or cream from which is used for manufacturing purposes.

(11) The term "department", unless otherwise indicated, means the department of livestock provided for in Title 2, chapter 15, part 31.

(12) "Direct acidification", "directly acidified", and similar terms mean the process of adding a food grade acid to milk or cream instead of or in addition to the adding of culture.

(13) "Filled dairy products" means milk, cream, skimmed milk, or any combination of these, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from them, to which has been added or which has been blended or compounded with fat or oil other than milk fat so that the resulting product is in imitation or semblance of a dairy product, including milk, cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt, dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

(14) "French ice cream", "French custard ice cream", "cooked ice cream", "ice custard", "parfaits", and similar frozen products, except sherbets and water ices, are varieties of ice cream.

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(15) "Frozen dessert plant" means a place where products named in subsections (27)(a)(iii) through (27)(a)(ix) of this section are made for commercial purposes.

(16) "Fruit ice cream" shall conform to the requirements of ice cream, except that the fruit ingredients must be from sound, clean, and mature fruit, and it must contain not less than 9% of milk fat.

(17) "Grading" means the examination of milk, cream, or products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating their quality.

(18) "Ice" or "ice sherbet" is the pure, clean, frozen product made from water and sugar with harmless fruit or fruit juice flavoring, with or without harmless coloring or added stabilizer composed of wholesome edible material, and must contain not less than 35/100 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid. It may contain no milk solids.

(19) "Ice cream" is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, wholesome sweet butter, or any combination of these products, with or without sweetening, or clean wholesome eggs or egg products, with or without the use of harmless flavoring and coloring. Ice cream must contain not less than 10% of milk fat, not less than 33% total solids, and may or may not contain pure and harmless edible stabilizer. Ice cream may contain not to exceed 1% gelatin. No frozen milk or milk product may be manufactured or sold unless it contains at least 10% butterfat, excepting sherbets, ices, and other exceptions under this section. All ice cream must be manufactured from pasteurized ice cream mix.

(20) An "ice cream factory" is a place where ice cream mix is frozen into ice cream for commercial purposes.

(21) (a) "Ice cream mix" is a pasteurized, unfrozen product used in the manufacture of ice cream and must comply with the requirements for ice cream.

(b) "Mix" includes the liquid, unfrozen product from which those frozen products listed under subsection (27)(a)(iii) through (27)(a)(v) and (27)(a)(vii) through (27)(a)(xii) are made.

(22) An "ice cream mix factory" is a place where ice cream mix is made.

(23) "Intrastate commerce" means commerce within this state under the jurisdiction of the state and includes the operation of a business or service establishment.

(24) "Manufactured dairy product" means an item enumerated in subsection (27) or any other dairy product made by incorporating milk or cream or converting milk or cream into a different state of appearance or quality. For purposes of reporting production and licensing, "manufactured dairy product" includes but is not limited to:

(a) ice cream or its mix;

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(b) French ice cream, custard ice cream, French custard ice cream, their low-fat counterparts, or their mixes;

(c) sherbets of all kinds or their mixes;

(d) animal or vegetable fat frozen desserts or their mixes;

(e) frozen confections or their mixes when made in a manufactured dairy products plant;

(f) water ices or their mixes;

(g) frozen dessert sandwiches, bars, cones, and similar novelties;

(h) frozen dessert made of nondairy origins and other products made in the semblance or imitation of dairy products or their mixes when made in a manufactured dairy products plant;

(i) ice milk or its mix;

(j) cheese of all kinds, including cottage cheese, cheese curd, cheese dressing, and cream cheese, either cultured or directly acidified;

(k) sour cream when cultured or directly acidified;

(l) eggnog, low-fat eggnog, eggnog-flavored milk, and similar flavored products;

(m) buttermilk, cultured or from churned butter or directly acidified;

(n) butter;

(o) yogurt, low-fat yogurt *or* flavored yogurt, either cultured or directly acidified or frozen.

(25) "Manufactured dairy products plant" or "factory" means a place where milk or cream is collected and converted into a product or into a different state of appearance or quality or which manufactures those products listed in subsection (27). If only products of semblance or imitation of dairy products are made, the plant is not considered as a manufactured dairy products plant.

(26) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the milking of one or more healthy cows located in modified accredited areas and modified certified areas or from cows in herds fully accredited as tuberculosis free by the United States department of agriculture or in the process of being accredited when the milk or cream is sold for use in, intended for use in, or used in a manufactured dairy product.

(27) (a) "Milk" and "cream" mean milk and cream sold, used, or intended for manufacturing purposes or for conversion into products of a form other than the form in which originally produced or products commonly known as but not limited to:

(i) butter;

(ii) cheese, including cottage cheese, low-fat cottage cheese, cheese curd, and cream cheese which are either cultured or directly acidified, and cheese dressings;

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(iii) ice cream or its mix;

(iv) frozen dessert or its mix;

(v) sherbets of all kinds or their mixes;

(vi) frozen ice cream bars, sandwiches, cones, and similar novelties;

(vii) frozen desserts or products made in the semblance or imitation of frozen dessert;

(viii) frozen confections or their mixes;

(ix) water ices or their mixes;

(x) ice milk or its mix;

(xi) French ice cream, French custard, or their mixes;

(xii) frozen custard or its mix and frozen yogurt;

(xiii) yogurt, flavored yogurt, and low-fat yogurt;

(xiv) sour cream, either cultured or directly acidified;

(xv) cream cheese, either cultured or directly acidified;

(xvi) buttermilk, either cultured, from churned butter, or directly acidified;

(xvii) eggnog, low-fat eggnog, eggnog-flavored milk, whipped cream, flavored toppings, and similar flavored products;

(xviii) dry or powdered milk; and

(xix) condensed milk products.

(b) The items specified in subsection (27)(a) of this section shall conform to the standards of identity set forth in the Code of Federal Regulations. If standards of identity are not set forth in the code, then the standards adopted by the department prevail. The labeling of manufactured dairy products shall be in accordance with the Montana Food, Drug, and Cosmetic Act.

(28) "*Milk or cream* station" means a place other than a creamery where deliveries of milk or cream are weighed, graded, sampled, tested, or collected for purchase.

(29) "Milk sherbet" is the pure, clean, frozen product made from milk product, water, and sugar, with harmless fruit or fruit juice flavoring and with or without harmless coloring, which must contain not less than 35/100 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It must contain not less than 4% by weight of solids.

(30) "Mislabeled", "unwholesome", "food additives", "optional ingredients", "impure", "misbranded", "contaminated", "adulterated", "perishable", "hazardous", "unfit", "spoiled", "damaged", and similar terms,

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when applied to a manufactured dairy product or product made in semblance or in imitation of a manufactured dairy product, are as defined in Title 50, chapter 31.

(31) "Official test" means test procedures outlined in the sources referred to under 81-22-301 concerning samples, methods, and rules of evidence.

(32) "Pasteurization", "pasteurizing", and similar terms mean the process of heating every particle of milk or milk product to at least 145 degrees F and holding it continuously at or above this temperature for at least 30 minutes or to at least 161 degrees F and holding it continuously at or above this temperature for at least 15 seconds in equipment which is properly operated and approved by the department. Milk products that have a higher fat content than milk or contain added sweeteners shall be heated to at least 155 degrees F and held continuously at or above this temperature for at least 30 minutes, or to at least 175 degrees F and held continuously at or above this temperature for at least 25 seconds. This definition does not bar any other pasteurization process which has been recognized by the United States public health service to be equally effective and which is approved by the department.

(33) "Person" means an individual, firm, partnership, corporation, cooperative, or other business unit or trade device.

(34) "Producer" means the person who exercises control over the production of milk or cream delivered to a milk or cream receiving station or manufactured dairy products plant or who receives payment for milk or cream used in manufacturing.

(35) "Raw milk" or "raw milk products" means milk or milk products which have not been treated by a process of pasteurization.

(36) "Renovated butter" or "processed butter" is the product made by melting and reworking, without the addition or use of chemicals or substances except whole milk, cream, or salt, and must contain not less than 80% of milk fat.

(37) "Safe temperature" means 45 degrees F or less, unless the product is frozen, in which case the temperature must be at or below 0 degrees F.

(38) "Skimmed milk cheese" is the sound, solid, and ripened product made from skim milk by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning.

(39) "Testing", "test", "tested", and similar words mean the examination of milk, cream, or manufactured dairy products by sight, odor, taste, or biological or chemical laboratory analysis to determine their quality, wholesomeness, or composition.

(40) "Water ice" means a frozen product containing but not limited to the following ingredients: water, sugar, flavoring, coloring, stabilizers, and other ingredients allowed by the Code of Federal Regulations as optional ingredients."

Section 13. Section 81-22-204, MCA, is amended to read:

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"81-22-204. License required for milk or cream route. It is unlawful for a person to engage in hauling milk or cream on an established milk or cream route for a *manufactured* dairy products plant, milk plant, or milk or cream station without first procuring a license from the department. The fee for the license is $5 annually."

Section 14. Section 81-22-408, MCA, is amended to read:

"81-22-408. Manufacturer's and wholesaler's or retailer's names to appear on package — use of codes and numbers permitted. *(1)* All manufactured dairy products sold, offered, displayed, or exposed for sale at wholesale or retail in this state, wherever manufactured, must be packaged in a protective wrapper or package and must have the manufacturer's and wholesaler's or retailer's names clearly printed in a conspicuous place on the package or wrapper in which it is sold.

(2) If a manufactured dairy product is packaged in a plant other than that of the plant whose name appears on the package or wrapper, the package or wrapper shall also show the name of the plant at which the product was packaged or wrapped.

(3) This section does not prevent the use of codes or numbers which designate the *packaging* or wrapping plant *if* these codes or numbers are registered with the department."

Section 15. Section 81-22-413, MCA, is amended to read:

"81-22-413. Pasteurization required. All milk and cream used in the manufacture of any dairy product or products made in semblance *or imitation* of dairy products sold, offered for sale, purveyed, stored, displayed, or transported in Montana *must* be pasteurized. However, cheese held, stored, or aged for at least 60 days at not less than 35 degrees F *is* not required to be made from pasteurized milk or cream but *must* be labeled "made from raw or unpasteurized milk or unpasteurized cream", as the case may be. Other cultured raw or unpasteurized dairy products *that* can be made safe by aging *must* be similarly aged and labeled as required above."

Section 16. **Repealer.** Sections 3-2491, 46-1701, and 46-1703, R.C.M. 1947, are repealed.

Approved February 9, 1979.

CHAPTER NO. 15

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO STATE LANDS; AMENDING SECTIONS 77-1-112, 77-1-113, 77-1-114, 77-1-115, 77-1-117, 77-2-201, 77-2-214, AND 77-3-424, MCA, AND REPEALING SECTION 84-510, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-112, MCA, is amended to read:

"77-1-112. Violations classified. (1) Any officer, employee, or representative of the state who directly or indirectly accepts any money or

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any other valuable thing, except his regular and lawful compensation, for performing or not performing an official act under the provisions of *this title* or for modifying the performance thereof *is* guilty of a felony *and punishable as provided in 77-1-115.*

(2) Any officer, employee, or representative of the state who knowingly and willfully makes any false classification or appraisal of any state land or of any land offered the state for sale or offered as security for a loan from the state or who falsely classifies or scales any timber on state lands or from state lands or any timber in which the state is interested or who knowingly and willfully makes any false report of any such classification or appraisal or scaling *is* guilty of a felony *and punishable as provided in 77-1-115.*

(3) (a) Any officer, employee, or representative of the state who otherwise violates any of the provisions of *this title:*

(i) is guilty of a felony if the violation results in a loss to the state of $1,000 or more; or

(ii) is guilty of a misdemeanor if the violation results in a loss to the state of less than $1,000 or in no pecuniary loss.

(b) The punishment shall be as provided in 77-1-115."

Section 2. Section 77-1-113, MCA, is amended to read:

"77-1-113. Restrictions on who may buy or lease state lands. It is unlawful for any member of the board, any person appraising lands or in the employ of the state for the selection, classification, appraisal, sale, or leasing of any state lands or the timber thereon, or any person connected with the department of state lands as an officer or employee to purchase or lease, directly or indirectly, any of the land of the state or any timber thereon."

Section 3. Section 77-1-114, MCA, is amended to read:

"77-1-114. Prosecutions. (1) Whenever an arrest shall be made for any violation of the provisions of this *title* or whenever any information of such violations shall be lodged with him, the county attorney of the county in which this act was committed must prosecute the offender or offenders if in his judgment the facts warrant the same.

(2) If any county attorney shall fail to comply with the provisions of this section, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $100 or more than $1,000. Upon his conviction, the district court wherein he is convicted shall forthwith declare his office vacant and notify the proper appointing power thereof. Actions against the county attorney shall be brought by the attorney general in the name of the state.

(3) The penalties of this section shall also apply to any magistrate with proper authority who refuses or neglects to cause the arrest and prosecution of any person when a complaint under oath of a violation of any of the provisions of this *title* has been lodged with him."

Section 4. Section 77-1-115, MCA, is amended to read:

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"77-1-115. Punishments. *(1)* Any officer, employee, or representative of the state who is found guilty of a felony as defined in 77-1-112 *is* punishable by imprisonment in the state penitentiary for not less than 1 or more than 10 years or *by* a fine which shall neither be less than $500 nor less than twice the amount of the loss that resulted to the state through the crime of which he has been convicted or by both such imprisonment and fine.

(2) Any officer, employee, or representative of the state who is found guilty of a misdemeanor as defined in 77-1-112 *is* punishable by imprisonment in a county jail not to exceed 1 year or by a fine which shall neither be less than $100 nor less than twice the amount of the loss that resulted to the state through the crime of which he has been convicted or by both such imprisonment and fine."

Section 5. Section 77-1-117, MCA, is amended to read:

"77-1-117. Disposition of fines. *Unless otherwise provided, all money* received as fines, fees, and forfeitures under this title or as penalties for the violation of any of the land laws of this state shall be paid to the state treasurer and by him deposited to the credit of the general fund."

Section 6. Section 77-1-203, MCA, is amended to read:

"77-1-203. Multiple-use management. (1) The board shall manage state lands under the multiple-use management concept defined as the management of all the various resources of the state lands so that:

(a) they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions *and realizing that* some land *may* be used for less than all of the resources; and

(b) harmonious and coordinated management of the various resources, each with the other, *will result* without impairment of the productivity of the land, with consideration being given to the relative values of the various resources.

(2) *If* a parcel of state land in one class *has* other multiple *uses* or resource values which are of such significance that they do not warrant classification for the value, the land shall, nevertheless, be managed insofar as is possible to maintain or enhance these multiple-use values."

Section 7. Section 77-2-201, MCA, is amended to read:

"77-2-201. Exchange of land with United States. (1) The board may enter into contracts or agreements with the United States or any department thereof having jurisdiction for the waiving and relinquishment to the United States of any rights of the state in and to sections 16 and 36 of any township and to any other *parcel* of state lands, provided that the state shall, in lieu of the rights so waived and relinquished, receive from the United States other lands of equal or greater value.

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(2) The current user of the land transferred to the United States may continue to enjoy the use of the land under terms and conditions required by the federal government and in accordance with *P.L. 88-607, as amended, (43 U.S.C. 1411 through 1418)*, and the current user *of* the land received from the United States may continue to utilize the land on the terms and conditions imposed by law or by the board."

Section 8. Section 77-2-214, MCA, is amended to read:

"77-2-214. Investigation and findings concerning exchange of land. *(1)* The department of natural resources and conservation shall, as soon as it concludes its investigation thereof, report to the board the facts disclosed by its investigation and include in its report a recommendation concerning the proposal, including its reasons therefor in writing.

(2) After considering the report and recommendation and making such further investigation as it considers advisable, *the board shall consider the entire matter, make findings and conclusions concerning the proposal, and make an order:*

(a) rejecting and dismissing the proposal if in the judgment of the board the exchange is not in the public interest; or

(b) accepting the proposal and ordering the exchange to be made if in the judgment of the board the exchange is in the public interest and should be made.

(3) An order accepting the proposal shall contain an accurate description of all lands to be exchanged."

Section 9. Section 77-3-424, MCA, is amended to read:

"77-3-424. Power to terminate lease in absence of commencement of drilling or payment of delay drilling penalty. (1) In every oil and gas lease granted after March 3, 1955, under this part there shall be reserved to the board full power to declare termination of the lease at the end of the *fifth* year or any subsequent year of the primary term of the lease upon failure of the lessee to either:

(a) commence the drilling of a well for oil and gas upon the leased premises; or

(b) pay a delay drilling penalty as follows:

(i) for the sixth year of the lease $1.25 per acre per year; and

(ii) for the remainder of the primary term of the lease an amount per acre per year as the board may in its discretion determine.

(2) Notice of that determination shall be given to the lessee, and if the lessee applies for a hearing thereon within 10 days after receipt of the notice, the determination shall become final only after such hearing has been held.

(3) This annual delay drilling penalty shall be paid each year in advance.

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(4) If a well for oil and gas is commenced, the drilling of the well shall be prosecuted with due diligence and dispatch to such depth as is necessary to make a reasonable test for oil or gas."

Section 10. **Repealer.** Section 84-510, R.C.M. 1947, is repealed.

Section 11. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved February 9, 1979.

CHAPTER NO. 16

AN ACT TO RAISE THE LIMIT ON STATE BUILDING PROJECTS REQUIRING SUPERVISION BY THE DEPARTMENT OF ADMINISTRATION FROM $10,000 TO $25,000; AMENDING SECTIONS 18-2-103 AND 18-2-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-103, MCA, is amended to read:

"18-2-103. Supervision of construction of buildings. (1) For the construction of a building costing more than *$25,000,* the department of administration shall:

(a) review and approve all plans and working drawings prepared by architects;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys;

(c) under the supervision and with the approval of the board of examiners, solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and, with the consent of the board of examiners, approve all change orders;

(e) accept the building when completed according to approved plans and specifications.

(2) Before any contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(3) The department of administration is responsible for concurring in construction projects where the proposed cost is less than *$25,000* but more than *$5,000.* Before any contract under this subsection is approved for construction, alteration, or improvement at least three informal bids, if reasonably available, shall be procured from bona fide contractors duly licensed as such in the state of Montana.

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(4) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision where proposed construction costs are less than *$5,000.*

(5) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to insure compliance with the plans and specifications for the construction of such buildings. "Construction" shall include construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services shall be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction revolving account in the revolving fund.

(6) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) and (2) of this section."

Section 2. Section 18-2-301, MCA, is amended to read:

"18-2-301. Bids required — advertising. (1) It is unlawful for the board of examiners or any offices, departments, institutions, or any agent of the state of Montana acting for or in behalf of the state to do, to cause to be done, or to let any contract for the construction of buildings or the alteration and improvement of buildings and adjacent grounds on behalf of and for the benefit of the state when the amount involved is *$25,000* or more without first advertising in at least one issue each week for 3 consecutive weeks in two newspapers published in the state, one of which must be published at the seat of government and the other in the county where the work is to be performed, calling for sealed bids to perform such work and stating the time and place bids will be considered.

(2) All such work may be done, caused to be done, or contracted for only after competitive bidding.

(3) If no bid for such work is accepted, the work may not be done or accomplished. The work may be readvertised from time to time until awarded to a qualified competitive bidder.

(4) This section does not apply to work done by inmates at an institution in the department of institutions."

Approved February 9, 1979.

CHAPTER NO. 17

AN ACT TO PROVIDE FOR GRANDPARENT VISITATION RIGHTS WITH GRANDCHILDREN UNDER CERTAIN CIRCUMSTANCES WHEN THE VISITATION RIGHTS ARE IN THE BEST INTEREST OF THE CHILD; AMENDING SECTION 40-4-217, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Application of Montana Rules of Civil Procedure.** (1) Except as otherwise provided, the Montana Rules of Civil Procedure apply to all proceedings under [sections 1 and 2].

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(2) A proceeding for grandparent visitation under [sections 1 and 2] shall be entitled, "In re the visitation of ....."

(3) The initial pleading in all proceedings under [sections 1 and 2] shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings shall be denominated as provided in the Montana Rules of Civil Procedure.

Section 2. **Grandparent visitation rights.** (1) If the father or mother of an unmarried child is deceased, the district court may grant to the parents of the deceased person reasonable visitation rights with the child.

(2) Visitation rights granted under this section may be granted only upon a finding by the court, after a hearing, that the visitation would be in the best interest of the child.

(3) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Visitation rights granted under this section terminate upon the adoption of the child by a person other than a stepparent or a grandparent.

Section 3. Section 40-4-217, MCA, is amended to read:

"40-4-217. Visitation. (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health."

Approved February 9, 1979.

CHAPTER NO. 18

AN ACT TO AMEND SECTION 16-4-206, MCA, TO MAKE THE SECTION APPLICABLE TO ALL LICENSES UNDER THE LIQUOR CODE; TO REMOVE LANGUAGE RELATING TO CRIMINAL SANCTIONS WHEN THE APPLICANT MAKES A FALSE STATEMENT ON THE LICENSE APPLICATION; AND TO PROVIDE FOR DENIAL OR REVOCATION OF LICENSES WHENEVER FALSE STATEMENTS ARE MADE IN LICENSE APPLICATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-206, MCA, is amended to read:

"16-4-206. Application for license — penalty for false statements. (1) Prior to the issuance of *any license under this chapter*, the

applicant shall file with the department an application in writing, signed by the applicant and containing such information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as may be required by the department.

(2) The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths. *Upon proof that any applicant made a false statement in any part of the application, the application for the license may be denied, and if issued, the license may be revoked.*"

Approved February 9, 1979.

CHAPTER NO. 19

AN ACT TO DESIGNATE THE BOARD OF OIL AND GAS CONSERVATION AS THE MONTANA JURISDICTIONAL AGENCY FOR PURPOSES OF THE NATURAL GAS POLICY ACT OF 1978 AND ANY SUCCESSOR OR SIMILAR LEGISLATION AND TO PROVIDE FOR A PROCEDURE TO IMPLEMENT STATE AUTHORITY UNDER THE FEDERAL LAW; AMENDING SECTIONS 82-11-101 AND 82-11-141, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-11-101, MCA, is amended to read:

"**82-11-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(3) "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

(4) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; such artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

(5) "Field" means the general area underlaid by one or more pools.

(6) "Gas" means all natural gases and all other fluid hydrocarbons as produced at the wellhead and not defined as oil in subsection (6) of this section.

(7) "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form by ordinary production methods and which are not the result of condensation of gas before or after it leaves the reservoir.

(8) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others, and the term includes all persons holding such authority by or through him.

(9) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision thereof.

(10) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.

(11) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

(12) "Waste" means:

(a) physical waste, as that term is generally understood in the oil and gas industry;

(b) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

(c) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(d) the inefficient storing of oil or gas. (The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of this definition.)"

Section 2. **Role of board in implementation of national gas policy.** The board is designated as the state jurisdictional agency for purposes of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

Section 3. **Appointment of examiners.** The board shall designate one or more examiners to make determinations as defined in 82-11-101. To be appointed as an examiner, an individual must possess a degree in petroleum engineering or geology.

Section 4. **Procedure to make determinations.** (1) The board shall adopt rules to govern the making of determinations. These rules shall be adopted pursuant to the Montana Administrative Procedure Act, but

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the procedure to be employed in making determinations is not subject to the Montana Administrative Procedure Act. The rules may provide that testimony may only be submitted in writing and that no cross-examination is allowed.

(2) Any determination made by an examiner under this section and [section 3] shall be reviewed by the board upon request of two members of the board. The review by the board is subject to the notice and hearing but not the appeal provisions of the contested case procedures of the Montana Administrative Procedure Act. The request for review must be made within 20 days after an examiner makes a determination. If no request for a review is made during this 20-day period, the examiner's determination is considered to be the determination of the board and the determination, together with the accompanying record, shall be forwarded to the federal energy regulatory commission for review. If a review by the board is requested, the board shall forward the final determination to the federal energy regulatory commission.

Section 5. **Public access.** All applications for a determination and all determinations made pursuant to [sections 3 and 4] shall be made available for public inspection at the Billings and Helena offices of the board.

Section 6. Section 82-11-141, MCA, is amended to read:

"82-11-141. Administrative procedure. (1) *Unless otherwise provided, the* Montana Administrative Procedure Act applies to this chapter.

(2) An order or amendment thereof, except in an emergency, may not be made by the board without a public hearing upon at least 10 days' notice. The public hearing shall be held at such time and place as may be prescribed by the board, and any interested person is entitled to be heard.

(3) When an emergency requiring immediate action is found to exist, the board may issue an emergency order without advance notice or hearing which shall be effective upon promulgation. An emergency order may not remain in effect more than 15 days.

(4) If notice is required by the chapter and the Montana Administrative Procedure Act does not apply, the notice shall be made by publication in one or more issues of a newspaper in general circulation in Helena and a newspaper of general circulation in the county where the land or some part thereon is situated, and the board may also cause publication to be made in a trade journal or bulletin of general circulation in the oil and gas industry in the state.

(5) Proof of service by publication under subsection (4) shall be made by the affidavit of the printer or publisher of the newspaper, trade journal, or bulletin in which the notice is published or by a foreman or principal clerk of the newspaper, bulletin, or trade journal.

(6) Except as provided otherwise in this chapter, the board may act upon its own motion or upon the petition of an interested person. On the filing of a petition concerning a matter within the jurisdiction of the board, the board shall promptly fix a date for a hearing thereon and shall cause notice of the hearing to be given. The hearing shall be held without

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undue delay after the filing of the petition. The board shall enter its order within 30 days after the hearing."

Section 7. **Codification.** It is intended that sections 2 through 5 be codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to sections 2 through 5.

Section 8. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. **Effective date.** This act is effective upon passage and approval.

Approved February 9, 1979.

CHAPTER NO. 20

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO AGRICULTURE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-2-221, MCA, is amended to read:

"80-2-221. Tax for hail insurance — limitation on levy. (1) A tax is hereby authorized and directed to be levied on all lands in this state growing crops subject to injury or destruction by hail, the owners of which have elected to become subject to the provisions of this part.

(2) The board of hail insurance shall annually estimate, *as* accurately as possible, the amount required to pay all losses, interest on warrants, and costs of administration and shall recommend a levy to be made on each kind of land respectively, subject to the provisions of this part, to the department of revenue. The rates recommended to apply on the lands of owners shall be applied in the same proportions to the crops of those insured on a personal assessment basis.

(3) It is hereby provided, however, that such tax may not exceed in any one year $2.40 per acre on lands sown to grain crops on nonirrigated lands, $4.80 per acre on irrigated lands, or $2.40 per acre on lands producing hay crops.

(4) If the tax required to pay the estimated losses, interest on warrants, and costs of administration is less than $1.20 per acre on lands sown to grain crops on nonirrigated lands and $2.40 per acre on irrigated lands and a proportionate amount on lands sown to hay crops, the board of hail insurance must recommend a tax levy sufficient to raise the full amount thereof."

Section 2. Section 80-2-245, MCA, is amended to read:

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"80-2-245. Benefits exempt from execution. All money or benefits received from hail insurance *are* exempt from execution, *are* not liable to attachment, *and may not* be seized, taken, or appropriated by any local process to pay any debt or liability of the insured unless the amount *is* assigned and then for no more than the amount of the claim intended to be secured by the assignment, with lawful interest."

Section 3. Section 80-3-501, MCA, is amended to read:

"80-3-501. Definitions. Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) "Beans" means all varieties of the bean family (except green beans) whether grown or purchased for seed, feed, or human consumption.

(2) "Storage" or "warehousing" means any method by which beans are held for any party, other than direct ownership, by the party storing the beans.

(3) "Warehouseman" means a dealer, shipper (except grower), society, association, organization, corporation, or their agents or representatives."

Section 4. Section 80-3-508, MCA, is amended to read:

"80-3-508. Records of bean dealer — inspection — receipt. (1) A dealer in beans shall keep a complete record of all beans handled by him *on* a form *prescribed by* the department. The record shall be open to the confidential inspection of the department at all times.

(2) Every warehouseman shall issue a receipt for all beans received for storage on a form approved by the department.

(3) A person operating under this part shall keep in a place of safety complete records of all beans stored by him, all beans withdrawn from storage, all warehouse receipts issued by him, and all the receipts returned to and canceled by him and shall report to the department as required by the rules of the department."

Section 5. Section 80-3-513, MCA, is amended to read:

"80-3-513. Penalties for doing business without license and other violations. Any person who *engages* in or *carries* on any business or occupation for which a license is required by this part without first having obtained a license therefor or who *continues* to engage in or carry on any such business or occupation after such license has been revoked or expired *is* guilty of a misdemeanor and upon conviction thereof shall be fined not less than $25 or more than $100, and each day that such business or occupation is so carried on or engaged in *is* a separate offense. Any person who otherwise *violates* any of the provisions of this part or by any manner or means *converts* to his own use or that of another any beans so stored or accepted for storage, if the value of such converted beans exceeds $500, *is* guilty of a felony *or*, if the value is less than $500, *is* guilty of a misdemeanor and in either case upon conviction shall be punished by fine or imprisonment, or both, as otherwise provided by law."

Section 6. Section 80-4-106, MCA, is amended to read:

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"**80-4-106. Penalty for misconduct.** (1) Any inspector, sampler, or weigher who *is* guilty of any neglect of duty or who knowingly or carelessly *inspects, samples*, or *weighs* any grain or who, directly or indirectly, *accepts* any money or other consideration for any neglect of duty or any improper performance of duty as such inspector, sampler, or weigher or any person, persons, corporation, or agent who improperly *influences* or *attempts* to improperly influence any inspector, sampler, or weigher in the performance of his duties *is* guilty of a misdemeanor and upon conviction thereof shall be *punished by a fine of* not less than $100 or more than $500 or be imprisoned in the county jail not less than 30 days or more than 1 year or by both such fine and imprisonment, in the discretion of the court.

(2) Upon written complaint filed with the department, charging an inspector, sampler, or weigher with official misconduct, inefficiency, incompetency, or neglect of duty, the department shall investigate the charges. If the charges are substantiated, the department shall remove that officer."

Section 7. Section 80-5-202, MCA, is amended to read:

"**80-5-202. Licensing — issuance — application — fee — bonding — insurance.** (1) All seed processing plants, seed labelers, seed buyers, and public agricultural seed warehouses shall obtain a license from the department before doing business in this state; however, a Montana certified seed grower, when processing or labeling certified seed from his own production, is not required to be licensed under this section. Bin-run seed sales from one farmer to another are exempt from this part.

(2) All licenses are issued on a fiscal-year basis and expire on June 30 of each year. A license may cover any or as many as all four activities: processing plant, seed labeler, seed buyer, and public agricultural seed warehouse.

(3) Application for license is made in a manner and on forms provided by the department. A nonresident shall file a written power of attorney designating the secretary of state as his agent, and the power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the state of Montana over the nonresident applicant. A nonresident who has a duly appointed resident agent upon whom process may be *served* as provided by law is not required to designate the secretary of state as his agent. The department shall be furnished with a certified copy of the designation of the secretary of state or of a resident agent.

(4) The department may establish by rule minimum standards for equipment and handling procedures for facilities to be licensed and may carry out inspections during normal business hours to determine that these standards are being adhered to.

(5) Each license shall cost no more than $50 a year. The department may by rule establish license fees which bear a reasonable relationship to the cost of administering this part.

(6) Failure on the part of a licensee to comply with the rules issued under the authority of this section is sufficient cause for cancellation of a

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license by the department, provided the licensee is given a reasonable opportunity to correct inadvertent and nonrecurring deficiencies.

(7) The department may by rule establish bonding and insurance requirements for each class of license."

Section 8. Section 80-5-206, MCA, is amended to read:

"80-5-206. Rules — promulgated by department. The department is authorized to promulgate necessary rules as authorized by this part. All rules are *to be* promulgated in accordance with procedures as set forth in the Montana Administrative Procedure Act."

Section 9. Section 80-8-202, MCA, is amended to read:

"80-8-202. Prohibited acts. (1) It *is* unlawful for any person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce between points within this state any of the following:

(a) any pesticide which has not been registered pursuant to the provisions of 80-8-201 or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration or if the composition of a pesticide differs from its composition as represented in connection with its registration or if registration or reregistration has been refused, revoked, canceled, or suspended. The department of agriculture may allow a change in the labeling or formula of a pesticide within a registration period without requiring reregistration of the *product* when such change does not adversely affect the product for its intended use and if proper application therefor is made.

(b) any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) the name and address of the manufacturer, registrant, or person for whom manufactured;

(ii) the trade and chemical name, brand, or trademark under which said article is sold;

(iii) the net weight or measure of the content, subject to such reasonable variations as the department may permit;

(c) any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in 80-8-105, unless the label shall bear, in addition to any other matter required by this chapter:

(i) the skull and crossbones;

(ii) the word "poison" prominently in red on a background of distinctly contrasting color;

(iii) a statement of an antidote for the pesticide;

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(d) the pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored, as provided by regulations issued in accordance with this chapter, or any other white powder pesticide which the department, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the environment and the feasibility of such coloration or discoloration, shall by regulations require to be distinctly colored or discolored, unless it has been so colored or discolored. The department may exempt any pesticide to the extent that it is intended for a particular use from the coloring or discoloring required or authorized by this section if it determines that such coloring or discoloring for such use is not necessary for the protection of the public health and the environment.

(e) any pesticide which is adulterated or misbranded, or any device which is misbranded.

(2) It *is* unlawful for any person to:

(a) detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or rules promulgated hereunder or to add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this chapter;

(b) use for his own advantage or reveal, other than to the department or proper officials or employees of the state or the courts of this state in response to a subpoena, to physicians or to veterinarians or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of 80-8-201."

Section 10. Section 80-8-209, MCA, is amended to read:

"80-8-209. Farm applicators. (1) Farm applicators shall obtain a certificate or special-use permit prior to purchasing and using any pesticide designated by the department as a restricted-use pesticide. The certificate, to be issued for 5 calendar years, must be renewed annually by the department or its authorized representative. The 5-year certification period shall commence on January 1, 1978.

(2) Restricted pesticides may not be utilized by farm applicators or their employees except for the purpose of producing or protecting any agricultural commodity on property owned, leased, or rented or as provided in (6) of this section.

(3) Farm applicators shall qualify for the certificate or permit by either passing a written examination or attending a training course approved by the department with or without an ungraded *examination.* The examination or course shall include practical knowledge as *to* the ability to:

(a) recognize common pests to be controlled and damage caused by them;

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(b) read and understand the label and labeling information, including the common name of the pesticide(s) applied, pest(s) to be controlled, timing and methods of application, safety precautions, any preharvest or reentry restrictions, and any specific disposal procedures;

(c) apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticides to be used under particular circumstances, taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;

(d) recognize local environmental situations that must be considered during application to avoid contamination; and

(e) recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

(4) The department may require farm applicators to attend a mandatory training session and pass a written examination for those restricted pesticides *that* are extremely toxic or for which an effective antidote is not available. The department may require farm applicators handling these pesticides to maintain use records.

(5) Farm applicators having verified reading disabilities may become certified to use up to two restricted-use pesticides by passing a specific oral examination on the particular pesticide(s) if the applicator documents that a certified applicator in the immediate vicinity can advise him.

(6) Provisions of this chapter relating to *certification* of farm applicators *do* not apply to any farm applicator applying nonrestricted pesticides on his own land or on lands of his *neighbors if* he:

(a) operates farm property and operates and maintains pesticide application equipment primarily for his own use;

(b) is not regularly engaged in the business of applying pesticides for hire and does not publicly hold himself out as a pesticide applicator;

(c) operates his pesticide application equipment only in the vicinity of his own property and for the accommodation of his immediate neighbors."

Section 11. Section 80-8-210, MCA, is amended to read:

"80-8-210. Licensing nonresidents. Any nonresident applying for a license under this chapter to operate in Montana shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against *the* nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of Montana over such nonresident applicant; provided, however, that any such nonresident who has a duly appointed resident agent upon whom process may be *served* as provided by law *is* not required to designate the secretary of state as such agent. The secretary of state shall be allowed such fees as provided by law for designating resident agents. The department shall be furnished with a copy of such designation of the

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secretary of state or of a resident agent, such copy to be duly certified by the secretary of state."

Section 12. Section 80-9-101, MCA, is amended to read:

"80-9-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Brand name" means any word, name, symbol, or device or any combination of them identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(2) "Commercial feed" means all materials except the mixed or unmixed whole seeds or physically altered mixed or unmixed entire seeds of cereal grains with or without molasses added, when not adulterated within the meaning of subsections (1) through (5) of 80-9-204, which are distributed for use as feed or for mixing in feed. However, the department may by rule exempt from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities, compounds, or substances are not intermixed or mixed with other materials and are not adulterated within the meaning of subsections (1) through (5) of 80-9-204.

(3) "Custom-mixed feed" means commercial feed which consists of a mixture of either commercial feeds or feed ingredients or both of them, each batch of which is manufactured according to specifications mutually agreed to by the purchaser and the manufacturer. A copy of the specifications or a list of the ingredients, but not necessarily the percentage of each ingredient, shall be on file at the manufacturing facility.

(4) "Distribute" means to offer for sale, sell, exchange, or barter commercial feed.

(5) "Distributor" means a person who distributes.

(6) "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and articles other than feed intended to affect the structure or function of the animal body.

(7) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(8) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed is distributed.

(9) "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed, any of its containers, its wrapper, or accompanying the commercial feed.

(10) "Manufacture" means to grind, mix, blend, or further process a commercial feed.

(11) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

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(12) "Official sample" means a sample of feed taken by the department in accordance with the provisions of subsections (3), (5), or (6) of 80-9-301.

(13) "Percent" or "percentage" means percentage by weights.

(14) "Person" means an individual, partnership, corporation, *or* association.

(15) "Pet" means any domesticated animal normally maintained in or near the household of its owner.

(16) "Pet food" means any *commercial* feed prepared and distributed for consumption by pets.

(17) "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

(18) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, including but not limited to gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles.

(19) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

(20) "Ton" means a net weight of 2,000 pounds avoirdupois."

Section 13. Section 80-10-210, MCA, is amended to read:

"80-10-210. Licensee reports — confidentiality — inspection — failure to file. (1) Information contained in the reports *required by 80-10-207(3)* shall be held confidential by the department. Summary data published by the department shall be in a form that will not disclose details of any operation or business.

(2) The department *may* inspect and audit, during normal business hours, each licensee's records for the purpose of verifying tonnage reports.

(3) Failure to file an accurate report constitutes a violation of this chapter and may be punished by fine, revocation of license, or both."

Approved February 13, 1979.

CHAPTER NO. 21

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE JUDICIARY AND COURTS; AMENDING SECTIONS 3-1-101, 3-1-113, 3-1-201, 3-1-601, 3-1-605, 3-1-1001, 3-1-1002, 3-1-1003, 3-1-1010 THROUGH 3-1-1014, 3-2-205, 3-2-402, 3-5-213, 3-5-214, 3-5-407, 3-5-514, 3-6-204, 3-6-302, 3-10-111, 3-10-221, 3-10-301, 3-10-304, 3-10-502, 3-11-103, 3-11-203, 3-11-205, 3-12-103, 3-15-403, 3-15-601, AND 3-15-704, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-101, MCA, is amended to read:

"3-1-101. The several courts of this state. The following are courts of justice of this state:

(1) the court of impeachment, which is the senate;

(2) the supreme court;

(3) the district courts;

(4) the municipal courts;

(5) the justices' courts;

(6) the city courts and such other inferior courts as the legislature may establish in any incorporated city or town."

Section 2. Section 3-1-113, MCA, is amended to read:

"3-1-113. Means to carry jurisdiction into effect. When jurisdiction is, by the constitution or any statute, conferred on a court or judicial officer, all the means necessary *for the exercise of such jurisdiction* are also given. In the exercise of this jurisdiction, if the course of proceeding *is* not specifically pointed out by this code, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code."

Section 3. Section 3-1-201, MCA, is amended to read:

"3-1-201. What courts have seals. Each of the following courts shall have a seal:

(1) the supreme court;

(2) the district courts;

(3) the municipal courts."

Section 4. Section 3-1-601, MCA, is amended to read:

"3-1-601. Certain officers not to practice law or administer estates. (1) No justice or judge of a court of record or clerk of any court *may* practice law in any court in this state or act as attorney, agent, or solicitor in the prosecution of any claim or application for lands, pensions, or patent rights or other proceedings before any department of the state or general government or *any court* of the United States during his continuance in office.

(2) Neither the court administrator nor any assistant may practice law in any of the courts of this state while holding his position.

(3) No justice or judge of a court of record *may* act as administrator or executor of any estate for compensation."

Section 5. Section 3-1-605, MCA, is amended to read:

"3-1-605. Restrictions on judicial officers after term has expired. A *judicial officer as defined in 1-1-202,* after the expiration of his term of office, *may* not act as attorney or counsel in any action or special proceeding which has been before him in his official character."

Section 6. Section 3-1-1001, MCA, is amended to read:

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"**3-1-1001. Creation, composition, and function of commission.** A judicial nomination commission for the state is created. Its function is to provide the governor with a list of candidates for *appointment* to fill any vacancy on the supreme court or any district court. The commission shall be composed of seven members as follows:

(1) four lay members who are neither judges nor attorneys, active or retired, who reside in different geographical areas of the state, and each of whom is representative of a different industry, business, or profession, whether actively so engaged or retired, who shall be appointed by the governor;

(2) two attorneys actively engaged in the practice of law, one from each congressional district, who shall be appointed by the supreme court;

(3) one district judge elected by the district judges under an elective procedure initiated and conducted by the supreme court and certified to such election by the chief justice of the supreme court. The election shall be considered an appointment for the purposes of this part.

(4) appointments provided for in this section shall be made within 30 days of the completion of the preceding terms."

Section 7. Section 3-1-1002, MCA, is amended to read:

"**3-1-1002. Staggered terms of members.** (1) All original members named to the commission shall serve until January 1, 1976. Their successors shall serve as follows:

(a) The members appointed by the governor shall serve 4-year terms.

(b) The attorneys *appointed by the supreme court* shall serve 2-year terms.

(c) The judge elected shall serve a 2-year term.

(2) Thereafter all members shall serve terms of 4 years."

Section 8. Section 3-1-1003, MCA, is amended to read:

"**3-1-1003. Vacancies.** (1) In the event a vacancy on the commission occurs, the governor shall appoint a replacement for the remainder of the term. Such replacement shall be a member of the same group as the member he replaces.

(2) Appointments provided for in this section shall be made within 30 days of the occurrence of any vacancy."

Section 9. Section 3-1-1010, MCA, is amended to read:

"**3-1-1010. List submitted to governor.** The commission shall meet forthwith after a vacancy occurs on the supreme court or district court and submit to the governor within 30 days from the date of the vacancy a list of not less than three or more than five *nominees for appointment.*"

Section 10. Section 3-1-1011, MCA, is amended to read:

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"3-1-1011. Governor to appoint from list. The governor must make an appointment from *the list of nominees* submitted by the commission."

Section 11. Section 3-1-1012, MCA, is amended to read:

"3-1-1012. When governor fails to appoint. If the governor fails to *appoint* within 30 days after receipt of the list, the chief justice or acting chief justice shall make the *appointment*."

Section 12. Section 3-1-1013, MCA, is amended to read:

"3-1-1013. Senate confirmation — appointment in the interim. Each *appointment* shall be confirmed by the senate, but *an appointment* made while the senate is not in session is effective until the end of the next session. If the *appointment* is not confirmed, the office shall be vacant and another selection *of nominees* and *appointment* shall be made."

Section 13. Section 3-1-1014, MCA, is amended to read:

"3-1-1014. Duration of appointment — election for remainder of term. *An appointee* confirmed by the senate serves until the next succeeding general election. The candidate elected at that election holds the office for the remainder of the unexpired term."

Section 14. Section 3-2-205, MCA, is amended to read:

"3-2-205. Injunctions. (1) Upon such terms and under such rules as the supreme court may establish, the supreme court may continue in force an injunction order made by a district court or judge or grant an injunction order and writ pending an appeal to the supreme court from an order of a district court or judge refusing or dissolving an injunction.

(2) No action to obtain an injunction *may* be commenced in the supreme court except in cases where the state is a party, the public is interested, or the rights of the public are involved. The proper district court has jurisdiction of all injunctions and the commencement of all actions therefor, except as provided in this section.

(3) The supreme court may provide rules for the commencement and trial of actions for injunctions in that court."

Section 15. Section 3-2-402, MCA, is amended to read:

"3-2-402. Duties. It is the duty of the clerk to:

(1) keep the seal of the supreme court, its records and files, and the roll of attorneys and *counselors at law*;

(2) adjourn the court from day to day at the beginning of any term in the absence of any *justice* and until the arrival of a majority of *the justices*;

(3) file all papers or transcripts required *by law* to be filed;

(4) issue writs and certificates and approve bonds or undertakings when so required;

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(5) make out all transcripts to the supreme court of the United States;

(6) make copies of papers or records when demanded by law or the rules of the court; and

(7) perform such other duties as may be required of him by law and the rules and practice of the supreme court."

Section 16. Section 3-5-213, MCA, is amended to read:

"**3-5-213. Expenses when out of district.** A judge who sits in the place of another judge in the trial or hearing of an action or proceeding in a district other than his own or in the supreme court or who attends a conference of judges in Helena called by the chief justice of the supreme court shall be paid his actual and necessary travel expenses while engaged in that service as follows:

(1) his travel expenses in going from the county seat which he makes his place of residence to the place of trial, *hearing,* or conference and return; and

(2) his board and lodging while engaged in the trial, hearing, or conference."

Section 17. Section 3-5-214, MCA, is amended to read:

"**3-5-214. Certification and filing of expense claim.** As soon as his services in connection with the trial, hearing, *or conference* are concluded, the judge shall certify in detail the amount of money necessarily and actually expended by him for his *travel* expenses and board and lodging, as specified in 3-5-213, and shall file the claim with the state to be processed as provided by law."

Section 18. Section 3-5-407, MCA, is amended to read:

"**3-5-407. Sheriff to act as crier.** The sheriff in attendance upon *district* court must act as the crier thereof, call the parties and witnesses and all other persons bound to appear before the court, and make proclamation of the opening and adjournment of the court and of any other matter under its direction."

Section 19. Section 3-5-514, MCA, is amended to read:

"**3-5-514. Naturalization records.** The clerk of the district court shall keep two books:

(1) The first book must be labeled "*Declarations* of Intention to Become *a Citizen* of the United States" and must have entered in it, in alphabetical order, the *name* of *each person* who from the organization of the court *has* declared *his* intention to become *a citizen* of the United States, with the date of such declaration.

(2) The second book must be labeled "Naturalization—Final Papers" and must have entered in it, in alphabetical order, the *name* of *each person* who *has* been admitted as *a citizen* of the United States by the court of which he is clerk and, in a separate column opposite each name, the country of which the person was formerly a citizen or subject, the date

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of his admission, and the page of the minute book or book of record containing the order admitting him as a citizen."

Section 20. Section 3-6-204, MCA, is amended to read:

"**3-6-204. Disqualification — judge pro tem.** When a judge of *a* municipal court has been disqualified or is sick or unable to act, he shall call in some practicing attorney of the county in which *his* court is located, who shall be judge pro tem with the same powers for the purposes of *the* cause as the judge of *the* court."

Section 21. Section 3-6-302, MCA, is amended to read:

"**3-6-302. Records.** The records of *the* court shall be kept by *the* clerk. Such records in civil causes shall conform as nearly as possible to the records of district courts. In criminal causes, in cases arising under city ordinances, and *in cases mentioned in* 3-11-103, the records shall be similar to the records now kept in *justices' courts*."

Section 22. Section 3-10-111, MCA, is amended to read:

"**3-10-111. What provisions of code applicable to justices' courts.** Because justices' courts are courts of peculiar and limited jurisdiction, only those provisions of this code which are, in their nature, applicable to the organization, powers, and course of proceedings in justices' courts or which have been made applicable by special provisions in this chapter, chapter 31 of Title 25, and Title 27 are applicable to justices' courts and the proceedings therein."

Section 23. Section 3-10-221, MCA, is amended to read:

"**3-10-221. Duties of justices.** Justices of the peace must perform such duties as are prescribed in this chapter, chapter 31 of Title 25, and Title 27 and any other duties prescribed by law."

Section 24. Section 3-10-301, MCA, is amended to read:

"**3-10-301. Civil jurisdiction.** *Except as provided in 3-11-103, the* justices' courts have jurisdiction:

(1) in actions arising on contract for the recovery of money only if the sum claimed does not exceed $1,500, exclusive of court costs;

(2) in actions for damages not exceeding $1,500, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(3) in actions for damages not exceeding $1,500, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(4) in actions to recover the possession of personal property if the value of the property does not exceed $1,500;

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(5) in actions for a fine, penalty, or forfeiture not exceeding $1,500, imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(6) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed $1,500, though the penalty may exceed that sum;

(7) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed $1,500, exclusive of court costs."

Section 25. Section 3-10-304, MCA, is amended to read:

"3-10-304. Territorial extent of civil jurisdiction. The civil jurisdiction of *a justice's court* extends to the limits of the county in which *it is* held, and mesne and final process of *a* justice's court in a county may be issued to and served in any part of the county. *A summons of a justice's court may be served as provided in 25-31-407.*"

Section 26. Section 3-10-502, MCA, is amended to read:

"3-10-502. How entries made — prima facie evidence. (1) The items listed in 3-10-501 must be entered in the docket under the title of the action to which they relate and, unless otherwise provided, at the time when they occur.

(2) Such entries in a justice's docket or a transcript thereof certified by the justice or his successor in office are prima facie evidence of the facts so stated."

Section 27. Section 3-11-103, MCA, is amended to read:

"3-11-103. Exclusive jurisdiction. The city court has exclusive jurisdiction of:

(1) proceedings for the violation of an ordinance of the city or town, both civil and criminal;

(2) when the amount of the taxes or assessments sought does not exceed $300, actions for the collection of taxes or assessments levied for any of the following purposes, except that no lien on the property taxed or assessed for the nonpayment of the taxes or *assessments* may be foreclosed in any such action:

(a) city or town purposes;

(b) the erection or improvement of public buildings;

(c) the laying out, opening, or improving of a public street, sidewalk, alley, or bridge;

(d) the acquisition or improvement of any public grounds; and

(e) public improvements made or ordered by the city or town within its limits;

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(3) actions for the collection of money due to the city or town or from the city or town to any person when the amount sought, exclusive of interest and costs, does not exceed $300;

(4) when the amount claimed, exclusive of costs, does not exceed $300, actions for:

(a) the breach of an official bond given by a city or town officer;

(b) the breach of any contract *when the city or town is a party or is in any way interested*;

(c) damages when the city or town is a party or is in any way interested;

(d) the enforcement of forfeited recognizances given to, for the benefit of, or on behalf of the city or town; and

(e) collection on bonds given upon an appeal taken from the judgment of the court in any action mentioned in subsections (4)(a) through (4)(d);

(5) actions for the recovery of personal property belonging to the city or town when the value of the property, exclusive of the damages for the taking or detention, does not exceed $300; and

(6) actions for the collection of a license fee required by an ordinance of the city or town."

Section 28. Section 3-11-203, MCA, is amended to read:

"3-11-203. When substitute for judge called in. *(1)* The city judge or mayor may call in a justice of the peace or some qualified resident of the city or town to act in the judge's place whenever the judge is:

(a) a party in a case;

(b) interested in a case;

(c) the spouse of or related to either party in a case by consanguinity or affinity within the sixth degree; or

(d) sick, absent, or unable to act.

(2) The city judge may call in a justice of the peace or some qualified resident of the city or town to act in his stead when a disqualifying affidavit is filed against him pursuant to the supreme court's rules on disqualification and substitution of judges."

Section 29. Section 3-11-205, MCA, is amended to read:

"3-11-205. Justice of the peace acting as city judge. In *a town*, the council may designate a justice of the peace of the county in which the town is situated to act as city judge and may by ordinance fix *the* compensation for his services. *The* justice of the peace so designated may act as city judge in all cases arising out of *violations* of ordinances *in which* the town is a party. *If* the justice of the peace must travel from his *place* of residence to hold court, he shall be paid *per diem and mileage as provided in 2-18-501 through 2-18-503* by the town in which *the* court is held."

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Section 30. Section 3-12-103, MCA, is amended to read:

"3-12-103. Creation of court. (1) A small claims court may be created by a resolution passed by the board of county commissioners after consultation with the district court judges of the judicial district in which *the* county is located or by county initiative as provided in Title 7, chapter 5, part 22.

(2) Upon passage of the resolution or initiative, the judge of the appropriate judicial district shall, by court order, establish a small claims court under the provisions of this chapter.

(3) When the order is filed with the clerk of the district court of the appropriate county, the clerk of the district court becomes the clerk of the small claims court."

Section 31. Section 3-15-403, MCA, is amended to read:

"3-15-403. Lists delivered to clerk. A list of the names of the persons selected, showing the place of residence and other proper *particulars regarding* each of them, so far as those particulars can be conveniently ascertained, must be made out and signed by the officers or a majority of them. Within 5 days after the meeting, the list must be delivered by those officers to the clerk of the district court and filed by him in his office."

Section 32. Section 3-15-601, MCA, is amended to read:

"3-15-601. When and how drawn and summoned. (1) Whenever in the opinion of the district judge a grand jury is necessary, he must make an order directing a grand jury to be drawn and summoned to attend before the court. The order must specify the number of jurors to be drawn, which *may* not be less than 15 or more than 20.

(2) The jurors must be drawn from the jury box mentioned in 3-15-404. The list of names shall be certified and the jurors summoned in the same manner as for trial jurors. The *numbers* of any persons drawn who are not impaneled on the grand jury must be *returned to* the jury box."

Section 33. Section 3-15-704, MCA, is amended to read:

"3-15-704. Forming jury. At the time appointed for a jury trial in justices', city, or other inferior courts, the list of jurors summoned must be called. *The jurors summoned shall be 12 in number or double the number agreed upon by the parties before the trial.* The names of those attending and not excused must be written upon separate slips of paper, *which slips must be* folded so as to conceal the names, and placed in a box from which the trial jury must be drawn."

Approved February 13, 1979.

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CHAPTER NO. 22

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSING.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-2-104, MCA, is amended to read:

"37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions. (1) Except as otherwise provided by this section, it *is* unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) Nothing in this section *prohibits*:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of such medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner *whenever* there is no community pharmacy available to the patient;

(d) the dispensing *of drugs* occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples."

Section 2. Section 37-2-201, MCA, is amended to read:

"37-2-201. Nonliability for peer review — evidential privilege — application to nonprofit corporations. (1) No member of a utilization review committee of a hospital or long-term care facility or of a professional utilization committee, peer review committee, or professional standards review committee of a society composed of persons licensed to practice a health care profession is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge, but he cannot be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member thereof.

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(3) This section also applies to any member, *agent*, or *employee* of a nonprofit corporation engaged in performing the functions of a peer review or professional standards review committee."

Section 3. Section 37-3-322, MCA, is amended to read:

"37-3-322. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this chapter;

(2) performing abortion contrary to law;

(3) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(4) willful disobedience of the rules of the board;

(5) conviction of an offense involving moral turpitude or conviction of a felony involving moral turpitude, and the judgment of the conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(6) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(7) conviction or violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration, and the judgment *of* conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(8) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(9) conduct unbecoming a person licensed to practice medicine or detrimental to the best interests of the public;

(10) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization;

(11) testifying in court on a contingency basis;

(12) conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;

(13) aiding or abetting in the practice of medicine a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(14) gross malpractice or negligent practice;

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(15) practicing medicine as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice medicine within this state; however, this does not prohibit the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4, nor does this apply to a single consultation with or a single treatment by a person or persons licensed to practice medicine and surgery in another state or territory of the United States or foreign country;

(16) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by them; or

(17) any other act, whether specifically enumerated or not, which, in fact, constitutes unprofessional conduct."

Section 4. Section 37-5-101, MCA, is amended to read:

"37-5-101. Definitions — practice of osteopathy. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of osteopathic physicians provided for in 2-15-1607.

(b) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(2) Every person *is* "practicing osteopathy" within the meaning of this chapter who:

(a) *appends* to or *uses* in connection with his or her name the words "doctor of osteopathy, *diplomate* of osteopathy, osteopath, osteopathist, osteopathic practitioner, osteopathic physician", or words of like import or any abbreviation thereof or the letters "D.O."; or

(b) *professes* publicly to or *who*, either on his own behalf, in his own name or in his trade name, or in behalf of any other person, corporation, association, partnership (as manager, bookkeeper, practitioner, or agent), *treats*, *cures*, *alleviates*, or *relieves* any ailment or disease of either mind or body or *cures* or *relieves* any fracture or misplacement or abnormal condition or bodily injury or deformity by any treatment or manipulation or method of manipulating a human body or any of its limbs, muscles, or parts by the use of the hands or mechanical appliances in an effort or attempt to relieve any pressure, obstruction, misplacement, or defect in any bone, muscle, ligament, nerve, vessel, organ, or part of the body, after having received or with the intent or expectation of receiving therefor, either directly or indirectly, any bonus, gift, or compensation whatsoever; provided, however, that nothing in this section *restrains* or *restricts* any legally licensed physician or surgeon in the practice of his profession."

Section 5. Section 37-5-102, MCA, is amended to read:

"37-5-102. Osteopathy not practice of medicine. The system, method, or science of treating diseases of the human body commonly known as osteopathy is not the practice of medicine or surgery within the

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meaning of chapter 3, parts 1 through 3 and is not subject to the provisions of *those parts.*"

Section 6. Section 37-6-311, MCA, is amended to read:

"37-6-311. Refusal or revocation of license. *(1) After notice and opportunity for a hearing, the* board may *deny, revoke, or* refuse to renew a license *for any of the following causes:*

(a) fraudulent representation *in obtaining the license;*

(b) incompetency in practice;

(c) use of untruthful or improbable statements to patients or in advertisements;

(d) habitual intoxication;

(e) unprofessional and immoral conduct; or

(f) selling or giving away alcohol or drugs for an illegal purpose.

(2) However, the board may authorize the department to *grant or* reissue *such* license after 6 months if in its judgment the act, acts, or conditions of disqualification have been remedied."

Section 7. Section 37-7-101, MCA, is amended to read:

"37-7-101. Definitions. Unless the context requires otherwise, in parts 1 through 3 of this chapter the following definitions apply:

(1) "Board" means the board of pharmacists provided for in 2-15-1609.

(2) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(3) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(4) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(5) (a) "Drug" means:

(i) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or a supplement to them;

(ii) articles intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(iii) articles (other than food) intended to affect the structure or function of the body of man or other animals; and

(iv) articles intended for use as a component of an article specified in subsection (i), (ii), or (iii).

(b) "Drug" does not include devices or their components, parts, or accessories.

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(6) "Intern" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons in a pharmacy having a pharmacist in charge.

(7) "Medicine" means a remedial agent which has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(8) "Person" includes an individual, partnership, corporation, or association.

(9) "Pharmacist" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons and who may affix to his name the term "*R.Ph.*"

(10) "Pharmacy" means a *drugstore* or other established place registered by the department of professional and occupational licensing, in which prescriptions, drugs, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold at retail.

(11) "Poison" means a substance which, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or which destroys living tissue with which it comes in contact.

(12) "Prescription" means an order given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly to the furnisher, by means of an order signed by the prescriber and bearing the name and address of the prescriber, his license classification, the name of the patient, the name and the quantity of the drug or drugs prescribed, the directions for use and the date of its issue. These stipulations apply to both written and telephoned prescriptions.

(13) "Wholesale" means a sale for the purpose of resale."

Section 8. Section 37-7-104, MCA, is amended to read:

"37-7-104. Qualifications of employee hired to assist board. A person hired by the department to enter and inspect an establishment under this chapter; to examine the books of a manufacturer, druggist, storekeeper, wholesaler, pharmacist, or intern; to assist in a prosecution under this chapter; and to assist the board in supervising internships, reciprocity agreements, professional correspondence, and examinations shall be:

(1) a citizen of the United States and a resident of this state; and

(2) a pharmacist registered under this chapter, with *at least* 5 years of practical experience."

Section 9. Section 37-7-301, MCA, is amended to read:

"37-7-301. Sale of drugs or medicines unlawful except as provided. (1) It *is* unlawful for any person to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons in any place other than a pharmacy, except as hereinafter provided.

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(2) It *is* unlawful for any proprietor, owner, or manager of a pharmacy or any other person to permit the compounding or dispensing of prescriptions or the vending or selling at retail of drugs, medicines, chemicals, or poisons in any pharmacy except by a registered and licensed pharmacist or by an intern in the temporary absence of such pharmacist.

(3) It *is* unlawful for any person to assume or pretend to the title of pharmacist or intern unless such person has a license as such, issued and in force pursuant to parts 1 through 3 of this chapter.

(4) It *is* unlawful for any person other than a licensed and registered pharmacist or a licensed and registered intern to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons except as provided in parts 1 through 3."

Section 10. Section 37-7-311, MCA, is amended to read:

"37-7-311. Revocation of license issued to pharmacist or intern. The board shall revoke, temporarily or permanently, licenses issued by the department to a pharmacist or intern whenever the holder of the license:

(1) has obtained it by false representations or fraud;

(2) is an habitual drunkard or addicted to the use of narcotic drugs;

(3) has been convicted of a felony;

(4) has been convicted of violating the pharmacy law; or

(5) has been found by the board guilty of incompetency in the preparation of prescriptions or guilty of gross immorality affecting the discharge of his duties as a pharmacist or *intern.*"

Section 11. Section 37-15-102, MCA, is amended to read:

"37-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of speech pathologists and audiologists *provided for in 2-15-1615.*

(2) "Department" means the department of professional and occupational licensing *provided for in Title 2, chapter 15, part 16.*

(3) "Speech pathologist" means one who practices speech pathology and who presents himself to the public by any title or description of services incorporating the words "speech pathologist", "speech correctionist", "speech therapist", "speech clinician", "language pathologist", "language therapist", "language clinician", or any similar title or description of services.

(4) "Speech pathology aide" means any person meeting the minimum requirements established by the board of speech pathologists and audiologists who works directly under the supervision of a licensed speech pathologist.

(5) "Audiologist" means a person who practices audiology and who presents himself to the public by any title or description of services

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incorporating the words "audiologist", "hearing clinician", "hearing therapist", or any similar title or description of *services.*

(6) "Audiology aide" means any person meeting the minimum requirements established by the board of speech pathologists and audiologists who works directly under the supervision of a licensed audiologist.

(7) "Practice of speech pathology" means the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, counseling, or instruction related to the development and disorders of speech, voice, or language for the purpose of evaluating, preventing, habilitating, rehabilitating, or modifying such disorders and conditions in individuals or groups of individuals.

(8) "Practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, *or* auditory function, including auditory behavior related to hearing impairment.

(9) "Association" means the Montana speech and hearing association.

(10) "ASHA" means the American speech and hearing association.

(11) "Unethical conduct" means:

(a) the obtaining of any fee by fraud or misrepresentation;

(b) employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter unless that person assumes the legal status of a supervised aide;

(c) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceiving, improbable, or untruthful.

(12) "Provisionally licensed speech pathologist or audiologist" means those speech pathologists or audiologists currently practicing the profession in the state who do not meet the minimum requirements for licensure as defined in this chapter and who are eligible for provisional licensure conditioned on biennial evidence of satisfactory progress toward meeting the requirements for licensure as provided in this chapter. This provisional licensure, as defined in this chapter, *may* exist for no longer than 6 years from *July 1, 1975,* under any circumstance."

Section 12. Section 37-16-203, MCA, is amended to read:

"37-16-203. Compensation of members — expenses. Each member of the board shall receive $20 *a day* compensation when actually engaged in the discharge of his official duty and in addition shall be reimbursed for travel expense, as provided for in 2-18-501 through 2-18-503, in attending a meeting of the board in the state."

Section 13. Section 37-17-102, MCA, is amended to read:

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"37-17-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by the regional accrediting association for institutions of higher learning, such as the northwest association of secondary and higher schools.

(2) "Board" means the board of psychologists provided for in 2-15-1617.

(3) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(4) A person represents himself to be a "psychologist" when he holds himself out to the public by a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services defined in subsection (5) of this section to individuals, groups, corporations, or the public for compensation or fee.

(5) "Practice of psychology" means the application of principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, *emotions*, and interpersonal relationship; the methods and procedures of interviewing, counseling, and behavior modification, including psychotherapeutic techniques and hypnosis; and constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivation."

Section 14. Section 37-17-104, MCA, is amended to read:

"37-17-104. Exemptions. This chapter does not prevent:

(1) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, or educators, from doing work of a psychological nature consistent with their training and the codes of ethics of their respective professions if they do not hold themselves out to the public by a title or description incorporating the words "psychology" or "psychologist";

(2) the activities, services, and use of an official title on the part of a person in the employ of a federal, state, county, or municipal agency or of other political subdivisions or an educational or charitable institution insofar as these activities and services are a part of the duties of his office or position with the agency or institution;

(3) the activities and services of a student, intern, or resident in psychology pursuing a course of study at an accredited university or college or working in a generally recognized training center if these activities and services constitute a part of his supervised course of study;

(4) the activities and services of a person who is not a resident of this state in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the laws

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of the state or country of his residence to perform these activities and services; however, these persons shall report to the department the nature and extent of the services in this state if they exceed 10 days in a calendar year;

(5) a person authorized by the laws of the state or country of his former residence to perform activities and services, who has recently become a resident of this state and who has applied for a license in this state, *from performing such activities and services* pending disposition of his application;

(6) the use of the term "social psychologist" by a person who:

(a) has been graduated with a doctoral degree in sociology or social psychology from an institution and whose credits in sociology or social psychology are acceptable by a recognized educational institution;

(b) has passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or who has had equivalent specialized training in social psychology; and

(c) has filed with the department a statement of facts demonstrating his compliance with this subsection;

(7) the offering of lecture services for a fee by a person exempted from licensing requirements by virtue of his employment;

(8) activities of a psychological nature on the part of *a person* who *is a* salaried *employee* of *an* accredited academic *institution*, governmental *agency*, research *laboratory*, *or* business *corporation* if *he is* performing the duties for which *he is* employed by the *organization* within the confines of the organization."

Section 15. Section 37-31-203, MCA, is amended to read:

"37-31-203. Rulemaking powers. The board shall prescribe rules for:

(1) the conduct of its business;

(2) the qualification, examination, and registration of applicants to practice or teach cosmetology;

(3) the qualification and registration of applicants for manager-operator licenses;

(4) the regulation and instruction of apprentices and students;

(5) the conduct of schools of cosmetology for apprentices and students; and

(6) generally the conduct of the persons, firms, or corporations affected by this chapter."

Section 16. Section 37-31-322, MCA, is amended to read:

"37-31-322. Renewal — continuing education — delinquency fee. (1) Licenses and certificates *may* be issued for no longer than 1 year

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unless otherwise provided by rule. Licenses and certificates expire on December 31 unless otherwise provided by rule or renewed for the next year or renewal period. Licenses and certificates may be renewed by application made prior to December 31 of each year, unless otherwise provided, and the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The board may provide by rule for a change in the renewal date and renewal period for the manager-operator and salon owner category. The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and shall be as set by the board.

(2) In addition to the foregoing requirements for renewal, persons applying for the renewal of teachers' licenses must have fulfilled the following additional requirements:

(a) During each year, an active teacher, either full-time or part-time, must have successfully completed 30 *hours'* professional teacher training at a school approved by the board.

(b) A person holding a teacher's license but not actively engaged either full-time or part-time in teaching cosmetology during the preceding year may renew the license by paying the required fee. A person holding a teacher's license but not actively engaged in teaching cosmetology either full-time or part-time for the preceding year or longer and wishing to resume active teaching of cosmetology must successfully complete 30 *hours'* professional teachers' training at a school approved by the board before resuming active *teaching*. However, the foregoing provisions do not prevent the board, under rules it adopts, from permitting a person holding a teacher's license and not actively engaged either full-time or part-time in teaching cosmetology from teaching as a substitute for an active teacher.

(3) A fee of $10 shall be charged, in addition to other fees fixed by law, for renewal applications of licenses and certificates made after December 31 of each year or other predetermined renewal deadline. The department shall notify license and certificate holders of the expiration date of licenses and certificates not less than 30 days before the expiration date and call attention to the penalty imposed for failure to renew a license or certificate by the date of expiration."

Section 17. Section 37-40-307, MCA, is amended to read:

"37-40-307. Sanitarian practicing prior to effective date. *A person* having practiced as a sanitarian, *as* defined by 37-40-101(5), for 1 year prior to July 1, 1974, may be registered as *a sanitarian* upon making application and *paying* the required fee."

Section 18. Section 37-41-102, MCA, is amended to read:

"37-41-102. Exemptions. The license provisions of this chapter do not apply to any county or municipality or other local, state, or federal governmental agency which desires to clean septic tanks, cesspools, or privies publicly owned or controlled by them. However, counties and municipalities or other local, state, or federal governmental agencies shall comply

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with rules adopted by the department for cleaning cesspools, septic tanks, or privies and disposal *of* wastes from cesspools, septic tanks, or privies."

Section 19. Section 37-43-302, MCA, is amended to read:

"37-43-302. License required. The drilling, making, or construction of water wells into the groundwater resources of this state is declared to be a business and activity affecting the public interest, requiring reasonable standards of competence. It *is* unlawful for any *contractor*, as defined in this chapter, to construct a water well without first having obtained a valid license therefor as provided for *in this chapter.*"

Section 20. Section 37-50-308, MCA, is amended to read:

"37-50-308. Examination. Except as provided in 37-1-101(4), the department shall hold and grade a written examination in accounting, auditing, and related subjects as the board determines appropriate. The grade determination of the department is final in each case. The department shall use the examination and grading services of the American institute of certified *public* accountants. The examination *must* be held at least annually and at such other times as applications warrant. The board may determine the time and place of examination and may adopt rules necessary for the orderly conduct of the examination."

Section 21. Section 37-51-308, MCA, is amended to read:

"37-51-308. Broker's office — notice to department of change of address. (1) A resident licensed broker shall maintain a fixed office in this state. The original license of the broker and the original license of each salesman in the employ of or under contract with the broker shall be prominently displayed in the office. The address of the office and *any* branch office shall be designated on the broker's license.

(2) In case of removal from the designated address, the licensee shall notify the department before removal or within 10 days thereafter, designating the new location of this office and paying the required fee, whereupon a license for the new location *must* be issued *for the unexpired period.*"

Section 22. Section 37-60-304, MCA, is amended to read:

"37-60-304. Qualifications of applicants. Before a license is granted, the applicant or his manager shall meet all of the following:

(1) be at least 18 years of age;

(2) be a citizen of the United States and a resident of the state of Montana;

(3) be of good moral character and temperate habits; and

(4) comply with such other qualifications concerning training, education, or experience as the director may fix by rule."

Section 23. Section 37-61-409, MCA, is amended to read:

"37-61-409. Penalty for violation. An attorney and counselor who violates 37-61-408 is guilty of a misdemeanor and on conviction thereof

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shall be punished accordingly and must be removed from office by the supreme court."

Section 24. Section 37-66-103, MCA, is amended to read:

"37-66-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of landscape architects *provided for in 2-15-1652.*

(2) "Department" means the department of professional and occupational licensing *provided for in Title 2, chapter 15, part 16.*

(3) "Education" means time spent as a student enrolled in a college or school curriculum of landscape architecture accredited by the American society of landscape architects and other college or university training the board may approve.

(4) "Experience" means full-time employment as a landscape architect or doing landscape architectural work under the supervision of a registered landscape architect or a landscape architect qualified for registration in Montana. All experience is subject to approval by the board.

(5) "Landscape architect" means a person who holds a certificate to practice landscape architecture in the state of Montana under the provisions of this chapter.

(6) "Practice of the profession of landscape architecture" means performing services in connection with the analysis or development of land areas where and to the extent that the dominant purpose of such services is the preservation, enhancement, or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings, approaches, or environment for structures or other improvements, natural drainage, and the consideration and determination of inherent problems of the land relating to erosion, wear and tear, blight, or other hazards. This practice *includes* the location and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined herein but *does* not include the design of structures or facilities with separate and self-contained purposes that are ordinarily included in the practice of engineering or architecture and *does* not include the making of land surveys or final land plats for official approval or recording.

(7) "Training" means a period *of at least 6 years* of experience and/or education as defined herein."

Section 25. Section 37-67-101, MCA, is amended to read:

"37-67-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of professional engineers and land surveyors *provided for in 2-15-1653.*

(2) "Department" means the department of professional and occupational licensing *provided for in Title 2, chapter 15, part 16.*

(3) "Engineer-in-training" means a person who complies with the requirements for education, experience, and character and has passed an examination in the fundamental engineering subjects, as provided in this chapter.

(4) "Land surveyor" means a person who has been duly registered and licensed as a land surveyor by the board and is a professional specialist in the technique of measuring land, educated in the basic principles of mathematics, related physical and applied sciences, and relevant requirements of law for adequate evidence and all requisites to the surveying of real property and is engaged in the practice of land surveying as herein defined.

(5) "Land surveyor-in-training" means a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this chapter.

(6) "Practice of engineering" means any service or creative work the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of water, teaching of advanced engineering subjects, engineering surveys, and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of mechanical, electrical, hydraulic, pneumatic, or thermal nature insofar as they involve safeguarding life, health, or property and including such other professional services as may be necessary to the planning, progress, and completion of any engineering services. The term does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, communication lines, signal circuits, electric powerlines, or pipelines.

(7) "Practice of land surveying" means any service or work, the adequate performance of which requires the application of knowledge of the principles of mathematics, physical sciences, applied sciences, and:

(a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;

(b) teaching of land surveying subjects;

(c) measurement and allocation of lines, angles, and elevations;

(d) location of natural and manmade features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including such work for the determination of areas and volumes;

(e) monumenting of property boundaries;

(f) platting and layout of lands and the subdivisions thereof, including the alignment and grades of streets and roads therein; and

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(g) preparation and perpetuation of maps, plats, field note records, and property descriptions.

(8) "Professional engineer" means a person who, by reason of his special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering and who has been duly registered and licensed as a professional engineer by the board.

(9) "Responsible charge" means direct control and personal supervision either of engineering work or of land surveying, as the case may be. Only professional engineers or land surveyors may legally assume responsible charge under this chapter."

Section 26. Section 37-67-319, MCA, is amended to read:

"37-67-319. Temporary permits for nonresident practitioners. Temporary permits are governed by the following:

(1) *Such a permit may be granted for the* practice or offer to practice engineering by a person not a resident of or having no established place of business in this state, provided such person is legally qualified by registration to practice engineering in his own state or country, provided the requirements for registration in his home state or country are not less than those defined in this chapter. Such person shall make application to the board in writing. The application must be accompanied by a fee set by the board. Upon approval by the board, such person may be granted a written permit for a definite period of time not to exceed 1 year to do a specific job; provided, however, no right to practice engineering shall accrue to such applicant with respect to any other works not set forth in *the* permit.

(2) The practice of land surveying under a temporary permit by a person registered as a land surveyor in another state is not considered to be in the best interests of the public and, therefore, *may* not be granted."

Section 27. Section 37-69-103, MCA, is amended to read:

"37-69-103. No penalty for hiring unlicensed plumber. This chapter *may* not be construed as imposing any penalty on any *unlicensed* person for hiring or contracting with an unlicensed person to do work in the field of plumbing. However, any person who himself *engages* in the field of plumbing at a time when he is not duly licensed *is* subject to the penalties imposed by this chapter."

Section 28. Section 37-70-203, MCA, is amended to read:

"37-70-203. Compensation and expenses. Each member of the board is entitled to $25 per day for each day served discharging his board duties, together with a per diem and mileage expense allowance pursuant to 2-18-501 *through* 2-18-503. No member of the board *may* be allowed compensation in addition to his present compensation from the state."

Section 29. **Repealer.** Sections 66-1701 through 66-1714, R.C.M. 1947, are repealed.

Approved February 13, 1979.

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CHAPTER NO. 23

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO HIGHWAYS; AND REPEALING SECTION 32-1621, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-1-101, MCA, is amended to read:

"60-1-101. Legislative findings. The legislature recognizes that safe and efficient highway transportation is of important interest to all of the people of the state and declares that:

(1) inadequate highways, roads, and streets obstruct the free flow of traffic, increase costs of motor vehicle operation, endanger the health and safety of the citizens of the state, depreciate property values, and impede generally the economic progress of the state;

(2) the problems of establishing and maintaining adequate highways, roads, and streets, eliminating congestion, reducing accident frequency, providing parking facilities, and taking all necessary steps to insure safe and convenient transportation are urgent;

(3) adequate and integrated systems of highways, roads, and streets are essential to the general welfare of the state;

(4) providing adequate highway facilities is a proper public use and purpose, and *this title* is necessary for the preservation of the public peace, health, and safety, for the promotion of the general welfare, and as a contribution to the national defense."

Section 2. Section 60-1-103, MCA, is amended to read:

"60-1-103. General definitions. Subject to additional definitions contained in this title which are applicable to specific chapters or sections and unless the context otherwise requires, terms are defined as follows:

(1) *"Abandonment" means* cessation of use of right-of-way (easement) or activity thereon with no intention to reclaim or use again (sometimes called vacation).

(2) *"Commission" means the* highway commission provided for in 2-15-2502.

(3) *"Condemnation" means* taking by exercise of the right of eminent domain.

(4) *"Construction" means* supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, mapping, and costs of right-of-way or other interests in land and elimination of hazards at railway grade crossings.

(5) *"Control* of access" *means* the condition in which the right of owners or occupants of abutting land or other persons to access, light, air,

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or view in connection with a highway is fully or partially controlled by public authority.

(6) "*County* road" *means* any public highway opened, established, constructed, maintained, abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

(7) "*Department*" *means the* department of highways provided for in Title 2, chapter 15, part 25.

(8) "*Director*" *means the* director of highways, a position provided for in 2-15-2501.

(9) "*Easement*" *means* a right acquired by public authority to use or control property for a designated purpose.

(10) "*Eminent* domain" *means* the right of the state to take private property for public use.

(11) "*Federal-aid* highway" *means* any public highway which is a portion of any of the federal-aid highway systems.

(12) "*Federal-aid* highway systems" *means* all of the systems named hereafter and their urban extensions.

(13) "*Federal-aid* interstate system" *means* that system of public highways selected by the commission in cooperation with adjoining states, subject to the approval of the secretary of commerce, as provided in *Title 23, U.S.C.*

(14) "*Federal-aid* primary system" *means* that system of connected public highways designated by the commission, subject to the approval of the secretary of commerce, as provided in *Title 23, U.S.C.*

(15) "*Federal-aid* secondary system" *means* that system of public highways not *in* the federal-aid primary or interstate systems selected by the commission in cooperation with the boards of county commissioners, subject to the approval of the secretary of commerce, as provided in *Title 23, U.S.C.*

(16) "*Fee* simple" *means* an absolute estate or ownership in property including unlimited power of alienation.

(17) "*Highway*" includes rights-of-way or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures.

(18) "*Highway*", "road", *and* "street", whether they appear together or separately or are preceded by the adjective "public", are general terms denoting a public way for purposes of vehicular travel *and include* the entire area within the right-of-way.

(19) "*Highway* authority" *means* the entity at any level of government authorized by law to construct and maintain highways.

(20) "*Maintenance*" *means the* preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for its safe and efficient utilization.

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(21) "*Public* highways" *means* all streets, roads, highways, bridges, and related structures which have been or shall be:

(a) built and maintained with appropriated funds of the United States or the state or any political subdivision thereof;

(b) dedicated to public use;

(c) acquired by eminent domain;

(d) acquired by adverse *use* by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(22) "*Right-of-way*" *is* a general term denoting land, property, or any interest therein, usually in a strip, acquired for or devoted to highway purposes.

(23) "*State* highway" *means* any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the department.

(24) "*Bridge*" *means* any bridge constructed by the department, together with all appurtenances, additions, alterations, improvements, replacements, and the approaches thereto, lands used therefor, and improvements thereon."

Section 3. Section 60-1-201, MCA, is amended to read:

"60-1-201. Classification — highways and roads. (1) Public highways of this state are *classified* as follows:

(a) federal-aid highways;

(b) state highways;

(c) county roads;

(d) city streets.

(2) All highways which are not designated, selected, or established by the commission *or* constructed or maintained by the department are county roads or city streets.

(3) County roads are those opened, established, constructed, maintained, changed, abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

(4) City streets are those public highways under the jurisdiction of municipal officials."

Section 4. Section 60-2-106, MCA, is amended to read:

"60-2-106. Designation of highways not located entirely within the state. The commission may designate highways subject to improvement under the provisions of *Title 23, U.S.C.*, even though those highways are not located entirely and continuously within the boundaries of the state. The designations shall meet the following conditions:

(1) the highway is on an approved federal-aid route and eligible for improvement under *Title 23, U.S.C.*;

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(2) the location of a portion of the route outside the boundaries of the state is necessary because of natural geographical or physical conditions which make the construction of the highway within the state impossible or impracticable;

(3) the portion of the route located outside the state does not connect with and is not a part of the state highway system of the adjoining state."

Section 5. Section 60-2-112, MCA, is amended to read:

"60-2-112. Competitive bidding. (1) When the estimated cost of any work exceeds $1,000, the commission shall let the contract by competitive bidding. Award shall be made upon such notice and upon such terms as the commission may prescribe by its rules. However, except when prohibited by federal law, the commission *shall* make awards and contracts in accordance with 18-1-102 and 18-1-112.

(2) If the commission finds that the work may be done in some more efficient manner, it need not let the contract by competitive bidding.

(3) If, on highway construction work financed in whole or in part by federal funds, the United States secretary of transportation affirmatively finds that under the circumstances relating to a particular project some method other than competitive bidding is in the public interest, the commission may enter into contracts with a board of county commissioners. These contracts may authorize each county to acquire rights-of-way for, survey, and construct farm-to-market, secondary, or feeder roads within the county by force account, unit price, or otherwise, as may be agreed by the commission and the board.

(4) If, on any highway construction work financed in whole or in part by federal funds, the commission finds that enforcement of the provisions contained in 15-50-203 and 18-2-311 relating to public contractors working beyond contract time will result in a reduction in the full benefits of *Title 23, U.S.C.*, it may waive enforcement of such provisions."

Section 6. Section 60-2-205, MCA, is amended to read:

"60-2-205. Powers of department with respect to highways not located entirely within the state. The department may expend funds for the construction, reconstruction, engineering, administration, betterment, and maintenance of highways designated under 60-2-106. It may do all things necessary or required to carry out fully the cooperation contemplated under *Title 23, U.S.C.*, with regard thereto."

Section 7. Section 60-3-101, MCA, is amended to read:

"60-3-101. Assent to federal law. (1) The legislature, for and on behalf of the state, assents to the provisions of *Title 23, U.S.C.*

(2) The department may, for and on behalf of the state, enter into all contracts and agreements with the United States or any officer, department, or bureau thereof relating to the construction, reconstruction, repair, and maintenance of highways in the state.

(3) The department may make all rules necessary to comply with the provisions of the *laws* assented to and all other *laws* granting aid for public highways and to obtain for the state the full benefits of such *laws*.

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(4) The department may do all other things necessary or required to carry out fully the cooperation contemplated by the acts of congress assented to."

Section 8. Section 60-3-103, MCA, is amended to read:

"60-3-103. Purposes for which federal funds to be expended. The department may expend funds apportioned to the state under *23 U.S.C. 319* for the following purposes:

(1) landscape and roadside development within the rights-of-way of federal-aid highways of this state;

(2) acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to the highways; and

(3) acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to federal-aid highway rights-of-way reasonably necessary to accommodate the traveling public."

Section 9. Section 60-3-105, MCA, is amended to read:

"60-3-105. Expenditure of funds. The department shall expend only nonmatching funds authorized under *23 U.S.C.* 319(b) in carrying out the authority granted by 60-3-102 through 60-3-104."

Section 10. Section 60-3-201, MCA, is amended to read:

"60-3-201. Distribution and use of proceeds of gasoline dealers' license tax. (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of revenue's suspense account for gasoline tax refund, shall be used and expended as provided in this section. So much of that money on hand at any time as may be needed to pay highway bonds and interest thereon when due and to accumulate and maintain a reserve therefor, as provided in laws and in resolutions of the state board of examiners authorizing such bonds, shall be deposited in the highway bond account in the sinking fund established by 17-2-102. Subject to that provision, 9/10 of 1% of all money shall be deposited in the state park account and 3/10 of 1% of all money shall be deposited in a snowmobile account in the earmarked revenue fund. *The* remainder of the money shall be used by the department of highways on the federal-aid highways in this state selected and designated under *Title 23, U.S.C.*, and on highways leading from each county seat in the state to the federal highway system of federal-aid roads where the county seat is not on the system and on the other roads which have been or may be authorized by the laws of Montana and for collection of the license taxes and the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the federal highway system in the various parts of the state in accordance with 60-3-204

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through 60-3-206. Nothing in this *title* conflicts with *Title 23, U.S.C.*, and the rules by which *it is* administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motor boating is allowed, except for the payment of refunds under 15-70-221 through 15-70-226. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost and to promote snowmobile safety. For the 2 years following July 1, 1977, 15% of the amount deposited in the snowmobile fund each year shall be used to promote snowmobile safety. Thereafter, 10% of the amount deposited in the snowmobile fund shall be used to promote snowmobile safety. The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, not less than 3/10 of 1% is used for propelling snowmobiles on public lands of this state."

Section 11. Section 60-3-209, MCA, is amended to read:

"60-3-209. Apportionment of state funds to federal-aid interstate highway system. (1) Each fiscal year the department shall apportion available state construction funds for the federal-aid interstate highway system among the financial districts.

(2) The apportionment shall be based upon the ratio between the estimated cost of constructing or reconstructing the system in each district and the estimated cost of constructing or reconstructing the entire system within the state.

(3) The cost estimates to be used shall be those developed by the department in accordance with *Title 23, U.S.C.*"

Section 12. Section 60-3-212, MCA, is amended to read:

"60-3-212. Interim apportionment to match federal-aid funds. During the interim between legislative sessions, the department of highways is delegated power and authority to develop formulas to apportion state construction funds in an equitable manner consistent with the intent of *this title* to match federal-aid funds for highway systems or purposes not enumerated in *this title.* Such apportionment formulas shall be valid only until approved, modified, or rejected by the next legislative session."

Section 13. Section 60-3-215, MCA, is amended to read:

"60-3-215. Replacement of bridges. (1) Whenever funds are made available under *Title 23, U.S.C.,* for the replacement of bridges, the department may allocate from state construction *money* such *money* as *is* necessary to match the available federal funds. Such allocation shall be

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made from available state construction *money* before the apportionments provided for in 60-3-205, 60-3-206, and 60-3-211.

(2) Whenever such state construction *money is* so allocated, the amount allocated may not be deducted from future apportionments to the financial district or city."

Section 14. Section 60-3-221, MCA, is amended to read:

"60-3-221. Priority primary routes defined. For the purposes of *60-3-221 through 60-3-225*, "priority primary routes" are defined as those high-traffic sections of highways on the federal-aid primary system which connect to the interstate system."

Section 15. Section 60-3-231, MCA, is amended to read:

"60-3-231. Economic growth center defined. For the purposes of *60-3-231 through 60-3-234*, an "economic growth center" is defined as an area of population of less than 100,000 which has been recommended for designation as such by the governor of Montana and approved by the secretary of transportation of the United States."

Section 16. Section 60-3-232, MCA, is amended to read:

"60-3-232. Department of highways to determine centers. For the purposes of *60-3-231 through 60-3-234*, the department of highways is authorized to determine and delineate the area influenced by designated economic growth centers. In so doing, it shall take into account relevant geographic, economic, educational, and recreational factors. The department is also authorized to determine and delineate those portions of existing highways which need to be upgraded to accommodate the existing and future needs of the traveling public."

Section 17. Section 60-3-301, MCA, is amended to read:

"60-3-301. Short title. This part may be cited as the "Montana *Footpath and Bicycle Trail* Act of 1975"."

Section 18. Section 60-3-303, MCA, is amended to read:

"60-3-303. Footpaths and bicycle trails to be established — funding. (1) Out of the funds received by the highway commission or by any county or city from the state highway commission earmarked revenue fund, reasonable amounts shall be expended as necessary for the establishment of footpaths and bicycle trails. Footpaths and bicycle trails may be established and extended to the nearest city or town or termination point of the highway or road wherever a highway, road, or street is being constructed, reconstructed, or relocated. In addition, footpaths and bicycle trails shall be established along all streets under state jurisdiction. Funds received from the earmarked revenue fund may also be expended to maintain footpaths and bicycle trails along other highways, roads, and streets and in parks and recreation areas where the construction would enhance traffic safety and convenience. Footpaths and bicycle trails shall be constructed along all sections of the national defense interstate highway system within a reasonable time after the completion of that system.

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(2) Footpaths and trails are not required to be established under subsection (1) of this section:

(a) if the cost of establishing the paths and trails would be excessively disproportionate to the need or probable use; or

(b) where sparsity of population, other available ways, or other factors indicate an absence of any need for the paths and trails.

(3) The amount expended by the state highway commission or by a city or county as *required* or permitted by this section shall never in any one fiscal year be less than ¾ of 1% of the amount appropriated to the department of highways from the earmarked revenue fund for the construction program, maintenance program, and preconstruction program."

Section 19. Section 60-4-105, MCA, is amended to read:

"60-4-105. Acquisition of whole parcel — sale of excess. (1) Whenever any interest in a part of a parcel of land or other real property is to be acquired for highway purposes leaving the remainder in a shape or condition as to be of little market value or to give rise to claims or litigation over severance or other damage, the department may acquire the whole parcel. It may sell or exchange the remainder for other property needed for highway purposes.

(2) Whenever a part of a parcel of land acquired for highway purposes is in a shape or size as to come within *the Montana Subdivision and Platting Act*, the department shall prepare and file the required plat in the office of the county clerk and recorder."

Section 20. Section 60-4-203, MCA, is amended to read:

"60-4-203. Conduct of sale. (1) The department shall publish notice of the sale in a newspaper published in the county in which the interest is located once a week for 2 successive weeks. Sale shall be held in the county wherein the property is located unless the department finds it impractical, in which case the sale *shall* be held at the office of the department.

(2) Before the sale of an interest having a value in excess of $100, the department shall have it appraised at a price representing a fair market value. The appraised value shall be stated in the published notice.

(3) A sale *of an interest* may not be made unless it has been appraised within 3 months prior to the date of the sale. A sale may not be made for less than 90% of the appraised value.

(4) Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department."

Section 21. Section 60-4-205, MCA, is amended to read:

"60-4-205. Private sale if no bid or offer. (1) If, after proper notice is published, the department receives neither bid at public sale nor offer from the original owner *or* his successor in interest, it may at any time thereafter sell the interest at private sale. At the sale, the department

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may accept as the purchase price an amount of money not less than 90% of the appraised value.

(2) Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department."

Section 22. Section 60-4-401, MCA, is amended to read:

"60-4-401. Relocation — definitions. For the purposes of the sections relating to relocation of utilities facilities, terms are defined as follows:

(1) "Utility" includes publicly, privately, and cooperatively owned utilities.

(2) "Cost of relocation" includes the entire amount paid by the utility properly attributable to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

(3) "Federal-aid systems" includes the federal-aid primary system, the federal-aid secondary system, the federal-aid interstate system, and urban extensions of all of them.

(4) "Interstate system" includes any highway now included or which *may* hereafter be included as a part of the national system of interstate and defense highways provided for in *Title 23, U.S.C.*"

Section 23. Section 60-5-101, MCA, is amended to read:

"60-5-101. Policy. The legislature declares it to be the policy of this state to facilitate the flow of traffic and promote public safety by controlling access to:

(1) highways included by the federal highway administration in the national system of interstate highways;

(2) throughways and intersections with throughways;

(3) such other federal-aid and state highways as shall be designated by the commission in accordance with the requirements set forth in this chapter."

Section 24. Section 60-7-202, MCA, is amended to read:

"60-7-202. Exclusions. Section 60-7-201 does not apply to the following:

(1) livestock on state highways *under the* charge of one or more herders;

(2) the parts of fenced highways adjacent to open range where a highway device has not been installed to exclude range livestock;

(3) the parts of a state highway *or* a part of the federal-aid primary system which the department of highways designates as being impracticable to exclude livestock. These portions of the highway shall be marked

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by proper signs in accordance with the department's manual and specifications for a uniform system of traffic-control devices."

Section 25. **Repealer.** Section 32-1621, R.C.M. 1947, is repealed.

Approved February 14, 1979.

CHAPTER NO. 24

AN ACT TO AMEND SECTION 69-12-302, MCA, TO CLARIFY THE CONDITIONS UNDER WHICH CLASS C CARRIERS ARE CONSIDERED TO BE OPERATING AS CLASS B CARRIERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-302, MCA, is amended to read:

"69-12-302. Conditions resulting in Class C carrier considered as Class B carrier. (1) *A Class C motor carrier operating with more than six contracts which are in effect at any given time and each of which are effective for a minimum of 180 days is considered to be operating as a Class B motor carrier. Before transportation service may commence, pertinent contract information shall be furnished to the commission for each contract on forms prescribed by the commission. The commission shall retain a duplicate of the information in its files, and a copy of the form, confirmed by the commission, must be kept in the cab of the motor carrier when operating under that contract.*

(2) All Class C motor carriers must annually submit to the commission the names and addresses of all persons, corporations, or other legal entities with whom the Class C carrier has executed a contract, charter, agreement, or undertaking for the distribution, delivery, or collection of wares, merchandise, or commodities or for transporting persons.

(3) The provisions of this section shall not apply to solid waste contractors, household goods carriers, *or house movers,* as defined by the department of public service regulation, or any carrier whose authority is confined by certificate to transportation within a distance of 50 miles or less from a particular location and that is performing pickup and delivery service under contract for one or more common carriers within that area."

Approved February 14, 1979.

CHAPTER NO. 25

AN ACT TO AMEND SECTION 69-12-321, MCA, TO MAKE THE SECTION APPLICABLE TO APPLICATIONS BY CLASS D CARRIERS AND TO REQUESTS FOR TRANSFERS OF AUTHORITY AND TO CLARIFY THE HEARING REQUIREMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-321, MCA, is amended to read:

"69-12-321. Hearing on application for motor carrier certificate. (1) Upon the filing of such application by a Class A, Class B, Class

C, *or Class D* motor carrier, except a Class C motor carrier authorized to operate under the terms of a contract with the United States government, or an agency or department thereof, *or upon the filing of a request for a transfer of authority,* the commission shall fix a time and place for hearing thereon *whenever a protest or a request for a hearing is received. The hearing is to be set for a date not later than 60 days after receipt of a protest or a hearing request by the commission. Whenever no protests or hearing requests are received, the commission may act on the application without a hearing as prescribed by commission rules.*

(2) Any motor carrier or railroad company referred to in 69-12-322, the department of highways, the governing board or boards of any such county, town, or city into or through which the route or service as proposed may extend, and any person or corporation concerned are hereby declared to be interested parties to the proceedings and may offer testimony for or against the granting of the certificate.

(3) The contracting parties referred to in 69-12-313(4) must appear and offer testimony in support of the applicant.

(4) However, an application by a Class A, Class B, Class C, *or Class D* motor carrier for a certificate may be disallowed without a public hearing thereon when it appears from the records of the commission that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the commission that public convenience and necessity do not require the proposed motor carrier service unless it is made to affirmatively appear in the application by a recital of the facts that conditions obtaining over the route or in the territory and affecting transportation facilities therein have materially changed since said public investigation and finding and that public convenience and necessity do now require the motor carrier operation."

Approved February 14, 1979.

CHAPTER NO. 26

AN ACT TO PROHIBIT MISREPRESENTATION OF AGE IN PROCURING ALCOHOLIC BEVERAGES; REPEALING TITLE 16, CHAPTER 5, PART 1, MCA, RELATING TO MONTANA LIQUOR IDENTIFICATION CARDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Misrepresenting age or falsely procuring or altering identification card.** It is unlawful for any person to fraudulently misrepresent his or her age to any dispenser of alcoholic beverages or to falsely procure any identification card or to alter any of the statements contained in any identification card.

Section 2. **Repealer.** Sections 16-5-101 through 16-5-106, MCA, are repealed.

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Section 3. **Codification.** Section 1 is intended to be codified as an integral part of chapter 6, Title 16, MCA, and the provisions of chapter 6, Title 16, apply to section 1.

Approved February 14, 1979.

CHAPTER NO. 27

AN ACT TO AMEND SECTION 82-2-404, MCA, RELATING TO THE QUALIFICATIONS OF UMPIRE ASSAYERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-2-404, MCA, is amended to read:

"82-2-404. Umpire assayers — appointment, qualifications, and duties. A person, association, or corporation engaged in the sampling of ores with intent to purchase or smelt them, whether for themselves or as the agent or agents for other purchasers, shall choose an assayer who has operated an assay office or chemical laboratory for at least 1 year. The person, association, or corporation shall submit to the selected assayer all samples of ore over which there is a dispute as to metallic contents or value between the buyer or sampler and the seller of the ore. The chosen assayer shall be known as the umpire for the person, association, or corporation."

Approved February 14, 1979.

CHAPTER NO. 28

AN ACT ALLOWING THE DEPARTMENT OF LIVESTOCK TO CHARGE FEES FOR DIPPING, INSPECTING, AND TESTING SERVICES WHEN THE SERVICES ARE PERFORMED UPON LIVESTOCK NOT DISEASED OR EXPOSED; AMENDING SECTIONS 81-2-102 AND 81-2-109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-2-102, MCA, is amended to read:

"81-2-102. Powers of department. (1) The department may:

(a) supervise the sanitary conditions of livestock in this state, under the provisions of the constitution and statutes of this state and the rules adopted by the department. The department may quarantine a lot, yard, land, building, room, premises, enclosure, or other place or section in this state which is or may be used or occupied by livestock and which in the judgment of the department is infected or contaminated with an infectious, contagious, communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated. The department may

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quarantine livestock in this state when the livestock is affected with or has been exposed to disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules which are necessary and proper to circumscribe, extirpate, control, or prevent the disease.

(b) foster, promote, and protect the livestock industry in this state by the investigation of diseases and other subjects related to ways and means of prevention, extirpation, and control of diseases or to the care of livestock and its products and to this end may establish and maintain a laboratory, may make or cause to be made biologic products, curatives, and preventative agents, and may perform any other acts and things as may be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state;

(c) impose and collect such fees as the department considers appropriate for the tests and services performed by *it at* the laboratory *or elsewhere* and for biologic products, curatives, and preventative agents made or caused to be made by the department. In fixing these fees the department shall take into consideration the costs, both direct and indirect, of the tests, services, products, curatives, and agents. All fees shall be deposited in the earmarked revenue fund for the use of the animal health functions of the department.

(d) adopt rules and orders which it considers necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock in this state and to this end may adopt rules and orders necessary or proper governing inspections and tests of livestock intended for importation into this state before it may be imported into this state;

(e) adopt rules and orders which it considers necessary or proper for the inspection, testing, and quarantine of all livestock imported into this state;

(f) adopt rules and orders which it considers necessary or proper for the supervision, inspection, and control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products, dairies, milk depots, milk and its byproducts, barns, dairy cows, factories, and other places and premises where meat or meat foods, milk or its products, or any byproducts thereof intended for sale or consumption as food are produced, kept, handled, or stored. An authorized representative of the department may take samples of a product so produced, kept, handled, or stored for analysis or testing by the department. The records of the samples and their analysis and test, when identified as to the sample by the oath of the officer taking it and verified as to the analysis or test by the oath of the chemist or bacteriologist making it, are prima facie evidence of the facts set forth in them when offered in evidence in a prosecution or action at law or in equity for violation of part 1, 2, or 3 of this chapter, 81-9-201 through 81-9-207, 81-20-101, 81-21-102, 81-21-103, or a rule or order of the board adopted thereunder. These standards, insofar as they relate to dairies or milk and its byproducts, may not include standards of weight or measurement.

(g) adopt rules and orders which seem necessary or proper for the supervision and control of manufactured and refined foods for livestock

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and the manufacture, importation, sale, and method of using a biologic remedy or curative agent for the treatment of diseases of livestock. However, as far as practicable the standards approved by the United States department of agriculture shall be adopted.

(h) install an adequate system of meat inspection, at any time and in such places as public welfare may demand, under the rules which may provide fees for the maintenance of such inspection and which shall provide ways and means for shipping home-grown and home-killed meats into any city in this state. As far as practicable, the rules shall conform with the meat-inspection requirements of the United States department of agriculture.

(i) slaughter or cause to be slaughtered any livestock in this state known to be affected with or which has been exposed to an infectious, contagious, communicable, or dangerous disease, when such slaughter is necessary for the protection of other livestock, and destroy or cause to be destroyed all barns, stables, sheds, outbuildings, fixtures, furniture, or personal property infected with any such infectious, contagious, communicable, or dangerous disease when they cannot be thoroughly cleaned and disinfected and the destruction is necessary to prevent the spreading of the disease;

(j) indemnify the owner of any property destroyed by order of the department or pursuant to any rules adopted by the department under parts 1, 2, or 3 of this chapter, 81-9-201 through 81-9-207, 81-20-101, 81-21-102, 81-21-103;

(k) require persons, firms, and corporations engaged in the production or handling of meat, meat food products, dairy products, or any byproducts thereof to furnish statistics of the quantity and cost of the food and food products produced or handled and the name and address of persons supplying them any of the products.

(2) When in the exercise of its powers or the discharge of its duties it becomes necessary for employees of the department to investigate facts and conditions, they may administer oaths, take affidavits, and compel the attendance and testimony of witnesses."

Section 2. Section 81-2-109, MCA, is amended to read:

"81-2-109. Expenses, how paid — lien and foreclosure. The expense of inspecting, testing, supervision of quarantine, supervision of dipping, supervision of disinfection, and supervision of other treatment of *diseased or exposed* livestock by the department and the sanitary inspection of dairies, packinghouses, meat depots, slaughterhouses, milk depots, and other premises shall be paid for by the department. However, the owner of the livestock or property is liable for all expenses, except the salary of the supervising officer representing the department, when the owner, agent, or person in charge of the livestock or property has violated the rules of the department. These expenses are a lien on the livestock or other property, and the department may retain possession of the livestock until the charges and expenses are paid. The lien is not dependent on possession and may be foreclosed in the name of the agent of the department

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by sale at public auction of the stock or as many as may be necessary to pay the sum of the costs, after 10 days' notice by posting in three public places in the county. The lien may also be foreclosed by an action in a court of competent jurisdiction against the owner of the livestock to recover the amount of charges and expenses."

Approved February 14, 1979.

CHAPTER NO. 29

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO MINORS; AMENDING SECTIONS 41-1-304, 41-5-523, AND 41-5-701, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-1-304, MCA, is amended to read:

"41-1-304. When minors may disaffirm. In all cases other than those specified by *41-1-303,* 41-1-305, and 41-1-306, the contract of a minor may, upon restoring the consideration to the party from whom it was received, be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards, or in case of his death within that period, by his heirs or personal representatives."

Section 2. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place in a licensed foster home or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody *does* not authorize the department of institutions to place the youth in a state youth correctional facility and such custody *may* not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court *considers* beneficial to the youth, consistent with subsection (d) of this section.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for

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consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision:

(a) order the youth to be evaluated *by the department of institutions* for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths; or

(b) in the case of a delinquent youth 16 years or older whom the court *considers* a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the finding. The director of the department of institutions shall then designate to the court the facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed 45 days for the purpose of evaluation as to the youth's suitability for placement and order the youth delivered for evaluation to the youth facility designated by the director. If after the evaluation the department of institutions reports to the court that such child is suitable for placement in a youth forest camp and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this chapter. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such further disposition as the court may *consider* advisable under the provisions of this chapter. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.

(3) No youth *may* be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes except as provided by subsection (2)(b).

(4) Any order of the court may be modified at any time.

(5) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(6) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

State of Montana, County of ...., ss:

In the district court for the .... judicial district.

On the .... day of ...., 19.., ..., a minor of this county, ... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

It is ordered that .... be committed to the department of institutions until .....

The names, addresses, and occupations of the parents are:

Name	Address	Occupation
.....	.....	.....
.....	.....	.....

The names and addresses of their nearest relatives are:

.....

.....

Witness my hand this .... day of ...., A.D. 19...

.....
Judge "

Section 3. Section 41-5-701, MCA, is amended to read:

"41-5-701. Appointment of probation officers. The youth *court* judge of each judicial district shall appoint such necessary probation officers as are required to carry out the purpose and intent of this chapter. He shall appoint such part-time probation officers as shall be required. The qualifications for part-time probation officers *must* approximate those required for probation officers insofar as possible. A chief probation officer *must* be appointed by the judge to supervise the youth division offices in the judicial district. The judge shall also insure that the youth division offices are staffed with necessary office personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this chapter. No person while serving as a law enforcement officer *may* be appointed or perform the duties of a full-time or part-time probation officer."

Approved February 14, 1979.

CHAPTER NO. 30

AN ACT AMENDING SECTION 1-2-108, MCA, TO CLARIFY THAT A REFERENCE TO A TITLE, CHAPTER, PART, SECTION, OR SUBSECTION OF THE MCA IS PRESUMED TO BE A REFERENCE TO THAT TITLE, CHAPTER, PART, SECTION, OR SUBSECTION, AS IT MAY BE AMENDED FROM TIME TO TIME.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-2-108, MCA, is amended to read:

"1-2-108. Reference to other titles, chapters, parts, or sections — subsequent amendments. *(1)* A statute which refers to a title, chapter, part, section, *or subsection* number without further identification or attribution *is* presumed, unless the context clearly indicates otherwise, to refer to a title, chapter, part, section, *or subsection* of the Montana Code Annotated.

(2) A specific or presumed reference to a title, chapter, part, section, or subsection of the Montana Code Annotated is presumed to be a reference to that title, chapter, part, section, or subsection as it may be

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amended or changed from time to time. This presumption may be overcome only by a clear showing that a subsequent amendment or change in the title, chapter, part, section, or subsection is inconsistent with the continued purpose or meaning of the section referring to it."

Approved February 14, 1979.

CHAPTER NO. 31

AN ACT TO AMEND SECTION 69-12-327, MCA, TO REVISE THE PROCEDURE TO REVOKE A MOTOR CARRIER CERTIFICATE; PROVIDING FOR AN ORDER TO SHOW CAUSE AND FOR REVOCATION WITHOUT HEARING IN CASE OF FAILURE TO APPEAR TO SHOW CAUSE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-327, MCA, is amended to read:

"69-12-327. Revocation of certificate — right of review. (1) *If it appears that a certificate holder is violating or refusing to observe any of the commission's orders or rules or any provision of Title 69, as amended, the commission may issue an order to the certificate holder to show cause why the certificate should not be revoked. If the certificate holder fails to appear to show cause as ordered by the commission, the certificate may be revoked without a hearing. If the holder does appear to show cause, the commission may:*

(a) dismiss the proceeding, notifying the holder that the certificate is not revoked; or

(b) hold a hearing on the question of revocation, notifying the holder of the time and place for the hearing.

(2) The holder of any such certificate or privilege shall have all rights of rehearing and review as to such order of the commission as is provided in this chapter."

Approved February 19, 1979.

CHAPTER NO. 32

AN ACT TO INCREASE THE MAXIMUM PERMISSIBLE LICENSE RENEWAL FEE FOR MASSAGE THERAPISTS FROM $25 TO $50 AND TO REVISE THE EXEMPTIONS FROM THE MASSAGE THERAPY LAWS, ELIMINATING THE EXEMPTION FOR ATHLETIC CLUBS AND CERTAIN OTHERS; AMENDING SECTIONS 37-33-103 AND 37-33-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-33-103, MCA, is amended to read:

"37-33-103. Exemptions. The following classes of persons are exempt from this chapter:

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(1) persons authorized by the laws of this state to practice medicine, surgery, osteopathy, chiropractic, or *podiatry*;

(2) persons who are registered or licensed under the laws of this state as nurses, practical nurses, physical therapists, barbers, or cosmetologists;

(3) educational institutions maintaining a full-time faculty with a varied curriculum."

Section 2. Section 37-33-306, MCA, is amended to read:

"37-33-306. Renewal. (1) A license expires on December 31 of each year and shall be renewed then or thereafter, by the department, on payment of a renewal fee of not less than $10 or more than *$50*, as set by the board.

(2) Any licensee who fails to renew on or before December 31 of each year shall be required to pay, in addition to the renewal fee, a late renewal fee in an amount not to exceed $10. Failure to renew within 30 days following December 31 shall be cause for suspension or revocation of the license."

Approved February 19, 1979.

CHAPTER NO. 33

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO THE FAMILY; AMENDING SECTIONS 40-1-203, 40-1-311, 40-5-112, 40-5-131, 40-6-108, AND 40-8-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-1-203, MCA, is amended to read:

"40-1-203. Proof of age and medical certificate required. (1) Before a person authorized by law to issue marriage licenses may issue a marriage license, each applicant therefor shall exhibit to him a birth certificate or other satisfactory evidence of age and, if *the* applicant is a minor, the approval required by 40-1-213 and shall file with him a medical certificate from a duly qualified physician, licensed to practice medicine and surgery in any state or United States territory, or any other person authorized by laws of Montana to make a medical certificate. *The* certificate shall state that the applicant has been given an examination, including a standard serological test, made not more than 20 days before the date of issuance of the license, and that the report of the results of the serological test has been exhibited to the applicant and that each party to the proposed marriage contract has examined the report of the serological test of the other party to the proposed contract.

(2) A person who by law is able to obtain a marriage license in this state is also able to give consent to any examinations and tests required by this section. In submitting the blood specimen to the laboratory, the

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physician or any other person authorized by the laws of Montana to make a medical certificate shall designate that it is a premarital test."

Section 2. Section 40-1-311, MCA, is amended to read:

"40-1-311. Declaration of marriage without solemnization. (1) Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 must, prior to executing the declaration, secure the *medical* certificate required by this chapter, which shall be firmly attached to the declaration and shall be filed by the clerk of the district court in the county where the contract was executed. *A* declaration of marriage *must contain* substantially the following:

(a) the names, ages, and residences of the parties;

(b) the fact of marriage;

(c) *the* name of father and maiden name of mother of both parties and address of each;

(d) *a statement* that both parties are legally competent to enter into the marriage contract.

(2) *The* declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of *the* county."

Section 3. Section 40-5-112, MCA, is amended to read:

"40-5-112. Contents and filing of petition for support — venue. (1) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor, including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his social security number.

(2) At the time of filing the petition, the obligee shall also file with the court an affidavit as required by 53-4-248 stating whether he has received public assistance from any source and, if he has received public assistance, that he has notified the department of social and rehabilitation services in writing of the pending action.

(3) The petition may be filed in the appropriate court of any state in which the obligee resides. The court may not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other state where there is pending another action for separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement."

Section 4. Section 40-5-131, MCA, is amended to read:

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"40-5-131. Proceedings not to be stayed — when. A responding court *may* not stay the proceeding or refuse a hearing under this chapter because of any pending or prior action or proceeding for separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter, the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding."

Section 5. Section 40-6-108, MCA, is amended to read:

"40-6-108. Statute of limitations. (1) An action may be commenced:

(a) at any time for the purpose of declaring the existence of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1);

(b) for the purpose of declaring the nonexistence of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1), only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but *not* later than 5 years after the child's birth.

(2) After the presumption has been rebutted, paternity of the child by another man may be determined in the same action if he has been made a party.

(3) An action to determine the existence or nonexistence of the father and child relationship as to a child who has no presumed father under 40-6-105 may not be brought later than 3 years after the birth of the child.

(4) Sections 40-6-107 and 40-6-108 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship or otherwise.

(5) After the conclusion of an adoption proceeding under chapter 8, Title 40, no further action to declare the existence or nonexistence of the father and child relationship of the adopted child may be commenced, except as provided in 40-8-112."

Section 6. Section 40-8-111, MCA, is amended to read:

"40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent *is* not required from a father or mother:

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(i) adjudged guilty by a court of competent jurisdiction of physical cruelty toward *the* child;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned *the* child;

(iv) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency or the department of social and rehabilitation services of the state of Montana for a period of 1 year without contributing to the support of *the* child during said period, if able;

(v) if it is proven to the satisfaction of the court that *the* father or mother, if able, has not contributed to the support of *the* child during a period of 1 year before the filing of a petition for adoption; *or*

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption and a certified copy of its order shall be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) shall be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of social and rehabilitation services or of an agency or witnessed by a representative of the court."

Approved February 19, 1979.

CHAPTER NO. 34

AN ACT ALLOWING THE DEPARTMENT OF LIVESTOCK TO COLLECT, FROM THE PROPER OWNERS, EXPENSES INVOLVED IN THE HOLDING AND RETURN OF ESTRAY ANIMALS; AMENDING SECTION 81-4-605, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-4-605, MCA, is amended to read:

"81-4-605. Expenses, how paid — disposition of proceeds of sale. Expenses for collecting, holding, advertising, and selling of the estray

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shall be paid out of the gross proceeds of the sale of the estray, and the balance of the proceeds of the sale shall be forwarded to the department to be advertised as estray funds in the manner provided by law. The proceeds are subject to claim by the owner of the animal for a period of 2 years from the date of the sale. If the owner of the estray claims the animal before the sale of the animal, the expense incurred by the stock inspector to that time shall be paid by the *owner.*"

Approved February 19, 1979.

CHAPTER NO. 35

AN ACT AMENDING SECTION 60-3-208, MCA, TO PERMIT INCREASED EXPENDITURES OF OFF-SYSTEM ROAD FUNDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-3-208, MCA, is amended to read:

"60-3-208. Apportionment of state funds to federal-aid off-system roads. (1) Each fiscal year the department of highways shall apportion to each county available state construction funds for the purpose of matching federal-aid off-system road funds. Such apportionment shall be made in the same manner and on the same basis as provided in 60-3-206.

(2) The board of county commissioners shall, in proposing projects to be constructed with off-system road funds, consult with the governing body of those cities with a population under 5,000 persons located within the county.

(3) To permit orderly programming and construction of projects, expenditures by a county may exceed the amount of off-system road funds available to that county by no more than 300%. The amount of the excess expenditures shall be deducted from the future off-system road funds available to that county."

Approved February 20, 1979.

CHAPTER NO. 36

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO FINANCIAL INSTITUTIONS; AMENDING SECTIONS 32-1-424, 32-1-464, 32-1-465, 32-1-506, 32-1-534, 32-2-406, AND 32-3-611, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-424, MCA, is amended to read:

"32-1-424. Investments of financial institutions. (1) Trust and investment companies may lease, purchase, hold, and convey all real or

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personal property necessary to carry on their authorized business, as well as such real or personal property as the board of directors *considers* necessary to acquire in the enforcement or settlement of any claims or demands arising out of business transactions and may execute and issue, in the transaction of their business, all necessary receipts, certificates, and contracts.

(2) The board of directors of any such corporation *may* invest the capital and assets of *the* corporation and keep the same invested in securities to be approved by the board, and the board *may* make such investments of its capital and assets and of the funds accumulated by its business, including money, deposits, or any part thereof, in negotiable or nonnegotiable notes or bonds, mortgages on unencumbered real estate, stocks and bonds of corporations, or bonds and warrants of any county, city, town, or school district of this state or any other state of the United States legally authorized to issue the same, or bonds or obligations of the United States.

(3) Notwithstanding other provisions of the law, it *is* lawful for *a* bank, trust company, investment company *or* other financial *institution* operating under the laws of this state to invest the funds or *money* in *its* custody or possession, eligible for investment, in debentures issued by the federal housing administrator and in obligations of *national mortgage associations*."

Section 2. Section 32-1-464, MCA, is amended to read:

"**32-1-464. Fraud by director, officer, or employee.** A director, officer, agent, or employee of a bank is guilty of a felony *if that person*:

(1) knowingly receives or possesses himself of any of its property, otherwise than in payment for a just demand, and with intent to defraud:

(a) omits to make or to cause or direct to be made a full and true entry of it in its books and account; or

(b) concurs in omitting to make any material entry thereof;

(2) knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false; or

(3) having the custody or control of its books, willfully refuses or neglects to make a proper entry in the books of that corporation as required by law, to exhibit them, or allow them to be inspected and extracts to be taken from them by the department."

Section 3. Section 32-1-465, MCA, is amended to read:

"**32-1-465. Overdraft by officer or employee — receiving personal profit from loan.** *An* officer, director, agent, teller, clerk, or employee of *a* bank is guilty of a misdemeanor *if that* person:

(1) knowingly overdraws his account with such bank and thereby obtains the money, notes, or funds of any such bank; or

(2) asks or receives or consents or agrees to receive any commission, premium on insurance, emolument, gratuity, reward, money, property, or

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thing of value for his own personal benefit or personal advantage for procuring or endeavoring to procure for any person, firm, or corporation any loan from or the purchase or discount of any paper, note, draft, check, or bill of exchange by such bank or for authorizing and permitting any person, firm, or corporation to overdraw any account with such bank."

Section 4. Section 32-1-506, MCA, is amended to read:

"32-1-506. Assessment on capital stock to make good impairment. (1) When the department determines that an impairment of capital exists in a bank, it may, in its discretion, notify the board of directors of the bank by written notice that the impairment exists, stating the amount thereof in dollars and percentage of the capital stock, and it may, in its discretion, order the board to make good the impairment within 90 days from date of the notice.

(2) The board of directors shall, upon receipt of notice, convene and pass a resolution reciting the receipt of the notice of impairment and calling a special meeting of the stockholders of the bank in the manner provided in their bylaws.

(3) The stockholders at the meeting shall pass a resolution reciting the facts of receipt of notice from the department, notice of impairment, and notice of meeting and assessing themselves by assessing the stock of record, payment of which assessment must be made within the time limit specified by the department as provided in notice of impairment.

(4) If there is any stock remaining on which the assessment is not paid as provided in this section, it or a part of it as is necessary to pay the assessment shall be sold by the board of directors, acting through the cashier or secretary of the bank, at public or private sale, as appears best for all concerned, not less than 30 days after the day fixed for payment of assessment. Notice of the time and place of the sale shall be given by certified or registered mail to the stockholders by the board through its cashier or secretary at least 10 days prior to the sale. A sale of stock as provided in this section causes an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold and makes them void in the hands of the stockholder *or* his assigns or pledgees. A new certificate shall be issued by the bank to the purchaser for the number of shares purchased and a new certificate issued to the stockholder of record and delivered to him or any pledgee or assignee of the stock for the remaining shares, if any. The record of the original certificate sold shall be marked canceled on the books of the bank, and that record is prima facie evidence of the regularity of the proceedings for the sale of the stock.

(5) If a bank fails to make good its capital impairment upon demand of the department, as provided in this section, the department may immediately take charge of that bank and proceed to liquidate it as in case of insolvency.

(6) If the stock does not sell for enough to pay the assessment on it, the board of directors may sue in the name of the corporation to collect the deficiency from the *stockholder of record* whose stock has been sold for the assessment."

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Section 5. Section 32-1-534, MCA, is amended to read:

"32-1-534. Claims — order of payment — priorities. (1) Except as otherwise provided by the Uniform Commercial Code, the order of payment of the debts of a bank liquidated by the department shall be as follows:

(a) the expense of liquidation, including compensation of agents, employees, and attorneys;

(b) all funds of any other bank in process of liquidation by the department and placed on deposit by the department;

(c) all funds held by the bank in trust;

(d) debts due depositors, holders of cashier's checks, certified checks, *contractual liabilities, and* drafts on correspondent banks, including protest fees, paid by them on valid checks or drafts presented after closing of the bank, pro rata. All deposit balances of other banks or trust companies and all deposits of public funds of every kind (except those actually placed on special deposit under the statutes providing therefor), including those of the United States, the state of Montana, and every county, district, municipality, political subdivision, or public corporation of this state, whether secured or unsecured or whether deposited in violation of law or otherwise, are included within the terms of this subsection (1)(d) and take the same priority as debts due any other depositor. Accrued interest on savings accounts, certificates of deposit, or other interest-bearing contracts, up to the time of the closing of the bank, shall be considered as part of the debt due.

(e) interest on the classes of claims contained in subsections (1)(a) through (1)(d) of this section without regard to the priority computed from the date of closing of the bank at the rate of 7% a year;

(f) unliquidated claims for damages and similar claims, including claims of stockholders for amounts claimed to have been voluntarily advanced to the bank or paid in by way of special or voluntary or other assessments.

(2) The department may, in its discretion, without regard to the priorities fixed in subsections (1)(c) through (1)(f) of this section or in preference to the payment of any claims of creditors within these subsections, pay off and discharge any lien, claim, or charge against the assets or property of the bank in its hands and pay those sums it considers necessary for the preservation, maintenance, conservation, and protection of those assets and property and likewise property on which the bank has liens by mortgage or otherwise. It may also, in its discretion, create a fund or retain in its hands, in preference to the claim of any creditors in subsections (1)(c) through (1)(f), *money* for those purposes.

(3) Collateral *that* has been put up or pledged as security for the payment of bills payable by a bank or loans or discounts *that* have been outstanding as rediscounts of a bank prior to the closing of it is not available to the other creditors of the bank in whole or in part until the bills payable or rediscounts have been retired, after which offsets as provided in this section shall be allowed.

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(4) Deposits of a person, firm, or corporation in a bank which is in the possession of the department may be offset against any indebtedness (subject to the conditions of subsection (3) of this section), except assessments on stock, due to the bank from that person, firm, or corporation. All dividends when declared in favor of a creditor of the bank may be applied, in the discretion of the department, in satisfaction of the indebtedness, if any, due the bank from the creditor."

Section 6. Section 32-2-406, MCA, is amended to read:

"32-2-406. Investments. (1) A building and loan association may invest the money of the association in:

(a) the bonds and securities of the United States, bonds and other obligations guaranteed as to interest and principal by the United States, and the stocks, bonds, debentures, and other securities and obligations of any federal home loan bank created under the laws of the United States;

(b) the bonds and warrants of any state and of any county, city, or school district of the state of Montana;

(c) the obligations of the federal savings and loan insurance corporation lawfully issued pursuant to Title IV of the National Housing Act;

(d) improved real estate which has been sold under contract, including suburban homes but not including farm lands or mining property. However, the total amount remaining so invested, excluding real estate otherwise acquired, *may not* exceed 15% of its assets. The amount so invested may not exceed 85% of the price stipulated in the contract of sale or 85% of the value of the property so purchased, whichever is the lesser.

(e) other bonds and securities, not to exceed 10% of the association assets.

(2) Not over 10% of the assets of an association may be invested in home office buildings, furniture, and fixtures. Other real property acquired in any manner or for any purpose may not be held for more than 5 years, except by permission of the department.

(3) Notwithstanding other provisions of the law, it *is* lawful for *a* building and loan association *or* other financial institution operating under the laws of this state to invest the funds or *money* in *its* custody or possession, eligible for investment, in debentures issued by the federal housing administrator and in obligations of *national mortgage associations*."

Section 7. Section 32-3-611, MCA, is amended to read:

"32-3-611. Share insurance. (1) *Each credit union shall maintain insurance on its share accounts under the provisions of Title II of the Federal Credit Union Act.*

(2) *No credit union may begin operation or transact any business until proof that it has obtained insurance under the provisions of Title II of the Federal Credit Union Act has been furnished to the director of the department of business regulation.*

(3) A credit union operating in violation of this section is subject to an order of suspension as provided for in 32-3-205.

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(4) The director of the department of business regulation shall make available reports of condition and examination reports to the administrator of the national credit union administration and may accept any report of examination made on behalf of such administrators. The director may appoint the administrator of the national credit union administration as liquidating agent of an insured credit union."

Approved February 20, 1979.

CHAPTER NO. 37

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO HEALTH AND SAFETY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-2-120, MCA, is amended to read:

"50-2-120. Assistance from law enforcement officials. A state or local health officer may request a sheriff, constable, or other *peace* officer to assist him in carrying out the provisions of this chapter. If the officer does not render the service, he is guilty of a misdemeanor and may be removed from office."

Section 2. Section 50-5-201, MCA, is amended to read:

"50-5-201. License requirements. (1) No person may operate a facility unless licensed by the department. Licenses shall be for 1 year unless issued for a shorter period. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(2) Upon discontinuance of the operation or *upon* transfer of ownership of a facility, the license must be returned to the department.

(3) Licenses shall be displayed in a conspicuous place near where patients or residents are admitted."

Section 3. Section 50-5-301, MCA, is amended to read:

"50-5-301. Preliminary submission of plans for approval. (1) The department may adopt rules to require an applicant or licensee who contemplates construction of *or* alteration or addition to a health care facility to submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

(2) Approval may be given only if the plans and specifications conform to the state or the municipal building code which applies to the facility."

Section 4. Section 50-15-302, MCA, is amended to read:

"50-15-302. Decree of dissolution or declaration of invalidity of marriage. (1) At the same time a decree of *dissolution* or *declaration of invalidity* of marriage is filed, the clerk of court shall prepare a report

to the department on the form prescribed by the department. Parties to the action or their attorneys shall supply the clerk with necessary information.

(2) The report shall include *the*:

(a) name, age, birthplace, residence, race or color, and occupation of each party;

(b) number, date, and place of any previous marriage of either party;

(c) number of children under 18 years of age in custody of either party and residing with him;

(d) grounds for the action;

(e) number of the cause of action;

(f) county and judicial district where the action is filed; *and*

(g) date of judgment and the party which was granted it."

Section 5. Section 50-15-303, MCA, is amended to read:

"50-15-303. Certificates of dissolution of marriage, adoption, declaration of invalidity of marriage, or annulment of adoption. Before the 16th day of each month, the clerk of court shall prepare and forward to the department a certificate for each decree of *dissolution of marriage*, adoption, *declaration of invalidity* of marriage, or annulment of adoption that became final during the preceding calendar month. Certificates shall be on forms prescribed by the department."

Section 6. Section 50-17-105, MCA, is amended to read:

"50-17-105. Application to require examination or treatment for tuberculosis. (1) The department or a local board may apply for an order from the district court if a person is reasonably suspected to have or to have been exposed to communicable tuberculosis, upon request of:

(a) a physician legally authorized to practice medicine in the state;

(b) the department; or

(c) a local health officer.

(2) The application shall request that the person be ordered to:

(a) submit to an examination for tuberculosis; or

(b) enter or return to a hospital for treatment if the person is a menace to public health.

(3) The application for an order provided for in subsections (1) and (2) of this section shall allege that the person:

(a) is suspected of having tuberculosis in a communicable state or has been exposed to communicable tuberculosis, is a menace to public health, and has refused to be examined for tuberculosis as required by rules adopted by the department; or

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(b) is suffering from tuberculosis in a communicable state, is a menace to public health, *and* has refused to enter or has left a hospital against the advice of a physician or health officer.

(4) The application shall state the names of witnesses by which facts alleged may be proved. At least one witness shall be a physician."

Section 7. Section 50-30-301, MCA, is amended to read:

"50-30-301. Prohibited acts. The following acts and the causing thereof are prohibited:

(1) the introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance;

(2) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of or the doing of any other act with respect to a hazardous substance if such act is done while the substance is in commerce or while the substance is held for sale (whether or not the first sale) after shipment in commerce and results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance;

(3) the receipt in commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise;

(4) the giving of a guarantee or undertaking referred to in 50-30-305*(2)*, which guarantee or undertaking is false, except by a person who *relies* upon a guarantee or undertaking to the same effect signed by and containing the name and address of the person residing in the United States from whom he received in good faith the hazardous substance;

(5) the failure to permit entry or inspection as authorized by 50-30-107(1) or to permit access to any copying of any record as authorized by 50-30-108;

(6) the introduction or delivery for introduction into commerce or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification;

(7) the use by any person to his own advantage or revealing other than to the department or officers or employees of the agency or to the courts when relevant in any judicial proceeding under this chapter of any information acquired under authority of 50-30-106 and 50-30-107 concerning any method *or* process which as a trade secret is entitled to protection."

Section 8. Section 50-31-103, MCA, is amended to read:

"50-31-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing

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or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Color" includes black, white, and intermediate grays.

(3) (a) "Color additive" means a material which:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with other substance) of imparting color thereto.

(b) This term does not include material which has been or hereafter is exempted under the federal act.

(4) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant thereto. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the virus-serum toxin act;

(c) a drug subject to *50-31-306(1)(m) or 50-31-307(1)(c)* or section 503(b)(1) or 506 of the federal act;

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(5) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(6) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(7) "Counterfeit drug" means a drug, *drug* container, or *drug label* which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who

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in fact manufactured, processed, packed, or distributed the drug and which falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(8) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(9) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(b) to affect the structure or function of the body of man or other animals.

(10) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to *either* of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of man or other animals;

(d) articles intended for use as components of any article specified in subsections (a), (b), or (c) but does not include devices or their components, parts, or accessories.

(11) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301 et seq.).

(12) "Food" means:

(a) articles used for food or drink for man or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(13) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

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(b) This term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) color additive;

(iv) substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.).

(14) "Honey" means the nectar and saccharine exudations of plants gathered, modified, and stored in the comb by honey bees; is levorotatory, contains not more than 25% of water, not more than .25% of ash, and not more than 8% sucrose.

(15) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. ("Immediate container" does not include package liners.)

(16) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(17) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(18) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to *either* of these.

(19) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers but does not include:

(a) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(b) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

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(20) "Person" includes an individual, partnership, corporation, and association.

(21) "Pesticide chemical" means a substance which alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(22) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(23) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(24) "State board" or "board" means the board of health and environmental sciences, provided for in 2-15-2104."

Section 9. Section 50-31-111, MCA, is amended to read:

"50-31-111. When labeling requirement complied with. A requirement made by or under authority of this chapter that a word, statement, or other information *shall appear* on the label *is* not complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article or is easily legible through the outside container or wrapper."

Section 10. Section 50-31-303, MCA, is amended to read:

"50-31-303. Certain drug advertisements deemed false. (1) For the purpose of this chapter, the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, *or* venereal disease shall also be deemed to be false, except that no advertisement not in violation of 50-31-107(1) shall be deemed to be false under this section if it is disseminated only to members of the medical, dental, or veterinary professions or appears only in the scientific periodicals of these professions or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices.

(2) Whenever the department determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the department shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the department may deem necessary in the interests of public health.

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(3) This section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious."

Section 11. Section 50-31-305, MCA, is amended to read:

"50-31-305. When drug or device adulterated. A drug or device shall be deemed to be adulterated if it:

(1) consists in whole or in part of any filthy, putrid, or decomposed substance;

(2) has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth or rendered injurious to health;

(3) is a drug and the methods used in or the facilities or controls used for its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess;

(4) is a drug and its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health;

(5) is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of the federal act or it is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of the federal act;

(6) purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from or its quality or purity falls below the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or, in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standard of strength, quality, or purity therefor set forth in such compendium if its difference in strength, quality, or purity from such standard is plainly stated on its label.

(7) is not subject to the provisions of subsection (6) of this section and its strength differs from or its purity or quality falls below that which it purports or is represented to possess; *or*

(8) is a drug and any substance has been:

(a) mixed or packed therewith so as to reduce its quality or strength; or

(b) substituted wholly or in part therefor."

Section 12. Section 50-31-306, MCA, is amended to read:

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"50-31-306. When drug or device misbranded. (1) A drug or device shall be deemed to be misbranded:

(a) if its labeling is false or misleading in any particular;

(b) if in package form unless it bears a label containing:

(i) the name and place of business of the manufacturer, packer, or distributor; and

(ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variation shall be permitted and exemptions as to small packages shall be allowed in accordance with regulations prescribed by the department or issued under the federal act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, sulphonmethane, or any chemical derivative of such substance which, after investigation, has been found to be and designated as habit-forming by regulations issued by the department under this chapter or by regulations issued pursuant to section 502(d) of the federal act unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit-forming";

(e) if it is a drug unless its label bears to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula):

(i) the established name (as defined in 50-31-301(1)) of the drug, if such there be; and

(ii) in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained therein; provided that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subsection (1)(e)(ii), shall apply only to prescription drugs; provided further that, to the extent that compliance with the requirements of this subsection (1)(e)(ii) is impracticable, exemptions shall be allowed under regulations promulgated by the department or under the federal act;

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(f) unless its labeling bears:

(i) adequate directions for use; provided that, where any requirement of this subsection (1)(f)(i), as applied to any drug or device, is not necessary for the protection of the public health, the department shall promulgate regulations exempting such drug or device from such requirements; provided further that articles exempted under regulations issued under section 502(f) of the federal act may also be exempt; and

(ii) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users;

(g) if it purports to be a drug, the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein, provided that the method of packing may be modified with the consent of the department or if consent is obtained under the federal act. *In* the event of inconsistency between the requirements of this subsection and those of subsection (e) as to the name by which the drug or its ingredients shall be designated, the requirements of subsection (e) shall prevail.

(h) if it has been found by the department or under the federal act to be a drug liable to deterioration unless it is packaged in such form and manner and its label bears a statement of such precautions as the regulations issued by the department or under the federal act require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the department shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(i) if it is a drug and its container is so made, formed, or filled as to be misleading;

(j) if it is an imitation of another drug;

(k) if it is offered for sale under the name of another drug;

(l) if it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(m) if it is, purports to be, or is represented as a drug composed wholly or partly of insulin unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act; and

(ii) such certificate or release is in effect with respect to such drug;

(n) if it is, purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, any other antibiotic drug, or any derivative thereof unless:

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(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act; and

(ii) such certificate or release is in effect with respect to such drug; provided that subsection (1)(n) shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act;

(o) if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of 50-31-108 or of the federal act;

(p) in the case of any prescription drug distributed or offered for sale in this state unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(i) the established name, as defined in 50-31-301(1);

(ii) the formula showing quantitatively each ingredient of such drug to the extent required for labels under section 502(e) of the federal act; and

(iii) such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the federal act; *or*

(q) if a trademark, trade name, or other identifying mark, imprint, or device or another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

(2) A drug which is subject to 50-31-307 shall be deemed to be misbranded if, at any time prior to dispensing, its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which 50-31-307 does not apply shall be deemed to be misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence."

Section 13. Section 50-32-208, MCA, is amended to read:

"50-32-208. Prescription and medical requirements for scheduled drugs. (1) No dangerous drug in Schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the board, Schedule II drugs may be dispensed upon *a practitioner's* oral prescription reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of *50-32-309*. No prescription for a Schedule II drug may be refilled.

(3) A dangerous drug included in Schedule III or IV, which is a prescription drug as determined under the federal or Montana food, drug, and cosmetic acts, shall not be dispensed without a written or oral prescription

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of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than five times unless renewed by the practitioner.

(4) A dangerous drug included in Schedule V shall not be distributed or dispensed other than for a medical purpose."

Section 14. Section 50-32-229, MCA, is amended to read:

"50-32-229. Specific dangerous drugs included in Schedule IV. The *following* dangerous drugs are included in Schedule IV: any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a depressant effect on the central nervous system: barbital, chloral betaine, chloral hydrate, ethchlorvynol, ethinamate, methohexital, meprobamate, methylphenobarbital, paraldehyde, petrichloral, and phenobarbital."

Section 15. Section 50-32-232, MCA, is amended to read:

"50-32-232. Specific dangerous drugs included in Schedule V. The *following* dangerous drugs are included in Schedule V: *any* compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs which also contains one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams;

(2) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit."

Section 16. Section 50-37-102, MCA, is amended to read:

"50-37-102. Where chapter not to apply. (1) Nothing in this chapter shall be construed to prohibit the sale of any kind of fireworks to a person holding a permit from any municipality at the display covered by such permits, the use of fireworks by railroads or other transportation agencies for signal purposes or illumination or when used in quarrying or blasting or other industrial use, or the sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, or for use by military organizations or organizations composed of veterans of the United States *armed forces*.

(2) This chapter does not apply to toy paper caps containing less than one-fourth of a grain of explosive composition per cap, to the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, to the military or naval forces of the United States or this state, to peace officers, or to the sale or use of blank cartridges for ceremonial, theatrical, or athletic events."

Section 17. Section 50-38-304, MCA, is amended to read:

"50-38-304. Transportation vehicle to bear warning signs. Each vehicle in which explosives are transported, transferred, or delivered

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shall bear on each side a sign having the words "explosives—dangerous" in conspicuous letters not less than 2 inches in *height*."

Section 18. Section 50-51-106, MCA, is amended to read:

"50-51-106. Violation of chapter a misdemeanor. Any person violating any provision of this chapter or regulation made hereunder, except 50-51-107, *is* guilty of a misdemeanor and upon conviction thereof shall be *punished by a fine of* not less than $50 or more than $100 for the first offense and not less than $75 or more than $200 for the second offense and for the third and subsequent offenses not less than $200 and *by* imprisonment in the county jail not to exceed 90 days."

Section 19. Section 50-51-202, MCA, is amended to read:

"50-51-202. Application for license. *Application* for a license shall be made in writing to the department on such forms and with such pertinent information as it considers necessary."

Section 20. Section 50-61-118, MCA, is amended to read:

"50-61-118. Injunction authorized. In addition to the other remedies and penalties herein provided, upon the failure of any of the parties charged with the duty to erect fire escapes or to install and maintain fire alarms or fire extinguishers or other fire apparatus in accordance with this *chapter*, the attorney general of the state or any county attorney of the county where *the* building is located shall bring *an* action against the owner, lessee, and occupants of *the* building for an injunction enjoining the further occupancy of *it* until *it is in* compliance with this chapter. *The* action may be brought in the county where such building is located."

Section 21. Section 50-62-103, MCA, is amended to read:

"50-62-103. Service of order to repair or demolish structure. (1) If the state fire marshal, a deputy state fire marshal, or any officer mentioned in 50-62-101, upon an examination or inspection, finds that a building or other structure which for want of proper repair *or* by reason of age and dilapidated condition, defective or poorly installed electric wiring or equipment, defective chimneys, defective gas connections *or* defective heating apparatus or for any other cause or reason is especially liable to fire and is so situated as to endanger other buildings or property in the vicinity, *he shall* order *the* structure to be repaired, torn down, or demolished *and* all materials removed and all dangerous conditions remedied.

(2) *The* order shall be in writing, shall recite the grounds therefor, and shall be filed in the office of the clerk of the district court of the county in which the building or structure ordered to be altered, repaired, or demolished is situated, and thereupon all further proceedings for the enforcement thereof shall be had in *that* court.

(3) A copy of the order filed as aforesaid, together with a written notice that *it* has been filed and will be put in force unless the owner, occupant, or tenant shall file with the clerk of the court his objections or answer thereto within the time specified in 50-62-104, shall be served upon the owner of the building or structure directed to be altered, repaired, or

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demolished. If there *is* a tenant occupying the building, service shall also be made upon *him. Service* shall be made upon *the* owner and occupant, if there *is* one, personally either within or without the state.

(4) If the whereabouts of *the* owner is unknown and *he* cannot be ascertained by the state fire marshal by the exercise of reasonable diligence, then upon his filing in the office of the clerk of the district court his affidavit to this effect, service of *the* notice upon *the* owner may be made by the clerk of the district court by publication of *it* once in each week for 3 successive weeks in a newspaper printed and published in the county in which *the* building or structure is located and by posting a copy thereof in a conspicuous place upon *the* building or structure, and the service so made *is* complete upon the expiration of the publication period. Proof of service of *the* notice shall be filed in the office of the clerk of the district court within 5 days after the service thereof."

Section 22. Section 50-70-114, MCA, is amended to read:

"50-70-114. Variances. (1) Any person who owns or is in control of any plant, building, structure process, or equipment may apply to the board for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of pollutants. The application shall be accompanied by such information and data as the board may require.

(2) The board may grant *the* exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute an immediate danger to the health and safety of the worker; *and*

(b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the worker.

(3) No exemption or partial exemption *may* be granted pursuant to this section except after *a* public hearing on due notice and until the board has considered the relative interests of the applicant and the worker or workers involved.

(4) No exemption or partial exemption pursuant to this section *may* be granted for a period to exceed 1 year, but *an* exemption or partial exemption may be renewed for like periods if no complaint is made to the board on account thereof or if, *after a* complaint *has* been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal *may* be granted except on application therefor. *Application for renewal* shall be made at least 60 days prior to the expiration of the exemption or partial exemption. Immediately prior to application for renewal, the applicant shall give public notice of *the* application in accordance with *the* rules of the board. Any renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (2)(a) of this section.

(5) An exemption, partial exemption, or renewal thereof *is* not a right of the applicant or holder but shall be in the discretion of the board.

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(6) Nothing in this section and no exemption, partial exemption, or renewal granted *may* be construed to prevent or limit the application of the emergency provisions and procedures of 50-70-117 to any person or his property."

Section 23. Section 50-71-325, MCA, is amended to read:

"50-71-325. Division authorized to prohibit further use of equipment constituting violation. (1) The division, upon finding any violation of any duly adopted safety code, order, or rule involving failure to install or maintain any safety appliance, device, or safeguard required by such safety order, code, or rule, may prohibit the further use of the machine, equipment, or apparatus constituting such violation and, when such use is prohibited, shall post notice in an appropriate place in plain view of any person likely to use the same calling attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use thereof is prohibited.

(2) The notice required by subsection (1) of this section shall not be removed until the required safety appliance, device, or safeguard complies with the requirement of the safety order or safety code.

(3) Every person who, after the notice required by subsection (1) of this section is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus, or equipment referred to in subsection (1) of this section before it is made safe and the required safeguards or safety appliances or devices are provided or who defaces or destroys or removes any notice required by subsection (1) of this section without the authority of the division or who fails or refuses to file a report of accident as required by 39-71-307(1) is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount of not more than $1,000. This civil penalty may be imposed and collected by the division in an action brought in the name of the state in the county in which the employer resides or in which he employs workers. Any penalty collected under this subsection shall be paid into the *division of workers' compensation* earmarked revenue account.

(4) Any person aggrieved by an order prohibiting the use of the machine, equipment, apparatus, or place of employment as provided for in this section may request a hearing before the division within 20 days after entry of such order. The division shall then affirm, modify, or revoke the order, and all procedures of this chapter relative to entry of orders, rehearing, and appeal shall apply."

Section 24. Section 50-75-105, MCA, is amended to read:

"50-75-105. Rules governing inspectors. *The* division of workers' compensation shall *adopt* rules under which *the* inspectors of boilers, inspectors of mines, and coal mine *inspectors* shall perform their duties."

Section 25. Section 50-75-107, MCA, is amended to read:

"50-75-107. Laws continued in force. All laws that now prescribe the qualifications, powers, and duties of the inspectors of boilers, inspectors of mines, and coal mine *inspectors* not inconsistent with the provisions of this chapter are hereby continued in full force and effect."

Approved February 20, 1979.

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CHAPTER NO. 38

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO SOCIAL SERVICES AND INSTITUTIONS; AMENDING SECTIONS 53-2-104, 53-2-202, 53-2-205, 53-3-103, 53-4-213, 53-4-406, 53-4-501, 53-4-505, 53-4-509, 53-5-303, 53-5-304, 53-9-109, 53-20-112, 53-20-205, 53-21-112, 53-24-104, 53-24-108, 53-24-206, 53-24-304, 53-30-212, AND 53-30-214, MCA; AND REPEALING SECTIONS 38-121 AND 80-2101 THROUGH 80-2107, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-104, MCA, is amended to read:

"53-2-104. Audit of public assistance records. All applications, information, and records concerning any applicant or recipient of assistance or services under this title are subject to audit for legislative oversight or determination of *public assistance* fraud."

Section 2. Section 53-2-202, MCA, is amended to read:

"53-2-202. Attorney general to act as legal adviser to department. The attorney general of the state shall act as legal adviser to the department, shall perform such legal services as may be required, and may employ such other and additional counsel as may be necessary for this purpose and fix the compensation therefor."

Section 3. Section 53-2-205, MCA, is amended to read:

"53-2-205. Department authorized to establish and collect social services fees. (1) The department is authorized to establish and collect fees for social services furnished which are authorized pursuant to Title XX of the Social Security Act, Public Law *93-647*. Such fees shall be based on a schedule determined by the department.

(2) The state share of fees provided by subsection (1) shall be paid to the state treasurer for the credit of the earmarked revenue fund for the use of the department in providing social services."

Section 4. Section 53-3-103, MCA, is amended to read:

"53-3-103. Medical aid and hospitalization for indigent. (1) Except as provided in other parts of this title, medical aid and hospitalization for county residents and nonresidents within the county unable to provide these necessities for themselves are the legal and financial responsibility of the county commissioners and are payable from the county poor fund. The county commissioners shall make provisions for competent and skilled medical or surgical services as are approved by the department of health and environmental sciences or the state medical association or, in the case of osteopathic practitioners, by the state osteopathic association, or *in the case of* chiropractors, by the state chiropractic association, or *in the case of* optometrical services, by the Montana optometric association, or *in the case of* dental services, by the dental association. "Medical" or

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"medicine" as used in this section refers to the healing art as practiced by licensed practitioners.

(2) The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by physicians appointed by the board who shall be known as county physicians or deputy county physicians and may fix a rate of compensation for the furnishing of the medical attendance.

(3) The department may promulgate rules to determine under what circumstances persons in the county are unable to provide medical aid and hospitalization for themselves, including the power to define the term "medically needy". However, the definition may not allow payment by a county for general assistance—medical for persons whose income exceeds 300% of the limitation for obtaining regular county general relief assistance.

(4) In any case where the county or state pays medical expenses or hospitalization for an individual, the county or state is subrogated to the claims of the physician or hospital to the extent of payment. To the extent necessary for reimbursement of medical benefits paid to or on behalf of an individual, the county or state is subrogated to the rights of the individual to recover from a third party who may be liable to pay the medical expenses. The provisions of 53-2-612 which relate to medical benefits provided under Titles XIX *or* XX of the Social Security Act apply to medical benefits provided for in this section."

Section 5. Section 53-4-213, MCA, is amended to read:

"53-4-213. Department rules binding on county welfare departments. All rules of the department made under this *part* shall be binding upon the county departments of public welfare."

Section 6. Section 53-4-406, MCA, is amended to read:

"53-4-406. Certified copy of license furnished for adoption proceedings. Upon the request of any district court, proposed adoptive *parent*, or agency, a certified copy of any license issued and in good standing shall be furnished by the department for use in any adoption proceeding with which any licensed agency is concerned."

Section 7. Section 53-4-501, MCA, is amended to read:

"53-4-501. Definitions. In this part, the following definitions apply:

(1) "Child" means a person under 12 years of age.

(2) "Day-care facility" means a person, association, or place, incorporated or unincorporated, that receives for care during the day or part of the day three or more children of separate families and continues this type of care for 5 or more consecutive weeks. It does not include a person who limits care to children who are related to him by blood or marriage or under his legal guardianship *or any* group *facility* established chiefly for educational purposes.

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(3) "Day-care center" means a day-care facility that receives seven or more children for care for 5 or more hours of the day for 5 or more consecutive weeks. It may include facilities known as child-care centers, nursery schools, day nurseries, and centers for the mentally retarded.

(4) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22."

Section 8. Section 53-4-505, MCA, is amended to read:

"53-4-505. Fire safety — certification required. (1) The *state fire marshal of the* department of justice shall adopt and enforce rules for the protection of children in care facilities from fire hazards and arrange for such inspections and investigations as it considers necessary.

(2) Each applicant for a license to operate a day-care center shall submit to the department of social and rehabilitation services a certificate of approval indicating that fire safety rules have been met before a license can be issued.

(3) Automatic sprinkler systems acceptable to the *state fire marshal* shall be installed in all nonfire-resistant homes two stories or more in height with 10 or more children, with the *state fire marshal* to issue for the information and use of the department of social and rehabilitation services certificates of compliance with fire rules and standards applicable to the facilities."

Section 9. Section 53-4-509, MCA, is amended to read:

"53-4-509. Provisional license. The department of social and rehabilitation services may in its discretion issue a provisional license for a period of not more than 6 months if it finds that a substandard day-care facility is attempting to meet the minimum standards. The requirement that a day-care center shall be certified by the *state fire marshal of the* department of justice and the department of health and environmental sciences may not be waived."

Section 10. Section 53-5-303, MCA, is amended to read:

"53-5-303. Purpose. In order to ensure the proper care of aged persons or disabled adults in foster family care homes and to implement provisions of Title XX *of the* Social *Security Act, Public Law 93-647*, the department may obtain, license, and supervise adult foster family care homes for three or fewer aged persons or disabled adults in need of such care."

Section 11. Section 53-5-304, MCA, is amended to read:

"53-5-304. Standards for adult foster family care homes. The department may establish standards by which private residences may be licensed as adult foster family care homes. These standards shall provide for the safety and comfort of the residents and *are* subject to the advice and recommendations of the *state fire marshal of the* department of *justice* in relation to fire and safety requirements."

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Section 12. Section 53-20-112, MCA, is amended to read:

"53-20-112. Procedural rights. (1) Any person subject to emergency admittance to a residential facility, to examination or evaluation by a professional person, or to any hearing held pursuant to this part shall have all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of the seriously mentally ill.

(2) In addition, the parents or guardian of any person alleged to be developmentally disabled and in need of developmental disabilities services have the right to:

(a) be present at any hearing held pursuant to this part;

(b) be represented by counsel in any hearing;

(c) offer evidence and cross-examine witnesses in any hearing; and

(d) have the respondent examined by a professional person of their choice when such professional person is reasonably available, unless the person so chosen is objected to by the respondent or by a responsible person appointed by the court."

Section 13. Section 53-20-205, MCA, is amended to read:

"53-20-205. Community services. (1) The department may establish and administer community comprehensive services, programs, clinics, or other facilities throughout the state for the purpose of aiding in the prevention, diagnosis, amelioration, or treatment of developmental disabilities. Programs, clinics, or other services may be provided directly by state agencies *or* indirectly through contract or cooperative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons, or accredited health or long-term care facilities.

(2) The department may contract for programs for developmental disabilities services. Contracts entered into by the department shall contain specific conditions for performance by the contractor. It shall set minimum standards for programs and establish appropriate qualifications for persons employed in such programs.

(3) All developmental disabilities facilities and services shall comply with existing federal guidelines and with requirements which will enable the services and facilities to qualify for available aid funds. However, nothing herein requires facilities serving the developmentally disabled to meet the same or equal standards as licensed medical facilities unless the developmental disabilities facility is providing professional or skilled medical care.

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(4) Comprehensive services, programs, clinics, or other facilities established or provided by the department under this part shall conform as nearly as possible to the plans of the advisory council created under 2-15-2204 and the regional councils provided for in 53-20-207."

Section 14. Section 53-21-112, MCA, is amended to read:

"53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a minor who is 16 years of age or older may consent to receive mental health services to be rendered by a facility or a person licensed to practice medicine or psychology in this state.

(2) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility or the state hospital.

(3) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment shall be for the same period of time as that for an adult. A minor voluntarily admitted shall have the right to be released within 5 days of his request as provided in 53-21-111(3). The minor himself may make such request. Unless there has been a periodic review and a voluntary readmission consented to by the minor patient and his counsel, voluntary admission terminates at the expiration of 1 year. Counsel shall be appointed for the minor.

(4) If, in any *application for* voluntary admission for any period of time to a mental health facility, a minor fails to join in the consent of his parents or guardian to the voluntary admission, then the *application for* admission shall be treated as *a petition for* involuntary commitment. Notice of the substance of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary admission of a minor to a mental health facility. The notice shall be explained to the minor by the professional person approving the application."

Section 15. Section 53-24-104, MCA, is amended to read:

"53-24-104. Deposit of funds from federal or private sources with state treasurer. Funds available to the department from federal or private sources for use in *alcoholism* and drug dependence prevention, treatment, and control programs shall be deposited with the state treasurer to the account of the department in the federal and private revenue fund."

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Section 16. Section 53-24-108, MCA, is amended to read:

"53-24-108. Utilization of funds generated by taxation on alcoholic beverages. (1) Revenue generated by 16-1-404, 16-1-406, and 16-1-408 for the treatment, rehabilitation, and prevention of alcoholism may be distributed in either of the following manners:

(a) as payment of fees for alcoholism services provided by state-approved alcoholism programs, certified alcoholism counselors, licensed physicians, and licensed hospitals; *or*

(b) as grants to persons operating state-approved alcoholism programs.

(2) No person operating a state-approved alcoholism program may be required to provide matching funds as a condition of receiving a grant under subsection (1) of this section.

(3) In addition to funding received under this section, a person operating a state-approved alcoholism program may accept gifts, bequests, or the donation of services or money for the treatment, rehabilitation, or prevention of alcoholism.

(4) No person receiving funding under this section to support operation of a state-approved alcoholism program may refuse alcoholism treatment, rehabilitation, or prevention services to a person solely because of that person's inability to pay for those services.

(5) A grant made under this section is subject to the following conditions:

(a) The grant application must contain an estimate of all program income, including income from earned fees, gifts, bequests, donations, and grants from other than state sources during the period for which grant support is sought.

(b) Whenever, during the period of grant support, program income exceeds the amount estimated in the grant application, the amount of the excess shall be reported to the grantor.

(c) The excess shall be used by the grantee under the terms of the grant in accordance with one or a combination of the following options:

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(i) use for any purpose that furthers the objectives of the legislation under which the grant was made; or

(ii) deduction from total project costs to determine the net costs on which the grantor's share of the costs is based.

(6) Revenue generated by 16-1-404, 16-1-406, and 16-1-408 for the treatment, rehabilitation, and prevention of alcoholism which has not been encumbered for those purposes by the counties of Montana or the department shall be returned to the state's general fund within 30 days after the close of each fiscal year."

Section 17. Section 53-24-206, MCA, is amended to read:

"53-24-206. Receipt of financial assistance authorized. The department may apply for and receive grants, allotments, or allocations of funds or other assistance for purposes pertaining to the problems of *alcoholism* and drug dependence or related social problems under laws and rules of the United States, any other state, or any private organization. The department may cooperate with any other government agency or private organization in programs on *alcoholism* and drug dependence related social problems. In carrying out cooperative programs, the department may make grants of financial assistance to government agencies and private organizations under terms and conditions agreed upon."

Section 18. Section 53-24-304, MCA, is amended to read:

"53-24-304. Emergency commitment of intoxicated persons and persons incapacitated by alcohol. (1) An intoxicated person who has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed or *a person* who is incapacitated by alcohol may be committed to an approved public treatment facility for emergency treatment. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

(2) The certifying physician, spouse, guardian, or relative of the person to be committed or any other responsible person may make a written application for commitment under this section directed to the administrator of the approved public treatment facility. The application shall state facts to support the need for emergency treatment and be accompanied by a physician's certificate stating that he has examined the person sought to be committed within 2 days before the certificate's date and facts supporting the need for emergency treatment. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

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(3) Upon approval of the application by the administrator of the approved public treatment facility, the person shall be brought to the facility by a peace officer, health officer, the applicant for commitment, the patient's spouse, the patient's guardian, or any other interested person. The person shall be detained at the facility to which he was admitted or transferred to another appropriate public or private treatment facility until discharged under subsection (5).

(4) The administrator of an approved public treatment facility shall refuse an application if in his opinion the application and certificate fail to sustain the grounds for commitment.

(5) When on the advice of the medical staff the administrator determines that the grounds for commitment no longer exist, he shall discharge a person committed under this section. No person committed under this section may be detained in any treatment facility for more than 5 days. If a petition for involuntary commitment under 53-24-302 has been filed within the 5 days and the administrator in charge of an approved public treatment facility finds that grounds for emergency commitment still exist, he may detain the person until the petition has been heard and determined, but no longer than 10 days after filing the petition.

(6) A copy of the written application for commitment and of the physician's certificate and a written explanation of the person's right to counsel shall be given to the person by the department within 24 hours after commitment. The department shall provide a reasonable opportunity for the person to consult counsel."

Section 19. Section 53-30-212, MCA, is amended to read:

"53-30-212. Commutation of sentence to state prison and transfer of prisoner to juvenile correctional facility. (1) Upon the application of a person under 21 years *of age* who has been sentenced to the state prison or upon the application of his parents or guardian, the governor may, after consulting with the department of institutions and with the approval of the board of pardons, commute the sentence by committing such person to the department *until he is 21 years of age* or until sooner placed or discharged.

(2) If such person's behavior after being committed to the department indicates that he is not a proper person to reside at one of the department's juvenile facilities, the governor, after consulting with the department *and* with the approval of the board of pardons, may revoke the commutation and return him to the state prison to serve out his unexpired

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term, and the time spent by him at one of the *department's* juvenile facilities or while a refugee from one of the *department's* juvenile facilities shall not be considered as a part of his original sentence.

(3) Upon recommendation of the warden and with the approval of the department, a person under 21 years *of age* who has been sentenced to the state prison may be transferred to any juvenile facility under the jurisdiction and control of the department.

(4) Upon recommendation of the warden and approval of a person sentenced to the state prison or application of a person sentenced to the state prison and approval of the warden and with the approval of the department, such person sentenced to the state prison who is 25 years *of age* or younger may be transferred to the Swan River youth forest camp. Upon such transfer such person shall be under the supervision and control of the facility to which he is transferred.

(5) If such person's behavior after transfer to such juvenile facility indicates he might be released on parole or his sentence *be* commuted and he be discharged from custody, the superintendent of such facility, with the approval of the department, may make an appropriate recommendation to the state board of pardons and the governor, who may, in their discretion, parole such person or commute his sentence.

(6) If such person's behavior after transfer to a juvenile facility indicates he is not a proper person to reside in such facility, upon recommendation of the superintendent and with the approval of the department, such person shall be returned to the state prison to serve out his unexpired term."

Section 20. Section 53-30-214, MCA, is amended to read:

"53-30-214. Apprehension and return of child leaving juvenile facility without permission. A child who has left a juvenile facility of the department of institutions without permission may be apprehended and returned by any citizen. The term "juvenile facility of the department" means any facility under the supervision and control of the department of institutions *which has as its* primary function the care, training, custody, and control of children and specifically includes the Pine Hills school for boys, the Mountain View school for girls, *and* the Swan River youth forest camp."

Section 21. **Repealer.** Sections 38-121 and 80-2101 through 80-2107, R.C.M. 1947, are repealed.

Approved February 20, 1979.

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CHAPTER NO. 39

AN ACT TO DEFINE THE TERMS "POULTRY" AND "AGRICULTURAL" FOR USE IN CONNECTION WITH TAXATION; AMENDING SECTION 15-1-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-101, MCA, is amended to read:

"15-1-101. Definitions. (1) When terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to the raising of livestock, swine, poultry, field crops, fruit, and other animal and vegetable matter for food or fiber.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(d) The term "improvements" includes all buildings, structures, fixtures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. If the mobile home or housetrailer is an improvement located on land not owned by the owner of such improvement, the improvement is assessed as a leasehold improvement to real property and delinquent taxes can be a lien only on the leasehold improvement.

(e) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches", exceeding 8 feet in width or 32 feet in length, designed to be moved from one place to another by an independent power connected to them.

(f) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(g) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(h) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

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(i) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and 15-23-801; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(j) The term "taxable value" means the percentage of assessed value as provided for in chapter 6, part 1.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board."

Approved February 20, 1979.

CHAPTER NO. 40

AN ACT TO AMEND SECTION 60-5-106, MCA, PERTAINING TO CONTROLLED-ACCESS HIGHWAYS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-5-106, MCA, is amended to read:

"60-5-106. Elimination of grade crossings. (1) Each highway authority may provide for elimination of intersections at grade of controlled-access highways or controlled-access facilities with existing federal-aid and state highways, county roads, and city or town streets. Elimination shall be accomplished at the boundary of the controlled-access right-of-way.

(2) After the establishment of any controlled-access highway or facility, no private or public highway or street which is not a part of the highway or facility shall intersect it at grade, *except as may be provided in the resolution designating it a controlled-access highway or facility.* No street, road, highway, or other public *or private* way shall be opened into or connected with any controlled-access highway or facility without the prior

consent and approval of the appropriate highway authority *which adopted the controlled-access resolution.*

(3) The commission may, whenever it determines that the public safety is not thereby impaired, authorize the continued intersection at grade of lightly traveled farm entrances and minor public roads as ways of access to controlled-access highways in sparsely populated rural areas. The commission shall have sole jurisdiction to determine the existence and location of any intersection with interstate highways, throughways, and other federal-aid and state highways."

Approved February 20, 1979.

CHAPTER NO. 41

AN ACT TO PROVIDE FOR A PUBLIC MEMBER ON THE BOARD OF OPTOMETRISTS AND TO CHANGE THE TERMS OF BOARD MEMBERS FROM 6 YEARS TO 4 YEARS; AMENDING SECTION 2-15-1612, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1612, MCA, is amended to read:

"2-15-1612. Board of optometrists. (1) There is a board of optometrists.

(2) The board consists of *four* members appointed by the governor. *Three members must* be registered *optometrists* of this state and actually engaged in the exclusive practice of optometry in this state during *their terms* of office. *One member must be a representative of the public who is not engaged in the practice of optometry.*

(3) Each member shall serve for a term of *4* years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. **Transition.** Persons who are members of the board of optometrists on the effective date of this act shall serve the remainder of their 6-year terms. All appointments or reappointments to the board made after the effective date of this act are for 4-year terms as provided in section 1, subsection (3).

Section 3. **Effective date.** This act is effective on its passage and approval.

Approved February 20, 1979.

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CHAPTER NO. 42

AN ACT TO AMEND SECTIONS 61-9-204 AND 61-9-205 TO DECREASE THE MINIMUM HEIGHT REQUIREMENT FOR TAILLAMPS AND REFLECTORS FROM 20 INCHES TO 15 INCHES TO COMFORM TO FEDERAL REGULATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-9-204, MCA, is amended to read:

"61-9-204. Taillamps. (1) Every motor vehicle, trailer, semitrailer, and pole trailer and any other vehicle which is being drawn at the end of a train of vehicles shall be equipped with at least one taillamp mounted on the rear, which, when lighted as hereinbefore required, shall emit a red light plainly visible from a distance of 500 feet to the rear, provided that in the case of a train of vehicles only the taillamp on the rearmost vehicle need actually be seen from the distance specified. Further, every such above-mentioned vehicle, other than a truck tractor, registered in this state and manufactured or assembled after January 1, 1956, shall be equipped with at least two taillamps mounted on the rear, which when lighted as herein required, shall comply with the provisions of this section.

(2) Every taillamp upon every vehicle shall be located at a height of not more than 72 inches or less than *15* inches.

(3) Either taillamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillamp or taillamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted."

Section 2. Section 61-9-205, MCA, is amended to read:

"61-9-205. New motor vehicles to be equipped with reflectors. (1) Every new motor vehicle hereafter sold and operated upon a highway, other than a truck tractor, shall carry on the rear, either as a part of the taillamps or separately, two red reflectors, except that every motorcycle and motor-driven cycle shall carry at least one reflector meeting the requirements of this section, and except that vehicles of the type mentioned in 61-9-208 shall be equipped with reflectors as required in those sections applicable thereto.

(2) Every such reflector shall be mounted on the vehicle at a height not less than *15* inches or more than 60 inches measured as set forth in 61-9-202(2) and shall be of such size and characteristics and so mounted as to be visible at night from all distances within 300 feet to 50 feet from such vehicle when directly in front of lawful upper beams of headlamps, except that visibility from a greater distance *may be* required of reflectors on certain types of vehicles."

Approved February 20, 1979.

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CHAPTER NO. 43

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO PUBLIC UTILITIES AND COMMON CARRIERS; REPEALING SECTIONS 8-127 AND 72-220, R.C.M. 1947, AND SECTIONS 69-14-136 AND 69-14-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-1-102, MCA, is amended to read:

"69-1-102. Creation of public service commission. A public service commission is hereby created, whose duty it *is* to supervise and regulate the operations of public utilities, *common carriers, railroads, and other regulated industries listed in this title.* Such supervision and regulation shall be in conformity with *this title.*"

Section 2. Section 69-1-108, MCA, is amended to read:

"69-1-108. Secretary of commission. (1) The commission shall, immediately after its members have qualified, appoint a secretary to serve during the pleasure of the commission. *The secretary shall be a qualified elector of the state.*

(2) The secretary shall:

(a) keep a full and complete record of all proceedings of the commission;

(b) be the custodian of its records and file and preserve at the office of the commission all books, maps, documents, and papers entrusted to his care and be responsible to the commission for the same; and

(c) perform such other duties as the commission may prescribe."

Section 3. Section 69-1-113, MCA, is amended to read:

"69-1-113. Removal or suspension of commissioner. If any commissioner *fails* to perform his duties as provided in *this title*, he may be removed from office as provided by 45-7-401. Upon complaint made and good cause shown, the governor *may* suspend any commissioner, and if, in his judgment the exigencies of the case require, the governor *may* appoint temporarily some competent person to perform the duties of *the* suspended commissioner during the period of *the* suspension."

Section 4. Section 69-2-202, MCA, is amended to read:

"69-2-202. Institution of and intervention in proceedings involving regulated companies. (1) The consumer counsel may institute proceedings before the commission against regulated companies.

(2) The consumer counsel may institute, intervene in, or otherwise participate in appropriate proceedings in the state and federal courts and administrative agencies in the name of and on behalf of the utility and transportation consuming public of the state of Montana or substantial elements thereof, including review of decisions rendered by or failure to

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act by the commission and applications for restraining orders pending the investigation of and decision upon a matter by the commission, pursuant to 27-19-203."

Section 5. Section 69-3-110, MCA, is amended to read:

"69-3-110. Enforcement of public utility law. (1) The commission shall inquire into any neglect or violation of the laws of this state by any public utility, as hereinbefore defined, doing business *in this state* or by the officers, agents, or employees thereof. The commission shall enforce the provisions of this chapter and report all violations thereof to the attorney general.

(2) All rates, fares, charges, classifications, and joint rates fixed by the commission shall be enforced and *are* prima facie lawful from the date of the order until changed or modified by the commission or in pursuance of part 4. All *rules*, practices, and services prescribed by the commission shall be enforced and *enforcement actions* shall be brought pursuant to the provisions of part 4 until *the rules, practices, or services are* changed or modified by the commission upon *a* satisfactory showing *being* made.

(3) Upon the request of the commission, it *is* the duty of the attorney general or the prosecuting attorney of any county to aid in any *investigation, prosecution*, hearing, or trial had under the provisions of this chapter and to institute and prosecute all actions or proceedings *necessary* for the enforcement of this chapter.

(4) Any forfeiture or penalty herein provided shall be recovered and suit thereon shall be brought in the name of the state in the district court of any county having jurisdiction of the defendant. The attorney general shall be the counsel in any proceeding, investigation, hearing, or trial prosecuted or defended by the commission, as also shall any prosecuting attorney selected by *the* commission or other special counsel furnished *the* commission in any county where such action is pending.

(5) In addition to the other remedies provided by this chapter for the prevention and punishment of any *violation* of the provisions thereof and all orders of the commission, the commission may compel compliance with the provisions of this chapter and of the orders of the commission by proceedings in mandamus, *by* injunction, or by other civil remedies."

Section 6. Section 69-3-204, MCA, is amended to read:

"69-3-204. Fees to be charged by commission. (1) The public service commission shall, except as otherwise provided by law, require and receive fees before filing annual reports, schedules, and supplements of these and shall require and receive fees for copies of orders, documents, classifications, blank forms, and other instruments prepared by it or on file in its office, unless provided by law to be furnished free of charge, under the following schedule:

(a) filing annual reports, each ..... $ 5.00;

(b) filing rate schedules, each ..... $ 2.00;

(c) classification for public utilities, each..... $ 1.50;

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(d) for blank forms of annual reports for utilities ..... cost

(2) This section does not require or authorize the public service commission to collect fees for the filing of annual reports, schedules, and supplements of these which relate solely to interstate commerce."

Section 7. Section 69-3-209, MCA, is amended to read:

"69-3-209. Violations of public utility laws or orders. If any public utility *violates* any provision of this chapter, *does* any act herein prohibited, or *fails* or *refuses* to perform any duty enjoined upon it, *fails* to place in operation any rate or joint rate, or *fails, neglects, or refuses* to obey any lawful requirement or order made by the commission or any court, *then* for every such violation, failure, or refusal *the* public utility *is* subject to the penalty prescribed by 69-3-206."

Section 8. Section 69-3-301, MCA, is amended to read:

"69-3-301. Schedule of rates, tolls, and charges. (1) Every public utility shall file with the commission, within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls, and charges which it has established and *which* are in force at the time for any service performed by it within the state or for any service in connection therewith or performed by any public utility controlled or operated by it. Every public utility shall file with and as a part of such schedule all rules that in any manner affect the rates charged or to be charged for any service. When a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedule shall in like manner be printed and filed with the commission.

(2) A copy of so much of *the* schedule as the commission *considers* necessary for the use of the public shall be printed in plain type and kept on file in every station or office of *the* public utility where payments are made by the consumers or users. *Such copy shall be* open to the public and in such form and place as to be readily accessible to the public and conveniently inspected."

Section 9. Section 69-4-202, MCA, is amended to read:

"69-4-202. Regulation of construction by rural electrification associations. (1) All electrical construction conducted and to be operated by any rural electrification association and constructed and to be operated in pursuance of the authority of the rural electrification administration of the federal government, within the state of Montana, shall be in conformity with the rules and regulations set forth in the national electrical safety code approved by the American *national standards institute*, as published by the *American institute of electrical and electronic engineers*, and any *revision* thereof as may exist from time to time; provided, however, that where Y-connected circuits with neutral conductors effectively grounded throughout their length are used, minimum vertical clearance of wires or neutral conductors over ground or rails shall be determined by the voltage between wires and ground if such voltage does not exceed 15,000 volts.

(2) The provisions of the national electrical safety code, as designated in subsection (1), wherever the same *are* in conflict with or in any manner

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contravene the provisions of this part, shall be construed as superseding, amending, and modifying the provisions of this part *to the extent of such conflict*; provided that the provisions of this section apply only to electrical construction conducted and operated in pursuance of the authority of the rural electrification administration of the federal government.

(3) Every person, firm, or corporation which *violates* any *provision* of this section *is* guilty of a misdemeanor."

Section 10. Section 69-4-204, MCA, is amended to read:

"69-4-204. Regulation by local government. *No ordinance in conflict with any provision of this part may be enacted by a municipality, and any such ordinance is void.*"

Section 11. Section 69-4-305, MCA, is amended to read:

"69-4-305. Effect on authority of public service commission. Nothing contained in this part shall vest any jurisdiction over *any* public utility in the governing body. The public service commission shall retain all jurisdiction now or hereafter conferred upon it by law."

Section 12. Section 69-5-106, MCA, is amended to read:

"69-5-106. Service to industrial or commercial premises. (1) An electric utility *has* the right to furnish electric service to any industrial or commercial premises if the estimated connected load for full plant operation at such industrial or commercial premises will be 400 kilowatts or larger within 2 years from the date of initial service provided such electric utility can extend its lines to such industrial or commercial premises at less cost to the electric utility or the industrial or commercial customer than the electric cooperative cost. The estimated connected load shall be determined from the plans and specifications prepared for construction of the premises or, if such estimate is not available, shall be determined by agreement of the electric supplier and the customer. The fact that actual connected load after 2 years from the date of initial service *is less than* 400 kilowatts *does* not affect the right of the electric supplier initially providing service to continue service to such premises.

(2) An independent consultant engineer agreeable to both electric suppliers or, in the event of failure of the electric suppliers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric supplier can extend its lines to the consumer at the least *cost*. The *cost* of such engineering services shall be paid equally by the electric suppliers involved.

(3) No premises other than another such commercial or industrial premises shall be served from a line constructed under this section."

Section 13. Section 69-5-109, MCA, is amended to read:

"69-5-109. Special provisions for annexed areas. With respect to service in areas which are annexed to incorporated municipalities having a population in excess of 3,500 persons, electric suppliers have rights and *are* subject to restrictions as follows:

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(1) Every electric supplier *has* the right to serve all premises being served by it on the date of annexation.

(2) An electric cooperative *does* not have the right to serve any premises initially requiring service on or after the date of annexation. The restriction stated in this subsection does not apply to incorporated municipalities in which 95% or more of the premises *were* served by an electric cooperative on February 1, 1971."

Section 14. Section 69-11-109, MCA, is amended to read:

"69-11-109. Provision for transportation of passengers and property for free or reduced rates. (1) No provisions of the laws of this state prevent any person, association, company, or corporation engaged as a common carrier of persons or property in this state from carrying, storing, or handling property free or at reduced rates for the United States, *for* state or municipal governments, or for charitable institutions; property which is being transported to or from fairs and expositions for exhibit thereat; or cars used by the government of the United States or the state for the transportation of fish *and from* carrying free or at reduced rates agents and employees employed in such transportation; and nothing therein contained *prevents* such person, association, company, or corporation from issuing free transportation or selling tickets at reduced rates to the classes of persons *listed in 69-11-208.*

(2) When free transportation or a ticket at a reduced rate is issued to any officer or any president or member of the faculty of any educational institution referred to in *69-11-208(1)(r)*, it shall only be issued upon the application of the secretary of state and the transportation or ticket shall be delivered to the secretary of state for delivery to the person or persons applying therefor. The secretary of state shall keep record of all transportation and tickets at reduced rates so received and delivered by him. The state officer and the president and faculty of the state educational institutions, when traveling upon any free transportation, may not charge any mileage against the state, or if traveling upon a ticket sold at reduced fare, they may not charge mileage in excess of the cost of the ticket.

(3) The carrying free or at reduced rates of property or persons in any of the classes above specified shall be held to be a reasonable classification by *common carriers* for such purposes and not to be unjust discrimination. The carriage and transportation by any *common carrier* at free or reduced rates in any of the cases above specified *is not* a violation of any of the provisions of the laws of Montana *and does not* subject *the common carrier* to any penalty therefor."

Section 15. Section 69-11-121, MCA, is amended to read:

"69-11-121. Detriment caused by carrier. (1) The detriment caused by the breach of a carrier's obligation to accept freight, messages, or passengers is deemed to be the difference between the amount which he had a right to charge for the carriage and the amount which it would be necessary to pay for the same service when it ought to be performed.

(2) The detriment caused by the breach of a carrier's obligation to deliver freight where he has not converted it to his own use is deemed to

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be the value thereof at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled if he had completed the delivery.

(3) The detriment caused by a carrier's delay in the delivery of freight is deemed to be the depreciation in the intrinsic value of the freight during the delay and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value, at the place where it ought to have been delivered and between the day at which it ought to have been delivered and the day of its actual delivery.

(4) The damages prescribed by this section are exclusive of exemplary damages and interest except where those are expressly mentioned. Notwithstanding the provisions of this section, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides, except *as provided in 27-1-303.*"

Section 16. Section 69-11-208, MCA, is amended to read:

"69-11-208. Classes of persons who may receive free transportation. (1) The persons to whom free tickets, free passes, free transportation, and discriminating reduced rates may be issued, furnished, or given are the following:

(a) the officers, agents, employees, attorneys, physicians, and surgeons of such common carriers of passengers *and the officers and employees of other common carriers upon the exchange of passes or tickets*;

(b) the families of the persons included in subsection (1)(a);

(c) the general officers of any such common carriers;

(d) employees of sleeping car and express car companies and linemen of telegraph and telephone companies, railway mail service employees, post-office inspectors, customs inspectors, and immigration inspectors, newsboys and newsgirls on trains, and baggage agents;

(e) persons injured in wrecks and physicians and nurses attending such persons;

(f) passengers traveling with the object of providing relief in cases of railroad accident, general epidemic, pestilence, or other calamitous visitation;

(g) necessary caretakers of livestock, vegetables, and fruit, including return transportation to forwarding stations;

(h) the officers, agents, or regularly accredited representatives of labor organizations composed wholly of employees of railway companies;

(i) inmates of homes for the reform or rescue of the *disadvantaged*, including those about to enter and those returning home after discharge, and boards of managers, including officers and superintendents, of such homes;

(j) superannuated and pensioned employees and members of their families and surviving spouses of such members;

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(k) employees crippled and disabled in the service of the common carrier of passengers;

(l) policemen and firefighters of any city, wearing the insignia of their office, within the limits of such city;

(m) ministers of religion, newspaper employees in exchange for advertising, traveling secretaries of Young Men's Christian Associations and Young Women's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work;

(n) indigent, destitute, and homeless persons, while being transported by charitable societies or hospitals, and necessary agents and employees in such transportation;

(o) school children, to and from public or parochial schools;

(p) *military personnel going to or coming from institutions for their keeping*;

(q) executive, judicial, or legislative officers of this state, including the members of the faculty of the different educational institutions of this state;

(r) the furloughed employees of common carriers authorized by 69-11-207 to issue free transportation and members of their families;

(s) persons who have become disabled or infirm in the service of a common carrier or members of families of persons who have become disabled or infirm in the service of any such common carrier;

(t) families of persons killed and surviving spouses who have not remarried and minor children during minority of persons who died while in the service of any such common carrier;

(u) witnesses attending any legal investigation in which such carrier is interested;

(v) the remains of persons who died while in the employment of a common carrier; and

(w) ex-employees traveling for the purpose of entering the service of any such common carrier.

(2) The provisions of this section and 69-11-207 shall not be construed to prohibit the interchange of passes for the persons to whom free tickets, free passes, or free transportation may be furnished or given under the provisions of this section. Nothing in this section or 69-11-207 shall be construed to invalidate any existing contract between a street railway company and a city where a condition of a franchise grant requires the furnishing of transportation to policemen, firefighters, and officers while in the performance of official duties."

Section 17. Section 69-11-421, MCA, is amended to read:

"69-11-421. Liability of inland carriers for loss. (1) Any common carrier, railroad, or transportation company subject to the provisions

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of 69-11-421 through 69-11-427, receiving property for transportation from a point in Montana to any other point in Montana, shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the state when transported on a through bill of lading. No contract, receipt, rule, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed.

(2) Except as provided in 69-11-422, any common carrier, railroad, or transportation company receiving property for transportation from a point in Montana to a point in Montana or any common carrier, railroad, or transportation company delivering property so received and transported *is* liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the state when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading or in any contract or rule or in any tariff filed with the public service commission. Any such limitation, without respect to the manner or form in which it is sought to be made, is unlawful and void, except:

(a) an inherent defect, vice, *or* weakness or a spontaneous action of the property itself;

(b) the act of a public enemy of the United States or of this state;

(c) the act of the law;

(d) an irresistible superhuman cause;

(e) the act or default of the shipper or owner; or

(f) for natural shrinkage.

(3) Nothing in 69-11-421 through 69-11-426 *deprives* any holder of such receipt or bill of lading of any remedy or right of action.

(4) The liability imposed by this section also *applies* in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as provided in this part.

(5) A common carrier is liable, even in the cases excepted by *subsection (2)*, if his ordinary negligence exposes the property to the cause of the loss."

Section 18. Section 69-12-101, MCA, is amended to read:

"69-12-101. Definitions. Unless the context requires otherwise, in this chapter *the following definitions apply*:

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(1) "Between fixed termini" or "over a regular route" means the termini or route between or over which a motor carrier usually or ordinarily operates motor vehicles, even though there may be periodical or irregular departures from the termini or route.

(2) "Certificate" means the certificate of public convenience and necessity issued under this chapter.

(3) "Compensation" means the charge imposed on motor carriers for the use of the highways in this state by motor carriers under 69-12-421.

(4) "Corporation" means a corporation, company, association, or joint-stock association.

(5) "For hire" means for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(6) "Motor carrier" means a person or corporation, or its lessees, trustees, or receivers appointed by any court, operating motor vehicles upon any public highway in this state for the transportation of persons or property for hire on a commercial basis, either as a common carrier or under private contract, agreement, charter, or undertaking. The term includes any motor carrier serving the public in the business of transportation of ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter.

(7) "Motor vehicle" includes vehicles or machines, motor trucks, tractors, or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state.

(8) "Person" means an individual, firm, or partnership.

(9) "Public highway" means a public street, road, highway, or way in this state.

(10) "Railroad" means the movement of cars on rails, regardless of the motive power used."

Section 19. Section 69-12-108, MCA, is amended to read:

"69-12-108. Violations. Any motor carrier subject to the provisions of *this chapter*, as amended, or whenever any such motor carrier is a corporation, any director or officer thereof; any receiver, trustee, lessee, agent, or *person* acting for or employed by such corporation; any person, corporation, or association or officer, agent, or employee thereof; or any broker of property or officer, agent, or employee thereof who violates or fails to comply with or who procures, aids, or abets in the violation of any provision of *this chapter*, as amended, or who fails to obey, observe, or comply with any lawful order, decision, rule, direction, demand, or requirement of the commission or any part of *the* provisions thereof *is*:

(1) subject to a civil penalty, to be collected and deposited to the general fund by the commission after notice and hearing, in an amount not less than $25 or more than $500 for the first offense and not less than $100 or more than $1,000 for each subsequent offense; or

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(2) subject, upon conviction in a justice's court, to a fine of not less than $25 or more than $500 for the first offense and not less than $100 or more than $1,000 for each subsequent offense."

Section 20. Section 69-12-203, MCA, is amended to read:

"69-12-203. Supervisor of motor carriers. (1) The commission shall appoint a supervisor of motor carriers who shall have general responsibility to *the commission* for enforcement of the provisions of this chapter. The supervisor shall be either an attorney admitted to practice law in Montana or a person qualified by at least 5 years of suitable experience and training in appropriate phases of the motor carrier industry. He shall serve at the pleasure of the commission and at an annual salary to be set by the commission.

(2) The supervisor shall direct all enforcement activities in behalf of the commission, including the investigation and prosecution of violations of *this chapter*, as amended, or the rules or orders prescribed thereunder by the commission.

(3) The supervisor and whatever field inspectors may be employed by the commission to assist him shall be deemed peace officers for the purpose of making arrests in connection with violations of *this chapter*, as amended, and issuing summonses, accepting bail, and serving warrants of arrest. The supervisor and field inspectors are empowered to make reasonable inspections of cargoes carried by commercial motor vehicles and require production of manifests, bills of lading, leases, and other documents relating to the cargo, routing, or ownership of such vehicles."

Section 21. Section 69-14-101, MCA, is amended to read:

"69-14-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Paralleling" *means the situation* where the main tracks of parallel lines of railroad or railway are not more than 2,000 feet apart when measured from center to center.

(2) "Railroad" means a corporation, company, or individual owning or operating a railroad in whole or in part in this state. The term also includes express companies and sleeping-car companies.

(3) "Transportation" includes instrumentalities of shipment or carriage."

Section 22. Section 69-14-102, MCA, is amended to read:

"69-14-102. Application. *This chapter* applies to all persons, firms, or companies, incorporated or otherwise, that do business as common carriers on any of the lines of railroad in this state."

Section 23. Section 69-14-103, MCA, is amended to read:

"69-14-103. Interpretation. *This chapter* shall not have the effect *of releasing or waiving* any right of action by the state or any person for any right, penalty, or forfeiture which may arise under any law of this state. All penalties accruing under this part *are* cumulative to each other,

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and a suit for or recovery of one *is* not a bar to the recovery of any other penalty."

Section 24. Section 69-14-112, MCA, is amended to read:

"69-14-112. Investigatory authority. (1) The commission shall investigate any alleged neglect or violation of the laws of the state by any railroad or other company above specified doing business therein or by the officers, agents, or employees thereof. The commission shall examine and inspect or cause to be examined and inspected all books, records, files, and papers of the persons and companies specified above, insofar as the same may be pertinent to any matter under investigation before *the* commission, and *shall* hear and take testimony in the progress of any inquiry or investigation authorized by *this chapter*.

(2) The commission, or some members thereof to be deputed by it, shall investigate and make inquiry into every accident occurring in the operation of any railroad in this state resulting in death, injury to any person of such gravity as to require the attention of a physician or surgeon, or the destruction of property greater in value than $2,000. The testimony taken on any such hearing shall be transcribed and filed in the office of the commission."

Section 25. Section 69-14-113, MCA, is amended to read:

"69-14-113. Attendance and examination of witnesses. (1) The commission in making any examination or investigation provided for in *this chapter may* issue subpoenas for the attendance of witnesses by such rules as it may prescribe. Each witness shall receive the sum of $3 per day, together with the sum of 5 cents per mile traveled by the nearest practicable route in going to and returning from the place of meeting of *the* commission. No witness furnished with free transportation *may* receive mileage for the distance he may have traveled on such free transportation. No person *may* be excused from attending or testifying or producing any books, papers, documents, or any thing or things before any court or magistrate or commissioner or board upon any investigation, proceeding, or trial under the provisions of *this chapter* or for any violation of any of them upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture. No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, and no testimony or evidence so given or produced shall be received against him upon any civil or criminal proceeding, action, or investigation.

(2) (a) The process issued by *the* commission shall be under seal and extend to all parts of the state. *The* commission shall have power to issue process in like manner as courts of record. Such process may be served by any person authorized to serve process of courts of record or by any person appointed by the commission for such purpose.

(b) In the event the process issued by the commission is a subpoena for the attendance of a witness and he *fails, neglects, or refuses* to obey the

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same, the commission is hereby authorized to file a petition with any district court in the state, setting up the facts and the necessity of having *the* witness appear in *the* trial. The court shall thereupon summarily direct that a subpoena be issued out of the court requiring the attendance of any person as a witness before the court. The commission *may* thereupon examine such witness before *the* court, under oath, respecting any inquiry or investigation being made by *the* commission pursuant to the provisions of *this chapter*. The court shall likewise, when any petition is filed stating the necessity therefor, order the production by any person or corporation, for examination in *the* court, of any books, papers, records, or files necessary or pertinent to any inquiry or investigation then being made by *the* commission."

Section 26. Section 69-14-115, MCA, is amended to read:

"69-14-115. Investigation, enforcement, and report concerning railroad safety laws. (1) *The* commission *shall:*

(a) make inquiry into the observance by all railroads within this state of the laws of the United States and of Montana intended to safeguard the lives of the employees of persons or corporations engaged in operating the same;

(b) lay complaint before the proper state or federal *officer*, of any infraction of any of such laws; and

(c) prosecute before the proper court or tribunal any person guilty of violation of the penal provisions thereof.

(2) *The* commission shall in *the* annual report *required by 2-7-102* set out what effort it has made to carry out the provisions of this section, with the result thereof, and in detail what steps it has taken to *prosecute* any violations of any such acts of which it has secured information. A copy of this annual report shall be mailed to the secretary of the department of transportation."

Section 27. Section 69-14-131, MCA, is amended to read:

"69-14-131. Enforcement duties of commission. *The* commission *shall* see that the provisions of *this chapter* and all laws of this state concerning railroads are enforced and obeyed and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected. *The* commission shall report all such violations, with the facts in its possession, to the attorney general or other officer charged with the enforcement of the laws and request him to institute the proper proceedings. All suits between the state and any railroad shall have precedence in all courts over all civil causes, *criminal business and* original proceedings in the supreme court excepted."

Section 28. Section 69-14-132, MCA, is amended to read:

"69-14-132. Legal assistance for commission. The attorney general is the attorney of the commission, and the county attorney of every county in the state shall, on the request and at the direction of the attorney general, assist in all cases, proceedings, and investigations undertaken by the commission under this *chapter* in his own county. However, the

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commission may employ special counsel, with the approval of the attorney general, to assist in any case, matter, proceeding, or investigation instituted under this *chapter*. The attorney general, upon direction of the commission, and the county attorney of each county in this state, upon direction of the attorney general, shall institute and prosecute and appear and defend any action or proceeding arising under this *chapter*. All suits and proceedings filed in any court of this state under this *chapter* shall have precedence over all other business in the court except criminal business and original proceedings in the supreme court."

Section 29. Section 69-14-133, MCA, is amended to read:

"69-14-133. Collection and disposition of penalties and forfeitures. *Unless otherwise provided, all* penalties and forfeitures incurred, levied, and made under the provisions of *this chapter* shall be collected by *the* commission and paid over to the state treasurer and credited to the general fund. Should the commission fail or refuse to institute appropriate action for the recovery of any penalty or forfeiture provided for herein for the space of 60 days after notice of the cause of complaint by *an* aggrieved person or shipper, such person or shipper may institute and prosecute such action in the name of the state against such railroad, in the same manner as could the commission."

Section 30. Section 69-14-134, MCA, is amended to read:

"69-14-134. Court enforcement of commission actions. (1) The district court *has* jurisdiction to enforce, by proper decree, injunction, or order, the rates, classifications, rulings, orders, and regulations made or established by the commission under the provisions of *this chapter*. The proceeding therefor shall be by equitable action in the name of the state and shall be instituted by the attorney general or county attorney, whenever advised by the commission that any railroad, railway, or common carrier is violating or refusing to comply with any such rule, order, rate, classification, or regulation made by the commission and applicable to such railroad, railway, or common carrier. Such proceedings shall have precedence over all other business in such courts except criminal business.

(2) In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, regulation, rate, or classification involved is unreasonable and unjust as to *it*. If, in such action, it is the decision of the court that the rule, regulation, order, rate, or classification is not unreasonable or unjust and that in refusing compliance therewith the railroad, railway, or common carrier is thereby failing or omitting the performance of any duty, debt, or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with the rule, regulation, order, rate, or classification by the defendant and its officers, agents, servants, and employees and may grant such other relief as *is* just and proper. Any violation of such decree *renders* the defendant and *any* officer, agent, servant, or employee of the defendant who is in any manner instrumental in such violation guilty of contempt, punishable by a fine not exceeding $1,000 for each offense or by imprisonment of the person guilty of contempt until he sufficiently *purges* himself therefrom. Such decree *remains* in effect until the rule, regulation, order, rate, or classification shall be

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modified or vacated by the commission. Nothing contained herein shall be construed to deprive either party to such proceedings of the right to trial by jury as provided by the seventh amendment to the constitution of the United States or as provided by the constitution of this state.

(3) An appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court *except original proceedings in the supreme court.*"

Section 31. Section 69-14-135, MCA, is amended to read:

"69-14-135. General right to supreme court review. Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of *this chapter.* Such appeals have precedence over all other business except criminal business and original proceedings in such court and shall be heard and determined as are appeals in civil actions."

Section 32. Section 69-14-137, MCA, is amended to read:

"69-14-137. Violations. If any railroad *or other common carrier* willfully *violates* any provision of *this chapter, does* any other act herein prohibited, or *refuses* to perform any lawful orders emanating from *the* commission relating to rates and charges or any other duty enjoined upon it for which a penalty has not been provided, *then* for every such act *or* violation it shall pay to the state a penalty of not more than $500."

Section 33. Section 69-14-202, MCA, is amended to read:

"69-14-202. Duty to furnish shipping and passenger facilities. (1) *Every* person, corporation, *or* association operating a railroad in the state *shall* maintain and staff facilities for shipment and delivery of freight and *shall* ship and deliver freight and accommodate passengers in at least one location, preferably the county seat, in each county through which the line of the railway passes and at any point upon the line of such railway where there is a city or town having a population, according to the last federal census, of not less than 1,000; provided, however, that this section shall not require the maintenance and staffing of such facilities in any county or at any city or town in which such facilities were not maintained and staffed on July 1, 1969.

(2) Nothing in this section *authorizes* the discontinuance of any facility presently established in any city, town, or other location having a population of less than 1,000 without a hearing before the public service commission, as provided by law."

Section 34. Section 69-14-209, MCA, is amended to read:

"69-14-209. Issuance of passenger tickets. (1) Every railroad corporation must provide and, on being tendered the regular rates of fare, furnish a ticket to every person desiring a passage on its passenger cars, which entitles the purchaser to a ride and to the accommodations provided on *its* cars from the depot or station where the same is purchased to any other depot or station on the line of its road. Every such ticket entitles the holder thereof to ride on its passenger cars to the station or depot of

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destination or any intermediate station and from any intermediate station to the depot of destination designated in the ticket at any time within 6 months thereafter.

(2) Any corporation failing to provide and furnish tickets or refusing the passage which the same calls for when sold must pay to the person refused the sum of $200."

Section 35. Section 69-14-215, MCA, is amended to read:

"69-14-215. Issuance of bills of lading by railroad station agents — penalty. (1) All railway companies operating in the state which do not permit bills of lading to be issued by employees *other* than agents shall be required to have bills of lading issued by the station agent at the nearest station where a station agent is regularly maintained in the direction toward which the shipment is destined. The conductor of the train which receives the shipment at its point of origin shall deliver to the agent at the nearest station at which an agent is maintained through which *the* shipment moves, immediately upon the arrival of the train carrying *the* shipment at *the* agency station, all data necessary for the issuance of a bill of lading for *the* shipment. The agent shall immediately issue *the* bill of lading and shall deliver the same to the shipper or his agent or shall, within 24 hours after the receipt of *the* data from the conductor, for shipment of 20,000 pounds or over, deposit the bill of lading in a United States post office, addressed and registered *or certified* to the consignor of *the* shipment or his agent or attorney to his proper post-office address. *A bill of lading for* shipments of less than 20,000 pounds *may* be mailed without *the use of registered or certified mail.*

(2) Any railway company operating in Montana violating any provisions of this section *is* guilty of a misdemeanor and liable to a fine of not less than $50 or more than $1,000."

Section 36. Section 69-14-232, MCA, is amended to read:

"69-14-232. Size and equipment of caboose. (1) Cabooses shall be at least 24 feet in length, exclusive of platforms, and shall be provided with a door in each end and with cupolas or bay windows, platforms, *guardrails*, grabirons, and steps for the safety of persons in alighting or getting on cabooses. Cabooses shall be of metal frame construction and be sufficiently insulated to eliminate track and other related noise above 85 decibels in any octave in the speech range. Other requirements for cabooses are as follows:

(a) The trucks shall provide riding qualities at least equal to those of freight type trucks modified with elliptical or additional coil springs or other means of equal or greater efficiency and shall have at least two four-wheel trucks with standard steel wheels or their equivalent. Draft gears shall have a minimum travel of 2 ½ inches and a minimum capacity of 18,000 foot-pounds and shall comply with Association of American *Railroads* Standard M-901 or its equivalent.

(b) Electric lighting of at least 40 foot-candles shall be provided for direct illumination of the caboose desk, reading areas, and lavatory facilities.

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(c) A spotlight shall be provided on the rear of the caboose with sufficient candlepower to illuminate the track for a distance of at least 300 feet to the rear of the caboose during the hours of darkness.

(d) The caboose marker or markers shall be either reflectorized or capable of illumination when required.

(e) Only glass of the *safety-glass* type shall be used in partitions, doors, windows, or wind deflectors.

(f) All seats and seat backs shall conform to the safety standards *designated* by the United States department of transportation in its "Federal Motor Vehicle Safety Standards", Motor Vehicle Safety Standard No. 201. All edges and protrusions on seats and seat backs shall be rounded to prevent injury to employees.

(2) Any person, corporation, or company, operating any railroad or railway in this state, violating any of the provisions of *this section and 69-14-233 is* guilty of a misdemeanor and upon conviction thereof shall be fined not less than $500 or more than $1,000 for each offense."

Section 37. Section 69-14-252, MCA, is amended to read:

"69-14-252. Accident reports. *Every* railroad company operating any line of railroad within this state *shall* promptly upon the occurrence of any accident mentioned in 69-14-112(2) report the same to the commission. In the report shall be stated the time and place of the accident, the names of the persons killed or injured, and the value of any property destroyed."

Section 38. Section 69-14-301, MCA, is amended to read:

"69-14-301. Commission powers related to ratemaking. (1) The commission shall adopt all necessary rates, charges, and regulations to govern and regulate freight and passenger tariffs, to correct abuses, and to prevent unjust discrimination and intimidation in the rates of freight and passenger tariffs on the different railroads in this state and to make the same effective by enforcing the penalties prescribed in *this chapter.*

(2) The commission shall fairly and justly classify and subdivide all freight and merchandise of whatever character that may be transported over railroads of this state into such general and special classes or subdivisions as may be considered necessary or expedient.

(3) The commission may fix different rates for different railroads and for different lines under the same management or for different parts of the same lines if found necessary to do justice and may make rates for express companies different from the rates fixed for railroads. The commission shall also fix and establish for all or any connecting lines of railroad in this state reasonable joint rates of freight charges for the various classes of freight and cars that may pass over two or more lines of such railroads.

(4) The commission shall make and establish reasonable rates for the transportation of freight within the state and shall prescribe rates, tolls, and charges for all other *services* performed by any railroad subject hereto."

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Section 39. Section 69-14-303, MCA, is amended to read:

"69-14-303. Prohibition on rate discrimination. (1) If any railroad subject hereto, directly or indirectly or by any special rate, rebate, drawback, or other device, charges, demands, or receives from any person, firm, or corporation a greater or *lesser* compensation for any service rendered or to be rendered in the transportation of property subject to the provisions of *this chapter* than that fixed by the commission for such service, such railroad shall forfeit and pay to the state not less than $500 or more than $2,000 for each offense. Nothing in this subsection prevents any railroad or railroad corporation from giving excursion rates to or from any point within or without the state.

(2) If any railroad subject to *this chapter* or its agents or officers hereafter collects, charges, demands, or receives from any person, company, firm, or corporation a greater rate, charge, or compensation than that fixed and established by the commission for the transportation of freight, passengers, or cars or for the use of any car on the line of its railroad or any line operated by it or for receiving, forwarding, handling, or storing any such freight car or for any other service performed or to be performed by it, such railroad and its agents and officers shall forfeit and pay to the state a sum not less than $500 or more than $2,000.

(3) (a) It is unlawful for any railroad subject to this title to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like *kinds* of property for a shorter distance than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as through rate than the aggregate of the intermediate rates; provided that upon application to the commission and after investigation, such carrier, in special cases, may be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property, and the commission may from time to time prescribe the extent to which such designated carriers may be relieved from the operation of the foregoing provisions of this subsection, but in exercising the authority conferred upon it in this proviso, the commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed.

(b) Violations of subsection *(3)* shall be punished in accordance with 69-14-805."

Section 40. Section 69-14-309, MCA, is amended to read:

"69-14-309. Posting of rate schedule. Each railroad affected by the provisions of *this chapter* shall display, in a conspicuous place in each of its stations in this state, a schedule printed in plain, legible, English type showing all classifications and rates fixed and established by the commission."

Section 41. Section 69-14-322, MCA, is amended to read:

"69-14-322. Actions to recover excess charges. (1) Any sum or amount of money paid to any railroad by any person or shipper in excess of the rates, tolls, or charges fixed and established by the commission for

such service may be recovered from such railroad by the person or shipper in any action instituted and maintained in the district court of the county in which such payment was made. No contract or agreement, written or otherwise, between such person or shipper and the railroad shall be admissible in evidence for the purpose of showing a waiver of the right given by this section. No voluntary payment by any person or shipper of any such excess or overcharge to any railroad shall be or be held to be a waiver on the part of such person or *shipper* of the right to sue and recover for such excess or overcharge as provided for in this section. If upon the trial of such action it shall satisfactorily appear to the court or jury that such overcharge was willfully made, the person or shipper bringing the action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of such action, including a reasonable attorney's fee, to be taxed and collected as other costs in the action.

(2) *An* action *under this section must* be brought within 3 years from the date *the cause of action accrues.*"

Section 42. Section 69-14-402, MCA, is amended to read:

"69-14-402. Lawsuit to determine reasonableness of commission actions. (1) Any railroad, shipper, or other interested person may bring an action in the district court of the county where the principal office or place of business of such railroad, *shipper, or other interested person* is situated or in any county where any classification, rate, toll, charge, *rule*, or order of the commission is applicable, against the commission as defendant, to determine whether or not any such classification, rate, toll, charge, *rule*, or order made, fixed, or established by the commission under the provisions of *this chapter* is just and reasonable.

(2) Until the final decision in any such action, the classification, rate, toll, charge, *rule*, or order of the commission affecting rates or charges shall be *considered* to be final and conclusive except as herein otherwise provided. In any action, hearing, or proceeding in any court, the classifications, rates, tolls, charges, *rules*, and orders made, fixed, and established by *the* commission shall prima facie be *considered* just, reasonable, and proper.

(3) All costs and expenses incurred in the hearing, trial, or appeal of any action brought under this section shall be fixed and assessed as may seem just and equitable to the court.

Section 43. Section 69-14-501, MCA, is amended to read:

"69-14-501. Organization of railroad corporation. (1) The persons named in the articles of incorporation or a majority of them shall be authorized to order books to be opened for receiving subscriptions to the capital stock of the railroad corporation, at such times and at such places as they may deem expedient, after having given at least 30 days' notice in a newspaper of general circulation in this state of the time and place of opening books.

(2) As soon as 5% *of* the capital stock *is* subscribed, they may give like notice for the stockholders to meet at such time and place within the state

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as they may designate for the purpose of electing five or more directors who shall continue in office until the time fixed for the annual election, which time shall be within 6 months from the date when such directors were elected, and until their successors are elected and qualified. At the time and place appointed, directors shall be elected in the manner provided in *35-1-506. The candidates for director receiving the highest number of votes shall be declared elected.* The persons named in such articles or such of them as may be present shall be inspectors of such election and shall certify what persons are elected directors and *specify* the time and place for holding their first meeting."

Section 44. Section 69-14-511, MCA, is amended to read:

"69-14-511. Authorization to consolidate railroad corporations. *(1)* Any two or more railroad corporations whose respective lines are wholly or partly within this state, whether chartered by or organized under the laws of the state or territory of Montana or of the United States or of any other state or territory, may consolidate their capital stock, franchises, and property and thereby become one corporation *to be known* by any name adopted by them, which may be that of one of them, upon such terms and conditions as may be agreed upon by them, in the manner provided in 69-14-512.

(2) Before any railroad corporation organized under the laws of any other state or territory or of the United States shall be permitted to avail itself of the benefits of this section and 69-14-512, such corporation shall file with the secretary of state a true copy of its charter or articles of incorporation."

Section 45. Section 69-14-512, MCA, is amended to read:

"69-14-512. Procedure to consolidate. (1) Articles of agreement shall be entered into by such corporations, under their respective corporate seals and the signatures of their respective presidents and secretaries, containing the terms and conditions of such consolidation and the mode of carrying the same into effect, including:

(a) the name of the corporation resulting from such consolidation;

(b) the amount of its capital stock and the number and amount of shares thereof;

(c) the manner of retiring the shares of the capital stock of the corporations so consolidated or of converting the same into or exchanging *them* for the capital stock of such resultant corporation;

(d) the number which shall constitute the board of directors of such corporation and what officers it shall have;

(e) the persons who shall constitute the first board of directors and officers thereof, their *terms* of office, and the manner in which their successors shall be elected, which shall be according to the provisions of *69-14-501*; and

(f) such other matters as *are considered* necessary to perfect such consolidation and as may be agreed upon.

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(2) Such articles of agreement shall, before the same shall be effectual, be assented to, approved, or ratified by the stockholders of the respective corporations so consolidated at a regular meeting of such stockholders or a special meeting thereof, duly called and held, by resolution adopted by a vote in favor thereof, in person or by proxy, of the holders of at least *a majority* in amount of the outstanding capital stock of such corporations, respectively.

(3) A duplicate of such articles of agreement, together with a copy of the resolutions adopted by the stockholders of such corporations assenting to, approving, or ratifying the same, certified under the corporate seal and the signature of the secretary and verified by a sworn statement of the president and secretary of the *corporations* stating that such resolution was duly adopted by the vote in favor thereof of the holders of *a majority* in amount of the outstanding capital stock of the *corporations* at a meeting of the stockholders thereof, duly held, shall be recorded in the office of the secretary of state. It shall be the duty of the secretary to record the same upon presentation for that purpose. Upon the filing thereof for record, as aforesaid, the corporation formed by such consolidation shall be a corporation by the corporate name mentioned in such articles of agreement and as such shall be perpetual and shall succeed to and have, own, possess, exercise, and enjoy all the powers, rights, franchises, privileges, immunities, and property of every name and nature possessed by the corporations so consolidated or to which they were entitled at the time of such consolidation and shall be entitled to have, own, hold, exercise, possess, and enjoy all the powers, rights, franchises, privileges, and immunities which may at any time appertain to railroad corporations under the general laws of this state. *All railroads and branches thereof of the consolidated corporation are subject to taxation and to regulation and control by the laws of this state, in all respects the same as if constructed by corporations organized under the laws of this state.*"

Section 46. Section 69-14-513, MCA, is amended to read:

"**69-14-513. Lease or purchase of other railroads.** (1) Any railroad corporation, whether chartered by or organized under the laws of the state or territory of Montana, the United States, or any other state or territory, may lease or purchase the whole or any part of the railroad or line of railroad of any railroad corporation, constructed or unconstructed, together with all the rights, powers, immunities, privileges, franchises, and all other property or appurtenances thereto. *The railroad company of any other state of the United States which purchases or leases a railroad or any part thereof in this state:*

(a) shall possess and may exercise and enjoy, as to the control, management, and operation of the road, all the rights, powers, privileges, and franchises possessed by railroad corporations organized under the laws of this state, including the exercise of the power of eminent domain; and

(b) shall establish and maintain an office or offices in this state at some point or points on its line at which legal process and notice may be served, as upon railroad corporations of this state.

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(2) Any railroad company may sell or lease the whole or any part of its railroad or branches within this state, constructed or to be constructed, together with all property and rights, privileges, and franchises pertaining thereto, to any railroad company organized or existing pursuant to the laws of the United States, this state, or any other state or territory of the United States.

(3) All roads or branches thereof in this state, whether purchased or leased, shall be subject to taxation and to regulation and control by the laws of this state, in all respects the same as if constructed by corporations organized under the laws of this state.

(4) Before any such lease or purchase shall be *effective*, it shall be assented to or approved or ratified by the stockholders of each corporation by a vote in favor thereof, at a general or special meeting of such stockholders, by the holders of *a majority* in amount of all the outstanding capital stock of the company."

Section 47. Section 69-14-514, MCA, is amended to read:

"69-14-514. Interrailroad business arrangements and out-of-state operations. (1) Any railroad company incorporated pursuant to the laws of this state, the United States, or any state or territory of the United States may at any time, by means of subscription to the capital stock of any other railroad company or by the purchase of its stock or bonds or by guaranteeing its bonds or otherwise, aid such company in the construction of its railroad within or without this state *and may take, purchase, hold, sell, and dispose of or guarantee the payment of the capital, stock, bonds, and securities of any other railroad corporation whose line of railroad within this state is continuous of or connects with its own line.*

(2) Any company owning or operating a railroad within this state may:

(a) extend the same into any other state or territory;

(b) build, buy, lease, or consolidate with any railroad or railroads in such other state or territory;

(c) operate the same; and

(d) own such real estate and other property in such other state or territory as may be necessary or convenient in the operation of such road.

(3) Such purchase, sale, consolidation with, or lease may be made or such aid furnished upon such terms or conditions as may be agreed upon by the directors or trustees of the respective companies, but the same shall be approved or ratified by persons holding or representing a majority in amount of the capital stock of each of such companies, respectively, at any annual stockholders' meeting or at a special meeting of the stockholders called for that purpose or by approval in writing of a majority in interest of the stockholders of each company respectively.

(4) Before any railroad corporation organized under the laws of any other state or territory or of the United States shall be permitted to avail itself of the benefits of this section, such corporation shall file with the secretary of state a true copy of its charter or articles of incorporation."

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Section 48. Section 69-14-532, MCA, is amended to read:

"69-14-532. Authority to plan, lay out, and construct rail lines. Every railroad corporation *may*:

(1) cause such examination and surveys to be made as may be necessary to the selection of the most advantageous route for the railroad;

(2) lay out its road, not exceeding in width 100 feet on each side of its *centerline*, unless a greater width *is* required for the purpose of excavation or embankment, and construct and maintain the same, with a single or double track and with such appendages and adjuncts as may be necessary for the convenient use of the same;

(3) construct *its* road across, along, or upon any stream of water, watercourse, roadstead, bay, navigable stream, street, avenue, or highway or across any railway, canal, ditch, or flume which the route of its road intersects, crosses, or runs along, in such manner as to afford security for life and property; but the corporation shall restore the stream or watercourse, road, street, avenue, highway, railroad, canal, ditch, or flume thus intersected to its former state of usefulness, as near as *possible*, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise;

(4) erect and maintain all necessary and convenient buildings, stations, depots, fixtures, and machinery for the accommodation and use of *its* passengers, freight, and business;

(5) change the line of its road, in whole or in part, whenever a majority of the directors so determine, as is provided in 69-14-534; but no such change *may* vary the general route of such road, as contemplated in its articles of incorporation."

Section 49. Section 69-14-536, MCA, is amended to read:

"69-14-536. Extension of rail lines into Montana. *(1)* Any railroad corporation chartered by or organized under the laws of the United States or of any state or territory may extend, *construct, maintain, and operate* its railroad into *and through* this state to any place within the state and may build branches from any point on such extension or continuation of any such extension or branch. Before making such extension into the state or building any such branch road or any such continuation, *the* corporation shall, by resolution of its board of directors, to be entered in the records of its proceedings, designate the general route of such proposed extension, branch, or continuation and file a copy of such record, certified by the president and secretary, in the office of the secretary of state, who shall record the same when presented for record. Thereupon such corporations shall have all the rights, powers, privileges, immunities, and franchises to make, maintain, and operate such extension and build, maintain, and operate such branch or continuation, *including the right of eminent domain,* which it would have had if it had been incorporated for such purposes under the general laws of Montana. *Any corporation of another state or of the United States extending its railroad or any portion thereof into or through this state:*

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(a) shall establish and maintain an office or offices in this state at some point or points on its line at which legal process and notice may be served, as upon railroad corporations of this state; and

(b) is subject to taxation and regulation and control by the laws of this state, in all respects the same as if the line were constructed by corporations organized under the laws of this state.

(2) Before any railroad corporation organized under the laws of any other state or territory or of the United States shall be permitted to avail itself of the benefits of this section, such corporation shall file with the secretary of state a true copy of its charter or articles of incorporation."

Section 50. Section 69-14-606, MCA, is amended to read:

"69-14-606. Role of public service commission with respect to crossings. (1) The commission *may* enforce the orders of any board of county commissioners for the construction of railroad crossings and *may* pass upon the reasonableness of any such order *and* modify, change, or annul the same.

(2) Whenever any railroad crossing has been ordered by the county commissioners, as herein provided, the railroad company may, within 30 days after the service of such order, serve upon the commission a notice stating why *the* order is considered unreasonable or unjust and *requesting* that the commission hold a hearing for the purpose of determining whether or not the construction of such crossing should reasonably be required. The commission shall thereupon institute a hearing for *this* purpose, and all interested parties shall be given reasonable notice and an opportunity to be heard. *The* commission may, after such hearing, either affirm, modify, or annul such order."

Section 51. Section 69-14-713, MCA, is amended to read:

"69-14-713. Violation of provisions dealing with injury to livestock. (1) Except as otherwise provided, every person who violates any of the provisions of 69-14-701 through 69-14-712 relating to livestock killed or injured by railroads is guilty of a misdemeanor.

(2) Any person violating any of the provisions of 69-14-711 or 69-14-712 shall upon conviction thereof be punished by a fine of not less than $10 or more than $300 or by imprisonment in the county jail for a period of not less than 10 days or more than 60 days or by both such fine and imprisonment."

Section 52. Section 69-14-802, MCA, is amended to read:

"69-14-802. Structural details of platform. Each platform shall be not less than 12 feet wide and 32 feet long, extending 4 feet and 6 inches, or such height as shall be determined by the commission, above the rails of the track, with suitable approaches to and from such platform to admit the driving of *vehicles* thereon."

Section 53. Section 69-14-1001, MCA, is amended to read:

"69-14-1001. Protection of employees affected by closure of station or other facility. (1) Whenever any railroad, as defined in

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69-14-101, is granted the authority to close a railroad station or facility by order of the commission, the commission *shall* require employee protection. Before the commission may approve closure of a station or facility, it shall require from the railroad an agreement to protect employees affected by the closure by providing jobs equal in nature and pay to the job held by the employee for the 6 months prior to *the* closure. The equal job and pay agreement must be in effect for a period of 4 years or, in the alternative, the number of years the employee has been employed prior to closure, whichever is shorter.

(2) Notwithstanding any other provisions of this section, an agreement pertaining to protection of the interests of affected employees may be entered into between the railroad and duly authorized representatives of the employees."

Section 54. Section 69-14-1003, MCA, is amended to read:

"69-14-1003. Railroad personnel as law officers. Every conductor, engineer, or other person in charge of the operation of cars, trains, or locomotives upon any railroad is, while so engaged or employed, constituted a public executive officer of the class of peace officers and of the grade of constable in each county wherein his train, cars, or locomotives may from time to time happen to be and *has* the same authority as other peace officers to, with or without a warrant, arrest and prosecute persons *trespassing or illegally obtaining passage on the railroad.* The *railroad personnel* mentioned herein shall not be entitled to receive fees for any arrest or prosecution which may be made or prosecuted under *this section.* None of the *railroad personnel* herein named shall be authorized to hold said office or exercise its functions unless at the time *they are citizens* of the United States and have been *citizens* of this state for at least 1 year preceding *their* exercising the functions thereof."

Section 55. **Repealer.** (1) Sections 8-127 and 72-220, R.C.M. 1947, are repealed.

(2) Sections 69-14-136 and 69-14-403, MCA, are repealed.

Section 56. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved February 22, 1979.

CHAPTER NO. 44

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO FISH AND GAME; AMENDING SECTIONS 87-1-105, 87-1-201, 87-1-205, 87-1-403, 87-1-703, 87-2-101, 87-2-902, 87-2-904, AND 87-3-128, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-105, MCA, is amended to read:

"87-1-105. Duty of attorney general and county attorneys. The attorney general of the state is the legal adviser of the department

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and shall, together with the several county attorneys, enforce the provisions of this *title.*"

Section 2. Section 87-1-201, MCA, is amended to read:

"87-1-201. Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) It shall enforce all the laws of the state respecting the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) It shall have the exclusive power to spend for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. *Money* collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, *or* from appropriations or received by the department from any other sources are appropriated to and under control of the department.

(4) It may discharge any appointee or employee of the department for cause at any time.

(5) It may dispose of all property owned by the state used for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds which is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the earmarked revenue fund.

(6) It may not issue permits to carry firearms within this state *to anyone* except regularly appointed officers or wardens.

(7) The department is hereby authorized to make, promulgate, and enforce such reasonable rules and regulations not inconsistent with the provisions of *chapter 2* as in its judgment will accomplish the purpose of *chapter 2.*

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or without the state."

Section 3. Section 87-1-205, MCA, is amended to read:

"87-1-205. Grievance procedure. An employee of the department, aggrieved by a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action, who has exhausted all administrative remedies within the department, is entitled to a hearing before the *board of personnel appeals provided for in 2-15-1705 and subject to the provisions of 2-18-1011 through 2-18-1013. Any* order of the board *is* binding upon the department."

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Section 4. Section 87-1-403, MCA, is amended to read:

"87-1-403. Regulation of employees by director. *(1)* The director may suspend without pay, reduce in rank, or remove any employee at any time for cause, providing that any person who has been continuously employed for 1 year or more immediately preceding any suspension or discharge may demand and receive a hearing before the department on *the* charges filed. The action of the department resulting from such a hearing *constitutes final administrative action for purposes of filing a grievance with the board of personnel appeals as provided in 87-1-205.*

(2) The director shall rate all employees on the basis of merit and efficiency in accordance with rules *adopted by* the department to secure a proper rating of each person employed. The salaries of employees shall be fixed by the department, and travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, shall be allowed employees while upon official business away from designated headquarters."

Section 5. Section 87-1-703, MCA, is amended to read:

"87-1-703. Cooperative agreements on federally owned land. The department, in the name of the state and with the approval of the governor, shall have the power to enter into cooperative agreements on federally owned lands with the government of the United States or any department or bureau thereof or with an individual or individuals, private corporations, or partnerships for the purpose of carrying on any fish restoration projects created and established under the provisions of 87-1-701 through 87-1-703 and shall have the power to acquire by purchase, either by cash or upon installments, or lease or by gift or by devise or individually or in conjunction with the government of the United States or some department or bureau thereof such lands or other property *or* interest therein as may be necessary for the purpose of carrying on any fish restoration and management projects created and established under the provisions of said Dingell-Johnson bill of the congress of the United States, and the state does reserve to itself, acting through its legislature, the right to direct the department to abandon any fish restoration and management projects created and established as the state may in its judgment think proper. The department shall have no power to exercise the right of eminent domain to condemn or acquire property under 87-1-701 through 87-1-703."

Section 6. Section 87-2-101, MCA, is amended to read:

"87-2-101. Definitions. *As used in this chapter and chapter 3, unless the context clearly indicates otherwise, the following definitions apply*:

(1) *"Angling"* or "fishing" *means* the taking of or attempting to take fish by hook and single line or single rod, in hand or within immediate control.

(2) *"Closed* season" *means* the time during which game birds, fish, *and* game and fur-bearing animals may not be lawfully taken.

(3) *"Commission" means* the state fish and game commission.

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(4) *"Fur-bearing* animals" *means* marten or sable, otter, muskrat, fisher, mink, bobcat, and beaver.

(5) *"Game* animals" *means* deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, and bear.

(6) *"Game* fish" *means* all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); and the species ictalurus punctatus (channel catfish).

(7) *"Migratory* game birds" *means* waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill, and whooping cranes; rails, including coots, gallinules, sora, or other rails; shore birds, including avocets, curlew, dowitcher, godwits, knots, upland plover, killdeer, sandpipers, wilson's snipes or jacksnipes, snipes, stilts, plovers, willets, and yellowlegs.

(8) *"Nongame* birds" *means* all wild birds not defined herein as upland game birds or migratory game birds.

(9) *"Nongame* wildlife" *means* any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(10) *"Open* season" means the time during which game birds, fish, *and* game and fur-bearing animals may be lawfully taken.

(11) *"Person" means* individuals, associations, partnerships, and corporations.

(12) *"Predatory* animals" *means* coyote, weasel, skunk, and civet cat.

(13) *"Upland* game birds" *means* sharptailed grouse, blue grouse, prairie chicken, sage hen or sage grouse, fool hen, ruffed grouse, commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian pheasant, commonly called ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(14) *"Wild* buffalo" *means* buffalo or bison which have not been reduced to captivity."

Section 7. Section 87-2-902, MCA, is amended to read:

"87-2-902. Bond of agent and preferred claim of state for license money. (1) An appointed license agent shall furnish a corporate surety bond of $1,000 or in an amount equal to the value of the licenses, permits, and certificates received for distribution, the amount to be fixed at the discretion of the director. The bond shall secure the faithful performance of the duties imposed on the license agent and the accounting for and payment to the state of all *money* received from the sale of hunting and fishing licenses and any permits or certificates prescribed by the

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department. The license agent shall properly account for all unsold licenses, permits, and certificates annually on April 1 or at any other time at the request of the director.

(2) All money received for the sale of licenses, permits, and certificates at all times belongs to the state. In case of an assignment for the benefit of creditors, receivership, or bankruptcy, the state has a preferred claim against the assets and estate of a license agent for all *money* owed the state."

Section 8. Section 87-2-904, MCA, is amended to read:

"87-2-904. Nontransferability of appointments — revocation and oaths. Appointments of license agents shall be nontransferable, and each appointment shall be valid only at the single location of the business as stated on the certificate of appointment. Such appointments may be summarily revoked at any time by the director upon discontinuance of the business at the stated location or for noncompliance with the provisions of this part or other regulations. Duly appointed license agents are hereby authorized to administer oaths to applicants for hunting and fishing licenses and for other permits and certificates prescribed by the *department*."

Section 9. Section 87-3-128, MCA, is amended to read:

"87-3-128. Exceptions — department personnel. The provisions of this *chapter* relating to methods of herding, driving, capturing, taking, locating, or concentrating of fish, game animals, game birds, or fur-bearing animals do not apply to the department or to any employee thereof while acting within the scope and course of the powers and duties of the department."

Section 10. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved February 22, 1979.

CHAPTER NO. 45

AN ACT TO LIMIT THE APPLICATION OF STANDARDS FOR PERMITTED OUTDOOR ADVERTISING TO CERTAIN TYPES OF SIGNS; AMENDING SECTION 75-15-113, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-15-113, MCA, is amended to read:

"75-15-113. Standards for permitted advertising. Except for outdoor advertising beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area, outdoor

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advertising permitted under *subsections (1)(d) and (1)(e) of* 75-15-111 shall conform to the following requirements:

(1) Signs may not be erected or maintained which exceed 1,200 square feet in area, including border and trim but excluding base or apron, supports, and other structural members.

(2) Maximum length, 60 feet.

(3) Maximum height, 40 feet as measured from the ground or, if the sign is attached to a structure, as measured from the base of the sign itself.

(4) No more than two facings visible and readable from the same direction on the main-traveled way may be erected on any one sign structure. Whenever two facings are so positioned, neither shall exceed 325 square feet.

(5) Double-faced, back-to-back, and V-type signs shall be considered as a single sign or structure.

(6) Where two or more faces, back to back, are supported by separate structures, each shall be considered a single sign.

(7) No two signs shall be spaced less than 500 feet apart adjacent to an interstate highway or limited-access primary highway, except that signs may be erected closer than 500 feet if they are separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distance is visible from the highway at any one time.

(8) Signs may not be located within 500 feet of any of the following which are adjacent to the highway unless the signs are in an incorporated area:

(a) public parks;

(b) public forests;

(c) public playgrounds;

(d) scenic areas designated as such by the highway department or other state agency having and exercising this authority;

(e) cemeteries.

(9) A sign may not be located on an interstate highway or freeway within 500 feet of an interchange or intersection at grade or rest area. The 500 feet is to be measured along the interstate or freeway from the beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way.

(10) Signs may be illuminated, subject to the following restrictions:

(a) Signs which contain, include, or are illuminated by a flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.

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(b) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at a portion of the traveled ways of the interstate or federal-aid primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle or which otherwise interfere with a driver's operation of a motor vehicle are prohibited.

(c) A sign may not be so illuminated that it interferes with the effectiveness of or obscures an official traffic sign, device, or signal.

(11) The location of sign structures situated on the primary highways between streets, roads, or highways entering or intersecting the main-traveled way shall conform to the following minimum spacing criteria:

(a) Where the distance between centerlines of intersecting streets or highways is less than 1,000 feet, a minimum spacing between structures of 150 feet may be permitted between the intersecting streets or highways.

(b) Where the distance between centerlines of intersecting streets or highways is 1,000 feet or more, minimum spacing between sign structures shall be 300 feet."

Approved February 22, 1979.

CHAPTER NO. 46

AN ACT TO INCLUDE WOLVERINE, NORTHERN SWIFT FOX, AND LYNX AS FUR-BEARING ANIMALS AND TO REMOVE WOLVERINE AND LYNX FROM THE LISTING OF NONGAME WILDLIFE IN NEED OF MANAGEMENT; AMENDING SECTION 87-2-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-101, MCA, is amended to read:

"87-2-101. Definitions. For the purpose of this [act], the following shall be construed, respectively to mean:

(1) angling or fishing—the taking of or attempting to take fish by hook and single line or single rod, in hand or within immediate control;

(2) closed season—the time during which game birds, fish, game and fur-bearing animals may not be lawfully taken;

(3) commission—the state fish and game commission;

(4) fur-bearing animals—marten or sable, otter, muskrat, fisher, mink, bobcat, *lynx, wolverine, northern swift fox,* and beaver;

(5) game animals—deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, and bear;

(6) game fish—all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion

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(sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); and the species ictalurus punctatus (channel catfish);

(7) migratory game birds—waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill, and whooping cranes; rails, including coots, gallinules, sora, or other rails; shore birds, including avocets, curlew, dowitcher, godwits, knots, upland plover, killdeer, sandpipers, wilson's snipes or jacksnipes, snipes, stilts, plovers, willets, and yellowlegs;

(8) nongame birds—all wild birds not defined herein as upland game birds or migratory game birds;

(9) nongame wildlife—any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other wild animal not otherwise legally classified by statute or regulation of this state;

(10) open season—the time during which game birds, fish, game and fur-bearing animals may be lawfully taken;

(11) person—the plural or singular, male or female, as the case demands, including individuals, associations, partnerships, and corporations, unless the context requires otherwise;

(12) predatory animals—coyote, weasel, skunk, and civet cat;

(13) upland game birds—sharptailed grouse, blue grouse, prairie chicken, sage hen or sage grouse, fool hen, ruffed grouse, commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian pheasant, commonly called ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge;

(14) wild buffalo—buffalo or bison which have not been reduced to captivity."

Section 2. It is the intent of this legislature that the department of fish and game take the necessary administrative action to remove lynx, northern swift fox, and wolverine from the listing of nongame species in need of management.

Approved February 22, 1979.

CHAPTER NO. 47

AN ACT AMENDING SECTION 39-51-1301, MCA, TO CLARIFY THE METHOD OF CHARGING INTEREST ON PAST-DUE CONTRIBUTIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-1301, MCA, is amended to read:

"39-51-1301. Penalty and interest on past-due contributions. (1) Contribution reports not made and filed on the date on which they are

due, as provided by subsections (1) and (2) of 39-51-1103 and subsection (2) of 39-51-1106, shall be subject to a penalty assessment of $10. Contributions unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and subsection (2) of 39-51-1106, shall be subject to a penalty assessment of $10 or 10% of the contribution due, whichever is greater, and shall bear interest at the rate of 1% per month.

(2) Interest and *penalties* collected pursuant to this section shall be paid into the unemployment compensation *trust* fund.

(3) When failure to pay contributions in time and before delinquency was not caused by willful intent of the employer and for good cause shown, the division may abate the penalty for late filing or late payment or both. Interest shall *also* be subject to abatement."

Approved February 22, 1979.

CHAPTER NO. 48

AN ACT TO AMEND SECTION 87-1-602, MCA, TO CLARIFY THAT ALL FISH AND GAME MONEY MAY BE USED TO PAY FOR FISH AND GAME EXPENSES AND TO GENERALLY REVISE ITS WORDING.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-602, MCA, is amended to read:

"87-1-602. Payment of salaries, per diem, and expenses. All salaries, per diem, expenses, and claims incurred by the department or a person appointed or employed by it shall be paid out of fish and game moneys in the *general fund, federal and private revenue fund,* earmarked revenue fund, *or other applicable fund* upon warrants properly drawn on those funds."

Approved February 22, 1979.

CHAPTER NO. 49

AN ACT TO AMEND SECTION 39-3-407, MCA, TO CLARIFY WAGE CLAIM ENFORCEMENT FOR MINIMUM WAGE AND OVERTIME COMPENSATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-407, MCA, is amended to read:

"39-3-407. Enforcement. Enforcement of this part shall be treated as a wage claim action and shall be *pursued* in accordance with *part* 2 of

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this chapter, as amended. *This part may also be enforced in accordance with part 5 of this chapter for the benefit of certain employees in the mineral and oil industry.* The commissioner may enforce this part without the necessity of a wage assignment."

Approved February 22, 1979.

CHAPTER NO. 50

AN ACT TO AMEND SECTION 87-3-204, MCA, TO PERMIT THE TAKING OF BURBOT (LING) WITH SPEAR OR GIG WHEN THE DEPARTMENT OF FISH AND GAME DECLARES AN OPEN SEASON TO TAKE BURBOT (LING) WITH SPEAR OR GIG.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-204, MCA, is amended to read:

"87-3-204. Restrictions on fishing methods. (1) No game fish may be caught, captured, or taken or attempted to be caught, captured, or taken by the aid or with the use of any gun or trap, nor may any such set gun, trap, or other device to entrap game fish be used, made, or set.

(2) It is unlawful for a person to take or catch fish in any of the waters of this state, except with hook and line held in hand or line and hook attached to rod or pole held in hand; to take or catch fish with hook baited with any poisonous substance or by means of the use of any poisonous substance, including fish berries; or to take or catch fish by means of the use of fishtraps, grabhooks, seines, nets, or other similar means for catching fish.

(3) The department may designate such waters within the state of Montana wherein, in the judgment of the department, spears or gigs may be used for taking walleyed pike, sauger, northern pike, and nongame fish and traps, seines, nets, and rubber or spring-propelled spears, when employed by sportsmen swimming or submerged in the water, may be used for the taking of designated species of fish. The waters so designated may be closed at the discretion of the department. The taking of all fish by such means in the waters, when so designated, is to be done under such rules as the department may prescribe with reference thereto and under the supervision of the department. All such nongame fish so taken may be possessed and sold in such manner and under such restrictions as the department may direct. All fish, other than those herein designated, so taken under department rules, when prescribed by the department, shall be returned uninjured to the waters from which they were taken.

(4) The taking of black bass in Flathead Lake may be permitted by the department.

(5) The department shall have the power to designate certain waters where setlines may be used to fish for certain species of game or nongame fish, and the department may designate the number of hooks and lines and the length of line or lines which may be used as setlines.

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(6) Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand or within immediate control. This does not prevent, however:

(a) the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the department declares an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging;

(b) the taking of paddlefish with longbow and arrow when the department declares an open season when paddlefish may be taken by longbow and arrow;

(c) the taking of walleyed pike, sauger, northern pike, *burbot (ling)*, and nongame fish with spear or gig when the department declares an open season for taking walleyed pike, sauger, northern pike, *burbot (ling)*, and nongame fish with spear or gig;

(d) the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified; or

(e) the taking of minnows other than game fish variety by the use or aid of a net not to exceed 12 feet in length and 4 feet in width in such waters as may be designated by the department."

Approved February 22, 1979.

CHAPTER NO. 51

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO PLANNING, RESEARCH, AND DEVELOPMENT; AMENDING SECTIONS 90-1-108, 90-2-112, 90-5-102, 90-6-116, MCA, AND REPEALING SECTIONS 90-2-105 AND 90-2-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-1-108, MCA, is amended to read:

"90-1-108. County land planning assistance. (1) The department of community affairs shall annually distribute the funds appropriated *to it* from the county land planning account. Each county shall be allotted $3,000. After this disbursement has been made, 40% of the balance in the account shall be apportioned to the counties according to the ratio of each county's land area to the total land area of the state and 60% of the balance shall be apportioned to the counties according to each county's portion of the total population of the state. If a multijurisdictional planning board has been established in the county, it may receive and expend part or all of the funds allocated to that county.

(2) Counties, cities, or joint planning boards receiving funds under this section shall use such funds for land planning purposes.

(3) At the end of each fiscal year, every local governing body and planning agency receiving funds under this section shall provide an accounting

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of how the *money was* spent, in a form acceptable to the department of community affairs. Any surplus funds shall revert to the education trust fund account."

Section 2. Section 90-2-112, MCA, is amended to read:

"90-2-112. Bond proceeds not for grants. Unless specifically authorized by the legislature, no bond proceeds *may* be used for the purpose of making grants. Grants may be made *only from* such sums as *are* deposited in the sinking fund account from the collection of the coal *severance* tax as provided in 90-2-124."

Section 3. Section 90-5-102, MCA, is amended to read:

"90-5-102. General municipal and county powers. (1) In addition to any other powers which it may now have, each municipality and each county *may*:

(a) acquire, by construction, purchase, devise, gift, or lease or any *combination* of such methods, one or more projects located within this state. *The projects* may be located within, without, *or* partially within *and* partially without the municipality or county.

(b) lease to others any or all of its projects for such rentals and upon such terms and conditions, *consistent with the provisions of this part,* as the governing body *considers* advisable;

(c) issue revenue bonds for the purpose of defraying the cost of acquiring or improving any project or projects and secure the payment of such bonds as provided in this part. *The* revenue bonds may be issued in two or more series or issues where *considered* advisable, and each such series or issue may contain different maturity dates, interest rates, priorities on revenues available for payment of *the* bonds, priorities on securities available for guaranteeing payment thereof, and such other differing terms and conditions as are *considered* necessary and are not in conflict with the provisions of this part; and

(d) sell and convey any real or personal property acquired as provided by subsection (1)(a) of this section and make *any* order respecting *it* as may be conducive to the best interest of the municipality or county, provided that such sale or conveyance shall be subject to the terms of any lease but shall be free and clear of any other encumbrance.

(2) No municipality or county *may* operate *a project referred to in this section* as a business or in any manner except as the lessor thereof. *No municipality or county may* acquire *a* project or any part thereof by condemnation."

Section 4. Section 90-6-116, MCA, is amended to read:

"90-6-116. Trust indenture. (1) In the discretion of the board, the bonds may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company within or without the state. A trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders *which* are reasonable and proper and not in violation of law,

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including covenants setting forth the duties of the board in relation to the exercise of its powers *and* the custody, safeguarding, and application of all *money*. The board may provide by a trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under the trust indenture of another depository and for the method of disbursement, with safeguards and restrictions it *considers necessary*.

(2) All expenditures incurred in carrying out a trust indenture may be treated as part of the operating expenditures of the board."

Section 5. **Repealer.** Sections 90-2-105 and 90-2-106, MCA, are repealed.

Approved February 22, 1979.

CHAPTER NO. 52

AN ACT TO EXCEPT WHITEFISH FROM THE PROHIBITION AGAINST SALE OF GAME FISH; AMENDING SECTION 87-4-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-601, MCA, is amended to read:

"87-4-601. Sale of fish or spawn unlawful — exceptions. (1) *Except as provided in subsection (2), no* person may, for speculative purposes, for market, or for sale, in any way, catch any of the fish which in this title are classified as game fish or remove or cause to be removed the eggs or spawn of any such fish. No person may sell or offer for sale any of the game fish of this state as defined in this title or the eggs or spawn therefrom.

(2) *The restrictions of subsection (1) do* not apply to*:*

(a) the catching of fish in private ponds by the owners thereof*;*

(b) the taking of fish by the state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for such purposes*; or*

(c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules and regulations of the department."

Section 2. **Records and report of whitefish sales by fishing license holders.** A holder of a fishing license who catches whitefish for speculative purposes, for market, or for sale shall keep a record and make an annual report to the department of the number of whitefish sold and the date of each sale. The annual report shall be submitted to the appropriate department regional office within 15 days of the end of the license year.

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Section 3. **Codification instructions.** Section 2 of this act is intended to be codified as an integral part of Title 87, chapter 4, part 6, and the provisions of Title 87, chapter 4, part 6, apply to section 2 of this act.

Approved February 23, 1979.

CHAPTER NO. 53

AN ACT TO AMEND SECTION 39-3-213, MCA, TO PERMIT THE PAYMENT OF WAGE CLAIMS BY STATE WARRANT AND THE CANCELLATION OF WARRANTS REMAINING UNCLAIMED FOR MORE THAN 1 YEAR.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-213, MCA, is amended to read:

"39-3-213. Disposition of wages. (1) The commissioner of labor and industry shall deposit wages collected by him under parts 2 and 4 of this chapter into the agency fund and shall attempt to make payment of wages to the entitled person. Wages deposited into the agency fund are not interest bearing. *The payment of wages collected may be made by means of state warrants.*

(2) *Warrants issued pursuant to subsection (1) which remain unclaimed for more than 1 year from the date of issuance shall be returned to the state auditor for cancellation in accordance with 17-8-303*
"

Approved February 23, 1979.

CHAPTER NO. 54

AN ACT TO AMEND SECTION 69-12-323, MCA, TO AMEND THE TIME PERIOD WITHIN WHICH THE PUBLIC SERVICE COMMISSION IS REQUIRED TO MAKE DECISIONS ON MOTOR CARRIER CERTIFICATE APPLICATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-323, MCA, is amended to read:

"69-12-323. Decision on application. (1) The commission must issue, within *180* days from and after the date of the *completed* filing of said application, its finding, order, or decision on said application and the evidence presented in support thereof at the time of said hearing. *The commission may extend the foregoing time for decision to a date requested by the applicant.*

(2) If after hearing upon application for a certificate, the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part thereof, as the commission shall determine, a certificate therefor shall be issued. In determining whether a certificate should be issued, the commission shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year and the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby.

(3) The commission may issue the certificate as prayed for or issue it for the partial exercise only of the privilege sought and may attach to the exercise of the rights granted by such certificate such terms and conditions as in its judgment the public convenience and necessity may require. When a certificate has once been issued to a motor carrier as provided in this part, such certificate shall continue in force until terminated by the commission for cause as herein provided or until terminated by the owner's failure to comply with 69-12-402."

Approved February 23, 1979.

CHAPTER NO. 55

AN ACT TO AMEND SECTIONS 69-12-321 AND 69-12-322, MCA, TO CLARIFY THE NOTICE REQUIREMENTS FOR HEARINGS ON APPLICATIONS FOR MOTOR CARRIER CERTIFICATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-321, MCA, is amended to read:

"69-12-321. Hearing on application for motor carrier certificate. (1) Upon the filing of such application by a Class A, Class B, or Class C motor carrier, except a Class C motor carrier authorized to operate under the terms of a contract with the United States government, or an agency or department thereof, the commission shall *give notice thereof to any interested party.*

(2) Any motor carrier referred to in 69-12-322, the department of highways, the governing board or boards of any such county, town, or city into or through which the route or service as proposed may extend, and any person or corporation concerned are hereby declared to be interested parties to the proceedings and may offer testimony for or against the granting of the certificate.

(3) The contracting parties referred to in 69-12-313(4) must appear and offer testimony in support of the applicant.

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(4) However, an application by a Class A, Class B, or Class C motor carrier for a certificate may be disallowed without a public hearing thereon when it appears from the records of the commission that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the commission that public convenience and necessity do not require the proposed motor carrier service unless it is made to affirmatively appear in the application by a recital of the facts that conditions obtaining over the route or in the territory and affecting transportation facilities therein have materially changed since said public investigation and finding and that public convenience and necessity do now require the motor carrier operation."

Section 2. Section 69-12-322, MCA, is amended to read:

"69-12-322. Notice of hearing. (1) *Whenever a hearing is scheduled, whether as a result of a protest or request or upon the commission's own motion, the* commission shall cause a copy of the petition and notice of hearing thereon to be served upon an officer or owner of any motor carrier that in the opinion of the commission might be affected by the granting of any such certificate *and shall notify any other affected party* at least 10 days before the date of hearing.

(2) Notice of such hearing shall be published:

(a) in the legal advertising section of a local newspaper or newspapers deemed by the commission to have a circulation sufficient to reach the consuming public in the area under consideration for applications for Class C authority and geographically limited Class B authority; and

(b) in appropriate newspapers deemed by the commission to have sufficient statewide circulation in the case of applications for Class A authority and geographically broad contemplated Class B authority."

Approved February 23, 1979.

CHAPTER NO. 56

AN ACT TO AMEND SECTION 61-8-714, MCA, BY DEFINING "CONVICTION", AS USED IN THAT SECTION, AS A FINAL CONVICTION OR A FORFEITURE OF BAIL OR COLLATERAL DEPOSITED TO SECURE THE DEFENDANT'S APPEARANCE, WHICH FORFEITURE HAS NOT BEEN VACATED AND WHICH CONVICTION OR FORFEITURE OCCURRED WITHIN 5 YEARS OF THE COMMISSION OF THE PRESENT OFFENSE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving while intoxicated. (1) Every person who is convicted of a violation of 61-8-401 shall be punished by a fine of not less than $100 or more than $500. On a second conviction, he

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shall be punished by a fine of not less than $300 or more than $500. On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days or more than 1 year, to which may be added, in the discretion of the court, a fine of not less than $500 or more than $1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(2) Except as otherwise provided in this section, the court may, in its discretion, suspend the execution of any sentence imposed under subsection (1) on the condition that the defendant successfully complete a course in a driver improvement school approved by the court or an alcohol treatment program approved by the department of institutions. Each school or institution providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been accepted by the school or treatment program. If the defendant fails to attend the school or the treatment program, the school or institution shall notify the court of the failure.

(3) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction."

Approved February 23, 1979.

CHAPTER NO. 57

AN ACT AMENDING SECTION 39-51-101, MCA, TO CHANGE THE TITLE OF THE "UNEMPLOYMENT COMPENSATION LAW" TO "UNEMPLOYMENT INSURANCE LAW" AND DIRECTING THE CODE COMMISSIONER TO MAKE APPROPRIATE TERMINOLOGY CHANGES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-101, MCA, is amended to read:

"39-51-101. Short title. This chapter shall be known and may be cited as the "Unemployment *Insurance* Law"."

Section 2. **Instructions to code commissioner.** The code commissioner is authorized and instructed to change any reference in the Montana code annotated from "unemployment compensation" to "unemployment insurance" except in 7-1-111, 39-51-2306, and 39-51-2501.

Approved February 23, 1979.

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CHAPTER NO. 58

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO PUBLIC CONTRACTS; REPEALING SECTION 18-5-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-1-412, MCA, is amended to read:

"18-1-412. Service of process upon attorney general. *In addition to any other requirement for service of process contained in Rule 4D(2)(h), M.R.Civ.P., the* attorney general of the state of Montana is hereby designated as the person upon whom all process shall be served *in actions under the provisions of this part.*"

Section 2. Section 18-2-403, MCA, is amended to read:

"18-2-403. Preference of Montana labor in public works — wages — federal exception. (1) In *any contract* let for state, county, municipal, school, or heavy highway construction, services, repair, *or* maintenance work under any *law* of this state, there shall be inserted in *the contract* a provision *requiring* the contractor *to* give preference to the employment of bona fide Montana residents in the performance of *the* work and *to* pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, in effect and applicable to the county or locality in which the work is being performed.

(2) No contract *may* be let to any person, firm, association, or corporation refusing to execute an agreement with the above-mentioned provisions in it, provided that in contracts involving the expenditure of federal-aid funds this part *may* not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged *veterans of the armed forces* and prohibiting as unlawful any other preference or discrimination among citizens of the United States."

Section 3. Section 18-4-212, MCA, is amended to read:

"18-4-212. Bid security or performance bond. With any proposal, the department may require a certified check on some responsible bank, payable to the treasurer of the state, equal in amount to *10%* of the sum of the proposal, or a bid bond issued by a licensed surety company as a guarantee for the faithful performance of any contract awarded. After the award is made, all checks deposited as a guarantee shall be returned except that of the successful bidder, whose check shall be held until the contract is signed and the performance bond is filed and approved if a performance bond is required."

Section 4. Section 18-6-101, MCA, is amended to read:

"18-6-101. Power to sell state property — proceeds credited to general fund. *(1)* The department has exclusive power, subject to the

approval of the governor, to sell or otherwise dispose of or to authorize the sale or other disposition of all materials and supplies, service equipment, or other personal property of every kind owned by the state but not needed or used by any state institution or by any department of state government.

(2) Unless otherwise provided by law, the department shall credit the general fund with all money received."

Section 5. Section 18-7-101, MCA, is amended to read:

"**18-7-101. Power to contract for printing.** (1) *Except as provided in 1-11-301, the* department has exclusive power, subject to the approval of the governor, to contract for all printing for any purpose used by the state in any state office (elective or appointive), agency, or institution.

(2) The department shall supervise and attend to all public printing of the state as provided in this chapter and shall prevent duplication and unnecessary printing.

(3) All forms, blanks, and documents printed for distribution to the state agencies and institutions shall be serially numbered and indexed by the department and sample copies of each permanently retained, and the department shall from time to time furnish to the public general information as to the nature, description, and official numbers of such reports as are available for public distribution.

(4) Unless otherwise provided by law, the department, in letting contracts as provided in this chapter, for the printing, binding, and publishing of all laws, journals, and reports of the state agencies and institutions may determine the quantity, quality, style, and grade of all such printing, binding, and publishing."

Section 6. Section 18-7-102, MCA, is amended to read:

"**18-7-102. Montana printers preferred for supreme court decisions, session laws, and codes.** (1) The department of administration shall, as occasion may require, call for bids for the printing and binding of all decisions of the supreme court of Montana, all session laws *and* resolutions and all codes.

(2) All contracts for printing and binding *required by subsection (1)* shall be let to contractors, publishers, or printers doing business within the state and all labor connected with *the* printing and binding *must* be performed within the state. *Nothing* herein contained *prohibits* the receipt of bids from contractors, publishers, or printers doing business outside of Montana. *If* the bids for *the* printing and binding from contractors, publishers, or printers doing business within the state *exceed by* 10% the bids received for printing and binding from contractors, printers, or publishers doing business outside the state, *the* contracts on such bids may be awarded to contractors, publishers, or printers outside the state and the labor thereon performed outside of Montana."

Section 7. **Repealer.** Section 18-5-104, MCA, is repealed.

Approved February 23, 1979.

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CHAPTER NO. 59

AN ACT TO PERMIT THE GOVERNOR TO DESIGNATE AN INTERSTATE COORDINATOR FOR THE WESTERN INTERSTATE CORRECTIONS COMPACT; AND AMENDING SECTION 46-19-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-19-303, MCA, is amended to read:

"46-19-303. Power of governor to enter into contracts. The governor is hereby empowered *to designate the department of institutions* to enter into such contracts recommended by the department on behalf of this state as may be appropriate to implement the participation of this state in the Western Interstate Corrections Compact pursuant to 46-19-301."

Approved March 7, 1979.

CHAPTER NO. 60

AN ACT TO AMEND SECTION 39-3-604, MCA, TO DELETE A REFERENCE TO A CERTIFICATE ISSUED UNDER WHAT IS NOW A REPEALED SECTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-604, MCA, is amended to read:

"39-3-604. Bond to be filed by lessee — bond requirements. (1) Every person who leases from another person premises for the purpose of conducting therein a business as a restaurant, bar, or tavern is hereby required to file a bond equal to at least double the amount of the projected semimonthly payroll with the commissioner of labor and industry. Said bond shall at all times be kept in full force and effect and any cancellation or revocation thereof or withdrawal of the sureties therefrom *is grounds for enjoining the conduct of business, as provided for in 39-3-607,* until such time as a new bond of like tenure and effect shall have been filed and approved as herein provided.

(2) The bond and affidavit required by subsection (1) of this section shall be filed with the commissioner of labor and industry. The state of Montana shall be named as the obligee therein, with good and sufficient sureties to be approved by the attorney general.

(3) Such bond shall be conditioned to assure that in any lease transaction of the type referred to in 39-3-608 the persons who perform labor or other personal services for the lessee are guaranteed their wages in the

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event the lessee ceases operation of the business for any reason and is unable to pay the wages due and owing the employees and to assure payment due the division of employment security as a result of payroll taxes."

Approved March 12, 1979.

CHAPTER NO. 61

AN ACT TO AMEND THE LAW RELATING TO SCREENING OF JUNKYARDS; AMENDING SECTION 75-15-222, MCA; AND REPEALING SECTION 75-15-221, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-15-222, MCA, is amended to read:

"75-15-222. Rules governing screening. (1) The department of health and environmental sciences shall adopt rules governing the screening or shielding of motor vehicle wrecking facilities as provided in chapter 10, part 5, of this title.

(2) The department of highways may adopt rules governing the materials to be used in and the location, planting, construction, and maintenance of screening or fencing required by this part.

(3) The department of highways may determine that in the best interests of the state, additional screening is required of certain junkyards or motor vehicle wrecking facilities licensed under this title. The cost of any additional screening shall be borne or reimbursed by the department of highways."

Section 2. **Repealer.** Section 75-15-221, MCA, is repealed.

Approved March 12, 1979.

CHAPTER NO. 62

AN ACT TO AMEND SECTION 61-8-207, MCA, TO ALLOW A LEFT TURN ON A RED SIGNAL FROM A ONE-WAY STREET TO ANOTHER ONE-WAY STREET GOING LEFT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-207, MCA, is amended to read:

"61-8-207. Traffic-control signal legend. Whenever traffic is controlled by traffic-control signals exhibiting the words "Go", "Caution", or "Stop" or exhibiting different colored lights successively one at a time or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

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(1) Green alone or "Go":

(a) Vehicular traffic facing the signal may proceed straight through or turn left or right unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection of an adjacent crosswalk at the time such signal is exhibited.

(b) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(2) Yellow alone or "Caution" when shown following the green or "Go" signal:

(a) Vehicular traffic facing the signal is thereby warned that the red or "Stop" signal will be exhibited immediately thereafter and such vehicular traffic shall not enter or be crossing the intersection when the red or "Stop" signal is exhibited.

(b) Pedestrians facing such signals are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right-of-way to all vehicles.

(3) Red alone or "Stop":

(a) Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "Go" is shown alone, until a right turn can safely be made, *or until a left turn can safely be made from the far left lane if the turn is made from a one-way street onto another one-way street going left.* In making such turn vehicular traffic must yield the right-of-way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection. If a traffic sign legend indicating that no right turn on red *or no left turn on red* may be made after a stop is posted at said intersection, such movement cannot be made until green or "Go" is shown alone.

(b) No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(4) Red with green arrow:

(a) Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right-of-way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.

(b) No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(5) Traffic-control signal at place other than intersection:

(a) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their very nature can have no application.

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(b) Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal."

Approved March 12, 1979.

CHAPTER NO. 63

AN ACT TO CLARIFY THE ROLE OF THE WORKERS' COMPENSATION JUDGE, DEFINING HIS JURISDICTION AND THE NATURE OF REMEDIES HE MAY IMPOSE; TO REVISE THE PROVISIONS RELATING TO RESCISSION, ALTERATION, AMENDMENT, OR COMPROMISE OF ORDERS, DECISIONS, AND AWARDS; AND TO INCREASE THE ADDITIONAL AWARD FOR UNREASONABLE DELAY OR REFUSAL TO PAY COMPENSATION; AMENDING SECTIONS 39-71-204, 39-71-611, 39-71-741, 39-71-2905, 39-71-2907, AND 39-71-2909, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-204, MCA, is amended to read:

"39-71-204. Rescission, alteration, or amendment by division of its orders, decisions, or awards — limitation — effect. (1) *Except as provided in subsection (2), the* division shall have continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor.

(2) The division *or the workers' compensation judge* shall not have power to rescind, alter, or amend any final settlement or award of compensation more than 4 years after the same has been *approved by the division. Rescinding, altering, or amending a final settlement within the 4-year period shall be by agreement between the claimant and the insurer. If the claimant and the insurer cannot agree, the dispute shall be considered a dispute for which the workers' compensation judge has jurisdiction to make a determination. Except as provided in 39-71-2908, the* division *or the workers' compensation judge* shall not have the power to rescind, alter, or amend any order approving a full and final compromise settlement of compensation.

(3) Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award shall have the same effect as original orders or awards."

Section 2. Section 39-71-611, MCA, is amended to read:

"39-71-611. Costs and attorneys' fees payable on denial of claim or termination of benefits later found compensable. In the event *an* insurer denies *liability for a* claim for compensation or terminates compensation benefits and the claim is later adjudged compensable

by the *workers' compensation judge* or on appeal, the insurer shall pay reasonable costs and attorneys' fees as established by the *workers' compensation judge.*"

Section 3. Section 39-71-741, MCA, is amended to read:

"39-71-741. Compromise settlements and lump-sum payments — division approval required. The biweekly payments provided for in this chapter may be converted, in whole or in part, into a lump-sum payment. Such conversion can only be made upon the written application of the injured worker or the worker's beneficiary, *with the concurrence of the insurer,* and shall rest in the discretion of the division, both as to the amount of such lump-sum payment and the advisability of such conversion. The division is hereby vested with full power, authority, and jurisdiction to *allow* and approve compromises of claims under this chapter. All settlements and compromises of compensation provided in this chapter are void without the approval of the division. *Approval* of the division must be in writing. The division shall directly notify every claimant of any division order approving or denying a claimant's settlement or compromise of a claim. *A controversy between a claimant and an insurer regarding the conversion of biweekly payments into a lump sum is considered a dispute for which the workers' compensation judge has jurisdiction to make a determination.*"

Section 4. Section 39-71-2905, MCA, is amended to read:

"39-71-2905. Petition to workers' compensation judge. A claimant or *an* insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge *for a determination of the dispute.* The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in chapter 71 of this title. *If the dispute relates to benefits due a claimant under chapter 71, the judge shall* fix and determine any benefits to be paid and specify the manner of payment. *The workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71. The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed against an insurer for disputes arising under chapter 71.*"

Section 5. Section 39-71-2907, MCA, is amended to read:

"39-71-2907. Increase in award for unreasonable delay or refusal to pay. When payment of compensation has been unreasonably delayed or refused *by an insurer,* either prior or subsequent to the issuance of an *order by the workers' compensation judge granting a claimant compensation benefits, the full amount of the compensation benefits due a claimant, between the time compensation benefits were delayed or refused and the date of the order granting a claimant compensation benefits, may be increased by the workers' compensation judge by 20%.* The question of unreasonable delay or refusal shall be determined by the workers' compensation judge, and such a finding constitutes good cause to rescind, alter, or amend any order, decision, or award previously made in the cause for the purpose of making the increase provided herein."

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Section 6. Section 39-71-2909, MCA, is amended to read:

"39-71-2909. Authority to review, diminish, or increase awards — limitation. The judge may, upon the *petition* of *a claimant or an insurer that the disability of the claimant has changed*, review, diminish, or increase, in accordance with the law on benefits as set forth in chapter 71 of this title, any benefits *previously awarded by the judge or benefits received by a claimant through* settlement agreements. *However, the judge may not change* any final settlement or award of compensation more than 4 years after the settlement has been *approved by the division or* any order approving a full and final compromise settlement of compensation."

Approved March 12, 1979.

CHAPTER NO. 64

AN ACT TO TRANSFER THE RESPONSIBILITY FOR ACTUARIAL VALUATIONS OF POLICE RESERVE FUNDS FROM THE DEPARTMENT OF COMMUNITY AFFAIRS TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTION 19-10-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-10-205, MCA, is amended to read:

"19-10-205. Actuarial valuation of police reserve funds. (1) The city treasurer shall submit to the department of *administration* before October 1 of each odd-numbered year all information requested by the department necessary to complete an actuarial valuation of the city's police reserve fund. The valuation shall consider the actuarial soundness of the police reserve fund for the 2 preceding fiscal years.

(2) The valuation is to be prepared by a qualified actuary selected by the department. A qualified actuary is a member of the American academy of actuaries or of any organization considered by the department to have similar standards.

(3) In each fiscal year in which an actuarial valuation is prepared, the department shall submit to the state auditor a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed $6,000 in any fiscal year. The state auditor shall make payment to the actuary designated in the request."

Approved March 13, 1979.

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CHAPTER NO. 65

AN ACT TO AMEND SECTION 5-11-203, MCA, TO MODIFY THE DISTRIBUTION OF SENATE AND HOUSE JOURNALS TO THE STATE HISTORICAL LIBRARY, THE MONTANA STATE LIBRARY, AND STATE OFFICERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-11-203, MCA, is amended to read:

"5-11-203. Distribution of senate and house journals and session laws. (1) Immediately after the senate and house journals and the session laws mentioned in 5-11-202 are bound, the legislative services division of the legislative council shall distribute them.

(2) It shall distribute the house and senate journals as follows:

(a) to each county clerk, one copy of each for the use of the county;

(b) *to the Montana state library, 20 copies of each for the use of the library and distribution to depository libraries, of which 2 copies will be deposited with the state historical library for security purposes*;

(c) to the state law librarian, two copies of each for the use of the library and such additional copies as may be necessary for the purposes of exchange;

(d) to the library of congress *and each state officer*, two copies of each; and

(e) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives at the session at which the journals were adopted, one copy of each.

(3) It shall distribute the session laws as follows:

(a) to each department of the government at Washington and of the government of this state, one copy;

(b) to the library of congress, eight copies;

(c) to the state library, two copies;

(d) to the state historical library, two copies;

(e) to the state law librarian, four copies for the use of the state law library and such additional copies as may be required for exchange with libraries and institutions maintained by other states, territories, and public libraries;

(f) to the library of each custodial institution, one copy;

(g) to each Montana member of congress, each United States district judge in Montana, each of the judges of the state supreme and district courts, and each of the state officers, one copy;

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(h) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives at the session at which the laws were adopted, one copy;

(i) to each of the incorporated colleges of the state and each unit of the state university system, one copy;

(j) to each county clerk, three copies for the use of the county; and

(k) to each county attorney and to each clerk of a district court, one copy."

Approved March 13, 1979.

CHAPTER NO. 66

AN ACT TO REMOVE THE PROVISION PROVIDING COMPENSATION AS GOVERNOR FOR THE LIEUTENANT GOVERNOR WHEN HE IS ACTING GOVERNOR; REPEALING SECTION 2-15-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 2-15-303, MCA, is repealed.

Approved March 13, 1979.

CHAPTER NO. 67

AN ACT TO EXEMPT FROM UNEMPLOYMENT COMPENSATION COVERAGE CASUAL LABOR OF LESS THAN $50 PER QUARTER WHEN SUCH CASUAL LABOR IS NOT IN THE COURSE OF THE EMPLOYER'S TRADE OR BUSINESS AND WHEN THE INDIVIDUAL IS NOT REGULARLY EMPLOYED BY SUCH EMPLOYER; AMENDING SECTION 39-51-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" shall not include:

(a) agricultural labor, except as provided in 39-51-203(8);

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-203(9);

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

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(d) service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of 18 in the employ of his father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress, provided that the division is hereby authorized and directed to enter into agreements with the proper agencies under such act of congress, which agreements shall become effective 10 days after publication thereof in the manner in 39-51-302 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such act of congress or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under this chapter;

(g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salesmen paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

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(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital;

(l) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service.

(2) "Employment" shall not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in the employ of a school which is not an institution of higher education, prior to December 31, 1977;

(d) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(e) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(f) for a state prison or other state correctional or custodial institution by an inmate of that institution."

Approved March 13, 1979.

CHAPTER NO. 68

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO ENVIRONMENTAL PROTECTION; AMENDING SECTIONS 75-3-103, 75-3-104, 75-3-204, 75-3-301, 75-3-405, 75-5-615, 75-6-111, 75-7-204, 75-10-113, 75-10-121, 75-10-213, 75-10-214, 75-10-232, 75-15-123, 75-15-215, 75-20-408, AND 75-20-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-3-103, MCA, is amended to read:

"75-3-103. Definitions. *The definitions used in this chapter are intended to be consistent with those used in 10 CFR 1-199 and 49 CFR*

173.389-173.399. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Byproduct material" means a radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(2) "Department" means the department of health and environmental sciences.

(3) "Disposal" means burial in soil, release through the sanitary sewerage system, incineration, or permanent long-term storage with no intention of or provision for subsequent removal.

(4) "General license" means a license effective pursuant to rules promulgated by the department without the filing of an application to transfer, acquire, own, possess, or use quantities of or devices or equipment utilizing quantities of byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially. General licenses are effective without the filing of applications with the department or the issuing of licensing documents to the user.

(5) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles, but not sound or radio waves or visible, infrared, or ultraviolet light.

(6) "Large quantity radioactive material" is that quantity of radioactive material defined in 49 CFR 173.389(b).

(7) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States *nuclear regulatory* commission, any successor thereto, or federal agencies licensed by the *nuclear regulatory* commission.

(8) "Registration" means the registering with the department by the legal owner, user, or authorized representative of sources of ionizing radiation in the manner prescribed by rule.

(9) "Source material" means uranium, thorium, or any other material which the department or the United States *nuclear regulatory* commission declares by order to be source material or ores containing one or more of the foregoing materials in such concentration as the department or the *nuclear regulatory* commission declares by order to be source material after the *nuclear regulatory* commission has determined the material in such concentration to be source material.

(10) "Special nuclear material" means plutonium, *uranium 233,* uranium enriched in the isotope 233 or in the isotope 235, and any other material which the department or the United States *nuclear regulatory* commission or any successor thereto declares by order to be special nuclear material or any material artificially enriched by any of the foregoing but does not include source material.

(11) "Specific license" means a license issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment utilizing quantities of byproduct, special nuclear materials, or other radioactive material occurring naturally or produced artificially."

Section 2. Section 75-3-104, MCA, is amended to read:

"75-3-104. Exemptions — sources, diagnosis, and therapy. (1) This chapter *does* not apply to the following sources or conditions:

(a) electrical equipment that is not intended primarily to produce radiation and that, by nature of design, does not produce radiation at the point of nearest approach at a weekly rate higher than one-tenth the appropriate limit for any critical organ exposed. The production testing or production servicing of such equipment *is* not exempt.

(b) radiation machines during process of manufacture or in storage or transit;

(c) any radioactive material while being transported in conformity with regulations adopted by the *nuclear regulatory* commission or any successor thereto or the interstate commerce commission and specifically applicable to the transportation of such radioactive materials.

(2) No exemptions under this section are granted for those quantities or types of activities *that* do not comply with the established rules promulgated by the *nuclear regulatory* commission or by any successor thereto.

(3) The provisions of this chapter *may* not be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts."

Section 3. Section 75-3-204, MCA, is amended to read:

"75-3-204. Records. (1) The department shall require each person who acquires, possesses, or uses a source of ionizing radiation to maintain records relating to its receipt, storage, transfer, or disposal and such other records as the department may require, subject to such exemptions as may be provided by rules.

(2) The department shall require each person who acquires, possesses, or uses a source of ionizing radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules of the department. Copies of these records and those required to be kept by subsection (1) of this section shall be submitted to the department on request.

(3) The department shall adopt reasonable regulations, compatible with those of the United States *nuclear regulatory* commission or the national committee on radiation protection, pertaining to reports of exposure of personnel to radiation. *The* regulations shall require that reports of excessive exposure be made to the individual exposed and to the department and shall make provision for periodic and terminal reports to individuals for whom personnel monitoring is required."

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Section 4. Section 75-3-301, MCA, is amended to read:

"75-3-301. Definition. *Notwithstanding the definition in 75-3-103, as used in this part "person"* means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity."

Section 5. Section 75-3-405, MCA, is amended to read:

"75-3-405. Penalty. *A* person who violates 75-3-404 is guilty of a misdemeanor punishable by a fine of not less than $100 and not more than $1,000 or by confinement in the county jail of not less than 30 days and not more than 90 days or by both."

Section 6. Section 75-5-615, MCA, is amended to read:

"75-5-615. Violators subject to penalties. (1) A person found to be in violation of a condition, limitation, standard, or other requirement established pursuant to 75-5-612 through 75-5-614 *is* subject to the penalty provisions of 75-5-631, 75-5-632, 75-5-633, and 75-5-635.

(2) For the purpose of this *section*, the term "person" *means*, in addition to the definition contained in 75-5-103, any responsible corporate officer."

Section 7. Section 75-6-111, MCA, is amended to read:

"75-6-111. Appeal from rule or standard — injunction to require compliance. (1) A person aggrieved by a rule, standard, or order adopted or issued pursuant to this part may appeal to the district court. While the appeal is pending, the rule, standard, or order is in force.

(2) The department may seek an injunction from the appropriate district court to require compliance with this part or a rule or order issued as authorized by this part. The department may also initiate an action to collect a *criminal* penalty as provided in 75-6-113."

Section 8. Section 75-7-204, MCA, is amended to read:

"75-7-204. Work for which permit required. (1) A person who proposes to do any work *that* will alter or diminish the course, current, or cross-sectional area of a lake or its lakeshore must first secure a permit for the work from the local governing body.

(2) Without limitation, the following activities, when conducted below mean annual high-water elevation, are examples of work for which a permit is required: construction of channels and ditches; dredging of lake bottom areas to remove muck, silt, or weeds; lagooning, *meaning the placement of a narrow strip of land across a portion of a lake to create a lagoon;* filling; constructing breakwaters of pilings; *constructing* wharves and docks."

Section 9. Section 75-10-113, MCA, is amended to read:

"75-10-113. User's fee assessed. In the event the revenues of a *solid waste management system* are insufficient to pay the costs, a local government may levy a pro rata fee against the users of the solid waste

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management district. *The* pro rata fee shall be based on a per ton, per pound, or volume assessment."

Section 10. Section 75-10-121, MCA, is amended to read:

"75-10-121. Solid waste management loans — requisites. (1) The department may, in the name of the state of Montana, enter into agreements with a local government for loans, subject to any existing contractual obligations of the local government.

(2) A loan agreement *must* include but not be limited to the following:

(a) the amount of the loan, not to exceed the estimated reasonable amount of the total implementation cost, excluding equipment, construction, or land acquisition as determined by the department;

(b) an agreement by the department to pay part of the amount of the loan to the local government on a timetable as may be agreed upon by the parties;

(c) an agreement by the local government to proceed with the *solid waste management system* in accordance with plans approved by the department;

(d) an agreement by the local government to commence operation of the *solid waste management system* on its completion and not to discontinue operations or dispose of the *solid waste management system* without the approval of the department;

(e) an agreement by the local government to operate and maintain a solid waste management system in accordance with applicable provisions of part 2 of this chapter and rules of the department;

(f) an agreement by the local government to pledge any available sources of revenue to the repayment of loans according to the schedule established by the department. Any revenues from the sale of energy or recycled materials recovered from the solid waste management system and any money received under federal grants for local solid waste management may be used to make such payments. State loan funds for local solid waste management systems may be used only for front-end organizational activities.

(g) an agreement by the local government to establish and maintain adequate financial records for the *solid waste management system*, including an annual audit of the financial records and transactions covering each fiscal year by a certified public accountant. A copy of each audit *must* be submitted to the department of administration and the department within 30 days after its completion. Failure of a local government to file a copy of the audit as required by this section shall be grounds for rescinding the loan agreement.

(3) The department may enter into further agreements with a local government and acquire further guarantees or securities as are necessary to implement the provisions of this part."

Section 11. Section 75-10-213, MCA, is amended to read:

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"75-10-213. Unlawful disposition of dead animals — exception. It is unlawful to:

(1) place all or any part of a dead animal in any lake, river, creek, pond, reservoir, road, street, alley, lot, or field;

(2) place all or any part of a dead animal within 1 mile of the residence of any person unless the dead animal or part of a dead animal is burned or buried at least 2 feet underground; or

(3) being the owner, permit all or any part of a dead animal to remain in the places specified in subsections (1) and *(2)* of this section except as provided in subsection *(2)* of this section."

Section 12. Section 75-10-214, MCA, is amended to read:

"75-10-214. Exclusions — exceptions to exclusions. (1) (a) This part may not be construed to prohibit a person from disposing of his own solid waste, except hazardous waste, upon land owned *or* leased *by that person* or covered by easement or permit as long as it does not create a nuisance or public health hazard.

(b) A person may dispose of his own hazardous wastes upon land owned *or* leased *by that person* or covered by easement or permit after complying with the licensing requirements of this part and the rules adopted to regulate the disposal or transport of hazardous wastes.

(c) The exclusion contained in subsection (1)(a) of this section does not apply to a division of land of 5 acres or less made after July 1, 1977, which falls within the definition of subdivision in Title 76, chapter 4, part 1, or the Montana Subdivision and Platting Act in Title 76, chapter 3.

(2) The licensing requirements of this part do not apply to the transportation of marketable hazardous wastes to a manufacturing or processing center."

Section 13. Section 75-10-232, MCA, is amended to read:

"75-10-232. Penalty for violations. (1) (a) *A* person violating this part or regulations prescribed by the department under this part, except 75-10-212(2), *is* guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $500.

(b) A person who stores, treats, transports, or disposes of a hazardous waste in violation of this part, a rule adopted as authorized by this part, or an order issued as provided in this part is subject to a civil penalty of not more than $25,000.

(2) Each day upon which a violation occurs is a separate violation."

Section 14. Section 75-15-123, MCA, is amended to read:

"75-15-123. Acquisition of outdoor advertising rights — compensation. (1) The department may acquire by gift, purchase, agreement, exchange, or eminent domain existing outdoor advertising and property rights pertaining to advertising *that was* lawfully in existence on June 24, 1971, and which by virtue of 75-15-111(1) *is* nonconforming. Eminent domain shall be exercised in accordance with the laws of the state.

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(2) Just compensation shall be paid for outdoor advertising and property rights pertaining to the advertising acquired through the process of eminent domain. The department may remove outdoor advertising found in violation of 75-15-112 or 75-15-132 without payment of compensation.

(3) Except as provided in 75-15-131 and 75-15-132, a sign may not be required to be removed unless at the time of removal or discontinuance there are sufficient funds, from whatever source, appropriated and immediately available to pay the just compensation required under this section and unless at that time the federal funds required to be contributed under section 131(g) of Title 23, United States Code, with respect to the outdoor advertising being removed have been apportioned and are immediately available to this state."

Section 15. Section 75-15-215, MCA, is amended to read:

"75-15-215. Restrictions as to location. No license *may* be granted for the establishment, maintenance, or operation of a junkyard within 1,000 feet of the nearest edge of the right-of-way of *a* highway on the interstate or primary systems except *a license may be granted for a junkyard*:

(1) screened by natural objects, *planted objects*, fences, or other appropriate means so as not to be visible from the main-traveled way of any such highway or otherwise removed from sight;

(2) located within *an area* zoned for industrial use under authority of law;

(3) located within unzoned industrial *area, as* determined from actual land uses and defined by *rules* promulgated by the *department of highways*;

(4) *that is* not visible from the main-traveled way of any such highway."

Section 16. Section 75-20-408, MCA, is amended to read:

"75-20-408. Penalties for violation of chapter — civil action by attorney general. (1) (a) Whoever commences to construct or operate a facility without first obtaining a certificate required under 75-20-201 or a waiver thereof under 75-20-304(3) *or* having first obtained a certificate, constructs, operates, or maintains a facility other than in compliance with the certificate *or* violates any other provision of this chapter or any rule or order adopted thereunder *or* knowingly submits false information in any report or application required by this chapter or rule or order adopted thereunder or causes any of the aforementioned acts to occur *is* liable *for* a civil penalty of not more than $10,000 for each violation.

(b) Each day of a continuing violation *constitutes* a separate offense.

(c) The penalty *is* recoverable in a civil suit brought by the attorney general on behalf of the state in the district court of *the first judicial district of* Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than $10,000 for each violation or imprisoned for not more

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than 1 year, or both. Each day of a continuing violation *constitutes* a separate offense.

(3) In addition to any penalty provided in subsections (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it may refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court of *the first judicial district of* Montana for injunctive or other appropriate relief against the violation and to enforce this chapter or a certificate issued hereunder. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

(4) The department shall also enforce this chapter and bring legal actions to accomplish the enforcement through its own legal counsel.

(5) All fines and penalties collected shall be deposited in the earmarked revenue fund for the use of the department in administering this chapter."

Section 17. Section 75-20-501, MCA, is amended to read:

"75-20-501. Annual long-range plan submitted — contents — available to public. (1) Each utility and each person contemplating the construction of a facility within this state in the ensuing 10 years shall furnish annually to the department for its review a long-range plan for the construction and operation of facilities.

(2) The plan shall be submitted *by* April 1 of each year and *must* include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the utility or person whose construction is projected to commence during the ensuing 10 years, as well as those facilities to be removed from service during the planning period;

(b) in the case of utility facilities, a description of efforts by the utility or person to coordinate the plan with other utilities or persons so as to provide a coordinated regional plan for meeting the energy needs of the region;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility or person and explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the board by rule or the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this chapter.

(3) The plan shall be made available to the public by the department. The utility or person shall give public notice throughout the state of its

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plan by filing the plan with the environmental quality council, the department of health and environmental sciences, the department of highways, the department of public service regulation, the department of state lands, *the department of fish and game,* and the department of community affairs. Citizen environmental protection and resource planning groups and other interested persons may obtain a plan by written request and payment therefor to the department."

Approved March 13, 1979.

CHAPTER NO. 69

AN ACT REQUIRING THE CONSIDERATION OF USING PUBLIC LANDS FOR THE LOCATION OF FACILITIES WHENEVER ECONOMICALLY PRACTICABLE AND COMPATIBLE TO ENVIRONMENTAL FACTORS; AMENDING SECTIONS 75-20-301 AND 75-20-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-301, MCA, is amended to read:

"75-20-301. Decision of board — findings necessary for certification. (1) Within 90 days after the last day of the hearing, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the facility as the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it shall find and determine:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) each of the criteria listed in 75-20-503;

(e) in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct shall be located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

(iii) that the facility will serve the interests of utility system economy and reliability;

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(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience, and necessity;

(h) that duly authorized state air and water quality agencies have certified that the proposed facility will not violate state and federally established standards and implementation plans. The judgments of duly authorized air and water quality agencies are conclusive on all questions related to the satisfaction of state and federal air and water quality standards; *and*

(i) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.

(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) of this section, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b) of this section;

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities."

Section 2. Section 75-20-503, MCA, is amended to read:

"75-20-503. Environmental factors evaluated. In evaluating long-range plans, conducting 5-year site reviews, and evaluating applications for certificates, the board and department shall give consideration to the following list of environmental factors and may by rule add to the categories of this section:

(1) energy needs:

(a) growth in demand and projections of need;

(b) availability and desirability of alternative sources of energy;

(c) availability and desirability of alternative sources of energy in lieu of the proposed facility;

(d) promotional activities of the utility which may have given rise to the need for this facility;

(e) socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality;

(f) conservation activities which could reduce the need for more energy;

(g) research activities of the utility of new technology available to it which might minimize environmental impact;

(2) land use impacts:

(a) area of land required and ultimate use;

(b) consistency with areawide state and regional land use plans;

(c) consistency with existing and projected nearby land use;

(d) alternative uses of the site;

(e) impact on population already in the area, population attracted by construction or operation of the facility itself;

(f) impact of availability of energy from this facility on growth patterns and population dispersal;

(g) geologic suitability of the site or route;

(h) seismologic characteristics;

(i) construction practices;

(j) extent of erosion, scouring, wasting of land, both at site and as a result of fossil fuel demands of the facility;

(k) corridor design and construction precautions for transmission lines or aqueducts;

(l) scenic impacts;

(m) effects on natural systems, wildlife, plant life;

(n) impacts on important historic architectural, archeological, and cultural areas and features;

(o) extent of recreation opportunities and related compatible uses;

(p) public recreation plan for the project;

(q) public facilities and accommodation;

(r) opportunities for joint use with energy-intensive industries or other activities to utilize the waste heat from facilities;

(s) opportunities for using public lands for location of facilities whenever as economically practicable as the use of private lands and compatible with the requirements of this section;

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(3) water resources impacts:

(a) hydrologic studies of adequacy of water supply and impact of facility on streamflow, lakes, and reservoirs;

(b) hydrologic studies of impact of facilities on groundwater;

(c) cooling system evaluation, including consideration of alternatives;

(d) inventory of effluents, including physical, chemical, biological, and radiological characteristics;

(e) hydrologic studies of effects of effluents on receiving waters, including mixing characteristics of receiving waters, changed evaporation due to temperature differentials, and effect of discharge on bottom sediments;

(f) relationship to water quality standards;

(g) effects of changes in quantity and quality on water use by others, including both withdrawal and in situ uses;

(h) relationship to projected uses;

(i) relationship to water rights;

(j) effects on plant and animal life, including algae, macroinvertebrates, and fish population;

(k) effects on unique or otherwise significant ecosystems, e.g., wetlands;

(l) monitoring programs;

(4) air quality impacts:

(a) meteorology—wind direction and velocity, ambient temperature ranges, precipitation values, inversion occurrence, other effects on dispersion;

(b) topography—factors affecting dispersion;

(c) standards in effect and projected for emissions;

(d) design capability to meet standards;

(e) emissions and controls:

(i) stack design;

(ii) particulates;

(iii) sulfur oxides;

(iv) oxides of nitrogen; and

(v) heavy metals, trace elements, radioactive materials, and other toxic substances;

(f) relationship to present and projected air quality of the area;

(g) monitoring program;

(5) solid wastes impact:

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(a) solid waste inventory;

(b) disposal program;

(c) relationship of disposal practices to environmental quality criteria;

(d) capacity of disposal sites to accept projected waste loadings;

(6) radiation impacts:

(a) land use controls over development and population;

(b) wastes and associated disposal program for solid, liquid, radioactive, and gaseous wastes;

(c) analyses and studies of the adequacy of engineering safeguards and operating procedures;

(d) monitoring—adequacy of devices and sampling techniques;

(7) noise impacts:

(a) construction period levels;

(b) operational levels;

(c) relationship of present and projected noise levels to existing and potential stricter noise standards;

(d) monitoring—adequacy of devices and methods."

Approved March 13, 1979.

CHAPTER NO. 70

AN ACT TO CLARIFY THE FISCAL DUTIES OF THE STATE TREASURER; AMENDING SECTION 17-1-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-1-111, MCA, is amended to read:

"17-1-111. General fiscal duties of state treasurer. (1) The state treasurer shall be the custodian of all moneys and securities of the state unless otherwise expressly provided by law.

(2) It is the duty of the state treasurer to:

(a) receive and account for all moneys belonging to the state, not expressly required by law to be received and kept by some other person;

(b) pay warrants out of the funds upon which they are drawn;

(c) upon payment of any warrant, take upon the back thereof the receipt of the person to whom it is paid;

(d) keep an account of all moneys received and disbursed;

(e) at the request of either house of the legislature or of any committee thereof, give information in writing as to the condition of the treasury or upon any subject relating to the duties of his office;

(f) discharge such other duties as may be imposed upon him by law."

Approved March 13, 1979.

CHAPTER NO. 71

AN ACT ALLOWING LANDOWNERS UPON WHOSE LAND A FACILITY UNDER THE MONTANA MAJOR FACILITY SITING ACT IS PROPOSED TO BE LOCATED TO RECEIVE ANY NEGOTIATED PAYMENT IN ANNUAL INSTALLMENTS AS COMPENSATION FOR USE OF THAT LAND.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Optional annual installments for location of facility on landowner's property.** A landowner upon whose land a facility is proposed to be located shall have the option of receiving any negotiated settlement for use of his land, if and when the land is used for a facility, by easement, right-of-way, or other legal conveyance in either a lump sum or in not more than five consecutive annual installments.

Section 2. **Codification.** This act is intended to be codified as an integral part of Title 75, chapter 20, part 4, and the provisions contained in Title 75, chapter 20, part 4, apply to this act.

Approved March 13, 1979.

CHAPTER NO. 72

AN ACT TO PERMIT SCHOOL TRUSTEES TO RECEIVE AND USE FEDERAL FUNDS TO SUPPLEMENT THE GENERAL FUND BUDGET WITHOUT A VOTE OF THE ELECTORS OF THE SCHOOL DISTRICT; AMENDING SECTIONS 20-9-315 AND 20-9-353, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-315, MCA, is amended to read:

"20-9-315. Maximum general fund budget and exceptions. The total amount of the general fund budget of any district shall not be greater than the general fund budget amount specified in 20-9-316 through 20-9-321, except when a district has adopted an emergency general fund budget under the provisions of 20-9-165 or when a district *satisfies the requirements of* 20-9-353."

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Section 2. Section 20-9-353, MCA, is amended to read:

"20-9-353. Additional levy for general fund — election for authorization to impose. (1) The trustees of any district may propose to adopt a general fund budget in excess of the general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321 for any of the following purposes:

(a) building, altering, repairing, or enlarging any schoolhouse of the district;

(b) furnishing additional school facilities for the district;

(c) acquisition of land for the district;

(d) proper maintenance and operation of the school programs of the district.

(2) However, when the trustees adopt a total general fund budget which exceeds 110% of the general fund budget for the preceding year, they shall file a notice of this increase with the superintendent of public instruction, setting forth the specific reasons for increasing the budget.

(3) When the trustees of any district determine that an additional amount of financing is required for the general fund budget that is in excess of the statutory schedule amount, the trustees shall submit the proposition of an additional levy to raise such excess amount of general fund financing to the electors who are qualified under 20-20-301 to vote upon such proposition except that *no election shall be required to permit the school trustees to use federal funds received under Title I of Public Law 81-874 to increase the school district's general fund budget as established in 20-9-316 through 20-9-321 by the amount of these funds.* Such special election shall be called and conducted in the manner prescribed by this title for school elections. The ballot for such election shall state the amount of money to be raised by additional property taxation, the approximate number of mills required to raise such money, and the purpose for which such money will be expended, and it shall be in the following format:

"PROPOSITION

Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional tax levy is made)?

☐ FOR the additional levy.

☐ AGAINST the additional levy."

(4) If the election on any additional levy for the general fund is approved by a majority vote of those electors voting at such election, the proposition shall carry and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The

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trustees shall certify the additional levy amount authorized by such a special election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy such number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141, as are required to raise the amount of such additional levy.

(5) Authorization to levy an additional tax under the provisions of this section shall be effective for only 1 school fiscal year and shall be authorized by a special election conducted before August 1 of the school fiscal year for which it is effective. Only one such additional levy for the maintenance and operation of the school programs of a high school district may be imposed by a high school district in a given school fiscal year."

Approved March 13, 1979.

CHAPTER NO. 73

AN ACT TO AMEND SECTION 61-4-101, MCA, TO PROVIDE A GRACE PERIOD FOR MOTOR VEHICLE DEALER LICENSE RENEWAL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-101, MCA, is amended to read:

"61-4-101. Application for dealer's license. (1) Every person, firm, corporation, or association who, for commission or profit, engages in the business of buying, selling, exchanging, or acting as a broker of new motor vehicles, used motor vehicles, trailers, (except trailers having an unladen weight of less than 500 pounds), semitrailers, or special mobile equipment as defined in 61-1-104 and qualifies under [subparagraph (f)] of this section shall cause to be filed, by mail or otherwise, in the office of the division, a verified application for licensing as a dealer on a blank to be furnished by the division for that purpose, and containing the information therein required. The application and all of the information therein contained shall be verified by the Montana highway patrol. Each application must be accompanied by the license fee hereinafter named. Dealer's license must be renewed and paid for annually, and an application for relicensing must be filed not later than January 1 of each year. *If an application for renewal of a license has been received by the division prior to the expiration of the license, the dealer may operate his business and display dealer plates under the expired license between January 1 and February 15 following expiration.*

(2) To qualify for licensing and the issuance and use of "D", "UD", "DTR", or "MCD" plates, as hereinafter provided, the applicant must furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant must:

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(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name and address of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary thereof are sufficient;

(iii) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

(iv) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

(v) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

(vi) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that he is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates, or as a trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates, or as a motorcycle dealer and for the use of "MCD" plates, the applicant must, in addition to the matters set forth in subsections (i) and (ii) of subsection (2)(a) above, provide:

(i) a statement that the applicant has a building or lot and a sign readable at a minimum distance of 150 feet and indicating the firm name and headquarters as the principal place of business; and

(ii) a certificate to the effect that the applicant is a bona fide dealer in used motor vehicles, trailers, semitrailers, special mobile equipment, or motorcycles.

(c) To qualify for a used motor vehicle dealer license a person must submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(b) above.

(d) The provisions of subsection (2)(c) above do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

(3) The applicant for a dealer's license shall also file with his application a good and sufficient bond in the sum of $5,000, and the bond shall be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds shall run to the state of Montana and shall be approved by the division and filed in its office and shall be renewed annually."

Approved March 13, 1979.

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CHAPTER NO. 74

AN ACT TO AMEND 61-3-431, MCA, TO PROVIDE A GRACE PERIOD IN WHICH A SPECIAL MOBILE EQUIPMENT IDENTIFICATION PLATE MAY BE RENEWED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-431, MCA, is amended to read:

"61-3-431. Special mobile equipment — exemption from registration and payment of fees and charges — identification plate — publicly owned special mobile equipment. (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in 61-1-104(2) and occasionally moves that equipment on, over, or across the highways of the state is not subject to registration of that equipment or required to pay the fees and charges provided for in 61-3-502, 61-4-115, 61-4-301 through 61-4-308, or part 2 of chapter 10. Prior to movement on the highways, however, each piece of equipment shall display an equipment identification plate or a dealers' license plate attached to the equipment.

(2) Annual application for the identification plate shall be made to the county treasurer before any piece of equipment is moved on the highways. Application shall be made on a form furnished by the department of justice, together with the payment of a fee of $5. The equipment for which a special mobile equipment plate is sought is subject to the assessment of personal property taxes on the date application is made for the plate. The personal property taxes assessed against the special mobile equipment must be paid before the issuance of a special mobile equipment plate. The fees collected under this section belong to the county road fund.

(3) The identification plate expires on December 31 of each year. *If the expired identification plate is displayed, an owner of special mobile equipment registered under the provisions of this section is entitled to operate the equipment between January 1 and February 15 following expiration without displaying the identification plate or receipt of the current year.*

(4) Publicly owned special mobile equipment, and implements of husbandry used exclusively by an owner in the conduct of his own farming operations, are exempt from this section."

Approved March 13, 1979.

CHAPTER NO. 75

AN ACT TO ALLOW THE USE OF METRIC SIZES FOR PACKAGING AND TO PROVIDE RULEMAKING BY THE DEPARTMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Use of metric sizes in sale of commodities — department to make rules.** Notwithstanding any other provision, metric sizes as defined by the department by rule will be permitted, provided there is compliance with all labeling requirements of the state of Montana.

Approved March 14, 1979.

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CHAPTER NO. 76

AN ACT ESTABLISHING PROCEDURES FOR ISSUANCE OF ORDERS AND REMOVAL OF BOARD MEMBERS OR OFFICERS OF FINANCIAL INSTITUTIONS IN THE EVENT OF VIOLATION OF A LAW OR UNSAFE PRACTICES; PROVIDING FOR INFORMAL DISPOSITION; AND PROVIDING PENALTIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For purposes of [sections 1 through 13], the following definitions shall apply:

(1) "Cease and desist order which has become final" and "order which has become final" mean a cease and desist order or an order issued by the director with the consent of the institution or the board member, officer, or other person concerned, with respect to which no timely petition for review of the action of the director has been filed in a district court as specified in subsection (2) of [section 8] or with respect to which the action of the court in which a petition for review has been filed is not subject to further review by the courts of the state.

(2) "Director" means the director of the department of business regulation.

(3) "Institution" means a commercial bank, savings bank, trust company, or investment company chartered under Title 32, chapter 1, MCA.

(4) "Violation" includes without limitation any action, alone or with others, causing, counseling, aiding, or abetting a violation.

(5) "Board member" means a member of the board of directors of the institution.

Section 2. **Notice of charges — hearing — cease and desist order — effective date.** (1) If the director has reasonable cause to believe that any institution is engaging or has engaged or is about to engage in an unsafe or unsound practice in conducting the business of such institution or is violating, has violated, or is about to violate a law or rule, the director may issue and serve upon the institution a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the institution.

(2) The hearing may not be earlier than 30 days or later than 60 days after service of the notice unless an earlier or a later date is set by the director at the request of the institution. Unless the institution appears at the hearing by a duly authorized representative, it shall be considered to have consented to the issuance of the cease and desist order. In the event of such consent or if upon the record made at any such hearing the director finds that any unsafe or unsound practice or violation specified in the notice of charges has been established by the preponderance of the evidence, the director may issue and serve upon the institution an order to

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cease and desist from any such practice or violation. By provisions which may be mandatory or otherwise, the order may require the institution and its board members, officers, employees, and agents to cease and desist from such practice or violation and to take affirmative action to correct the conditions resulting from any such practice or violation.

(3) A cease and desist order becomes effective at the expiration of 45 days after the service of the order upon the institution, except in the case of an order issued upon consent which is effective at the time specified therein, and remains effective and enforceable as provided therein, except to the extent it is stayed, modified, terminated, or set aside by the action of the director or a reviewing court.

Section 3. **Informal conferences — time for application.** (1) Within 15 days after service of the notice of charges, either the institution or department may request an informal conference to discuss the charges and the possible disposition of them without a formal hearing process. The conference shall be carried out in accordance with the provisions of 2-4-603. Upon a proper showing, the director in his discretion may withdraw charges and proceedings for a cease and desist order.

Section 4. **Temporary cease and desist order — grounds for issuance — effective date — injunctive relief.** (1) Whenever the director determines that any violation or threatened violation or any unsafe or unsound practice specified in the notice of charges served upon the institution pursuant to [section 2(1)] or the continuation thereof is likely to cause insolvency or substantial dissipation of assets or earnings of the institution or is likely to otherwise seriously prejudice the interests of its depositors, the director may issue a temporary order requiring the institution to cease and desist from such violation or practice. Such order shall contain a statement of the facts constituting the alleged violation or unsafe or unsound practice. The order is effective upon service upon the institution and unless set aside, limited, or suspended by a court in proceedings authorized by subsection (2) of this section remains effective and enforceable until the completion of the administrative proceedings pursuant to such notice of charges, until the director dismisses the charges specified in the notice, or until a cease and desist order which is issued against the institution after the hearing becomes effective.

(2) Within 10 days after the institution has been served with a temporary cease and desist order, the institution may apply to the district court for the county in which the home office of the institution is located for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings held pursuant to the notice of charges served upon the institution under [section 2(1)]. The court has jurisdiction to issue the injunction.

Section 5. **Notice of intention to remove board member or officer or to prohibit participation — suspension.** (1) The director may serve upon a board member or officer of an institution a written notice of intention to remove him from office whenever the director has reasonable cause to believe:

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(a) the board member or officer has:

(i) committed any violation of law involving dishonesty or breach of trust;

(ii) violated a cease and desist order which has become final;

(iii) engaged or participated in any unsafe or unsound practice in connection with the institution; or

(iv) committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as a board member or officer of the institution; and

(b) the institution has suffered or will probably suffer substantial financial loss or other damage or the interest of its depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty involving personal dishonesty on the part of such board member or officer.

(2) Whenever in the opinion of the director any board member or officer of an institution has, by conduct or practice with respect to another institution or business organization which has resulted in substantial financial loss or other damage to that institution or business organization, evidenced his personal disability and unfitness to continue as a board member or officer of the institution, and whenever the director has reasonable cause to believe that any other person participating in the conduct of the affairs of an institution has, by conduct or practice with respect to such institution, another institution, or other business organization which has resulted in substantial financial loss or other damage to the institution or business organization, evidenced his personal disability and unfitness to participate in the conduct of the affairs of such institution, the director may serve upon the board member, officer, or other person a written notice of intention to remove such person from office or to prohibit his further participation in any manner in the conduct of the affairs of the institution.

(3) A notice of intention to remove a board member, officer, or other person from office or to prohibit his participation in the conduct of the affairs of an institution shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. The hearing shall be held not earlier than 30 days or later than 60 days after the date of service of the notice, unless an earlier or later date is set by the director at the request of the board member, officer, or other person and for good cause shown.

(4) Unless the board member, officer, or other person appears at the hearing in person or by a duly authorized representative, he shall be considered to have consented to the issuance of an order of removal or prohibition. In the event of consent or if upon the record made at the hearing the director finds that any of the grounds specified in the notice have been established by the preponderance of the evidence, the director may issue such orders of suspension, removal from office, or prohibition from participation in the conduct of the affairs of the institution as he considers appropriate. The order becomes effective 30 days after service upon the

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institution and the board member, officer, or other person concerned, except in the case of an order issued upon consent which becomes effective at the time specified therein. The order remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the director or a reviewing court.

Section 6. **Informal conferences — time for application.** Within 15 days after service of the notice of charges, either the board member, officer, or other person may request an informal conference to discuss the charges and the possible disposition of them without formal hearing process. The conference shall be carried out in accordance with the provisions of 2-4-603. Upon a proper showing the director in his discretion may withdraw charges and proceedings for a cease and desist order.

Section 7. **Suspension or prohibition effective upon service — stay.** (1) With respect to any board member or officer of an institution or any other person to whom notice is sent pursuant to [section 5], if the director considers it necessary for the protection of the institution or the interests of its depositors that the board member, officer, or other person be suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the institution, the director may serve upon such board member, officer, or other person a written notice suspending him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the institution. The notice shall contain a statement of the facts constituting grounds for the order and shall fix a time, not later than 10 days from the date of the service of the notice, at which a hearing will be held to afford the board member or officer the opportunity to respond. The suspension or prohibition is effective upon service of the notice and unless stayed by a court in proceedings authorized by subsection (2) of this section shall remain in effect until the completion of the administrative proceedings pursuant to the notice served under [section 4], until such time as the director dismisses the charges specified in such notice, or until the order of removal or prohibition which is issued against the board member, officer, or other person becomes effective. Copies of the notice shall also be served upon the institution of which the person is a director or officer or in the conduct of whose affairs he has participated.

(2) Within 10 days after the hearing provided for in subsection (1) of this section, the board member, officer, or other person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon the board member, officer, or other person under [section 4]. The court has jurisdiction to stay the suspension or prohibition.

Section 8. **Felony charges — suspension or prohibition.** (1) Whenever any board member or officer of an institution or other person participating in the conduct of the affairs of an institution is charged in any information, indictment, warrant, or complaint authorized by a county, state, or federal authority with the commission of or participation in a felony involving dishonesty or breach of trust, the director by written notice served upon the board member, officer, or other person may suspend him from office or prohibit him from further participation in any

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manner in the conduct of the affairs of the institution. Suspension is effective upon service upon the individual. The notice shall contain a statement of the facts constituting grounds for the order and shall fix a place and time, not later than 10 days from the date of the notice, at which a hearing will be held to afford the board member or officer the opportunity to respond. A copy of the notice shall also be served upon the institution. The suspension or prohibition remains in effect until the information, indictment, warrant, or complaint is finally disposed of or until terminated by the director.

(2) Within 10 days after the hearing provided for in subsection (1) of this section, the board member, officer, or other person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the criminal proceedings initiated by the information, indictment, warrant or complaint. The court has jurisdiction to stay the suspension or prohibition.

(3) If a judgment of conviction with respect to the offense is entered against the board member, officer, or other person and at such time as the judgment is not subject to further appellate review, the director may issue and serve upon the board member, officer, or other person an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the institution except with the consent of the director. A copy of the order shall also be served upon the institution, whereupon the board member or officer shall cease to be a board member or officer of the institution. A finding of not guilty or other disposition of the charge does not preclude the director from thereafter instituting proceedings to suspend or remove the board member, officer, or other person from office or to prohibit further participation in the affairs of the institution pursuant to [sections 5 or 6].

Section 9. **Board of directors — lack of quorum — temporary board members.** If at any time because of the suspension or removal of one or more board members pursuant to [sections 1 through 13] the board of directors of an institution has less than a quorum of board members not so suspended or removed, all powers and functions vested in or exercisable by the board shall vest in and be exercisable by the board members not so suspended or removed until such time as there is a quorum of the board members. If all of the board members have been suspended or removed, the director shall appoint persons to serve temporarily as board members, pending the termination of the suspensions or removals or until such time as their successors are duly elected and take office.

Section 10. **Hearings — decision — review, modification, termination or stay of orders.** (1) Any hearing provided for in [sections 1 through 13] shall be conducted in accordance with the provisions of the Montana Administrative Procedure Act. The hearing shall be private unless the director, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After the hearing and within 90 days after the director has notified the parties that the case has been submitted to him

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for final decision, he shall render his decision, which shall include findings of fact upon which his decision is predicated, and shall issue and serve upon each party to the proceeding an order consistent with the provisions of this section.

(2) Any party to the hearing or any person required by an order issued under [sections 1 through 13] to cease and desist from any of the violations or practices stated therein or any person suspended, removed, or prohibited from participation in the conduct of the affairs of an institution may obtain a review of any order, other than a consent order, which review shall be pursuant to the Montana Administrative Procedure Act. Unless a petition for review is timely filed as provided in the Montana Administrative Procedure Act, the director, at any time, upon such notice and in such manner as he considers proper, may modify, terminate, or set aside the order. Upon the timely filing of a petition for review, the director may modify, terminate, or set aside the order with the permission of the court.

Section 11. **Enforcement of notices or orders.** The director may apply to the district court of the county in which the home office of the institution is located or to the district court for Lewis and Clark County for the enforcement of any effective and outstanding notice or order issued under [sections 1 through 13]. The court has jurisdiction to require compliance therewith.

Section 12. **Violation of notice or final order — penalties.** Any present or former board member or officer of an institution or any other person against whom there is outstanding and effective any notice or final order served upon the board member, officer, or other person pursuant to [sections 5, 7, or 8] who participates in any manner in the conduct of the affairs of such institution; directly or indirectly solicits, procures, transfers, or attempts to transfer votes or attempts to vote any proxies, consents, or authorizations in respect to any voting rights in such institution; or without the prior written approval of the director, votes for a board member or serves as a board member, officer, or employee of such institution is guilty of a misdemeanor and may be fined not more than $1,000 or imprisoned for not more than 6 months, or both.

Section 13. **Cease and desist orders — manner of service — copies to federal authorities.** Any service required or authorized to be made by the director pursuant to [sections 1 through 13] shall be made upon individual board members and officers by personal service and may be made upon institutions by registered or certified mail or in such other manner reasonably calculated to give actual notice as the director by rule or otherwise may provide. Copies of any notice or order served by the director pursuant to the provisions of [sections 1 through 13] upon any institution or any board member or officer thereof or other person participating in the conduct of its affairs may also be sent to the appropriate federal supervisory authorities.

Approved March 14, 1979.

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CHAPTER NO. 77

AN ACT TO CLARIFY WHAT CONSTITUTES THE MONTANA INSURANCE CODE; AMENDING SECTION 33-1-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-101, MCA, is amended to read:

"33-1-101. Short title. This *title* constitutes the "Montana Insurance Code"."

Approved March 14, 1979.

CHAPTER NO. 78

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO CORPORATIONS; REQUIRING A STREET AND NUMBER ADDRESS FOR THE REGISTERED OFFICE TO BE INCLUDED IN ARTICLES OF INCORPORATION OF A NONPROFIT CORPORATION; DELETING THE VERIFICATION REQUIREMENT FOR RESTATED ARTICLES OF INCORPORATION OF A NONPROFIT CORPORATION; CHANGING THE DUE DATE FOR SUBMISSION OF THE ANNUAL REPORT OF A NONPROFIT CORPORATION; INCREASING THE DATES AVAILABLE FOR INVOLUNTARY DISSOLUTION; AMENDING SECTIONS 35-2-202, 35-2-210, 35-2-902, 35-6-104, AND 35-6-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-2-202, MCA, is amended to read:

"35-2-202. Articles of incorporation — control over bylaws. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the purpose or purposes for which the corporation is organized;

(d) any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;

(e) the address, *including street and number, if any,* of its initial registered office and the name of its initial registered agent at such address;

(f) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;

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(g) the name and address of each incorporator.

(2) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(3) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling."

Section 2. Section 35-2-210, MCA, is amended to read:

"35-2-210. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation, without further action of the board of directors or members. Restated articles of incorporation shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that:

(a) in lieu of setting forth the address of the initial registered office and the name of the initial registered agent at such address, there shall be set forth the address, including street and number, if any, of the registered office and the name of the registered agent at such address at the time of the adoption of the restated articles of incorporation;

(b) no statement need be made with respect to the names and addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation when executed and filed in the manner prescribed in this chapter for articles of amendment shall supersede the theretofore existing articles of incorporation and amendments thereto.

(3) The restated articles of incorporation when filed shall be accompanied by a statement executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary setting forth the following:

(a) the name of the corporation;

(b) the date of the adoption of the restated articles of incorporation by the members, but if there are no members or no members entitled to vote thereon, that the restated articles were adopted at a meeting of the board of directors upon receiving an affirmative vote of a majority of the directors in office;

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(c) that the restated articles correctly set forth the provisions of the articles of incorporation as theretofore amended and that they have been duly adopted as required by law."

Section 3. Section 35-2-902, MCA, is amended to read:

"35-2-902. Filing of annual report of domestic and foreign corporations. (1) Such annual report of a domestic or foreign corporation shall be delivered to the secretary of state between January 1 and *April 15* of each year, except that the first annual report of a domestic or foreign corporation shall be filed between January 1 and *April 15* of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state. Proof to the satisfaction of the secretary of state that prior to *April 15* such report was deposited in the United States mail in a sealed envelope, properly addressed with postage prepaid, shall be deemed a compliance with this requirement.

(2) If the secretary of state finds that such report conforms to the requirements of this chapter, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties prescribed for failure to file such report within the time provided shall not apply if such report is corrected to conform to the requirements of this chapter and returned to the secretary of state within 30 days from the date on which it was mailed to the corporation by the secretary of state."

Section 4. Section 35-6-104, MCA, is amended to read:

"35-6-104. Involuntary dissolution — procedure. (1) On or before *April 1, August 1, and September 1* of each year, the secretary of state shall compile a list of defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by causing such list to be posted in the state capitol for a period of at least 90 days and:

(a) by mailing a letter addressed to the corporation in care of its registered agent or any director or officer; or

(b) by publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-6-102 *have been rectified within 90 days following the posting and mailing or publication of notice*:

(a) the secretary of state will dissolve such defaulting corporations;

(b) such corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) such corporations will forfeit their rights to carry on business within the state.

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(4) *After 90 days following posting and mailing or publication of each notice,* the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2) of this section.

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation shall be held in trust by the directors of such corporation and 35-1-921 or 35-2-711, whichever is appropriate, is applicable to liquidate such property and assets if necessary."

Section 5. Section 35-6-201, MCA, is amended to read:

"35-6-201. Reinstatement of dissolved corporation. (1) The secretary of state may:

(a) reinstate any corporation which has been dissolved under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state in duplicate an application, *executed and verified* by *a person who was an officer or director at the time of dissolution,* setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to 35-1-921 or 35-2-711;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; and

(b) a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) conform and file in his office reports, statements, and other instruments submitted for reinstatement; and

(b) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

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(c) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution."

Approved March 14, 1979.

CHAPTER NO. 79

AN ACT TO AMEND SECTION 32-1-302, MCA, AND REPEAL SECTION 32-1-304, MCA, TO CLARIFY THE APPLICATION PROCESS FOR CERTIFICATES OF AUTHORIZATION FOR STATE-CHARTERED BANKS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-302, MCA, is amended to read:

"32-1-302. Incorporation. (1) The *proposed* articles of agreement shall be presented to the department, together with an application in writing in the form prescribed by the department, for a certificate authorizing the proposed corporation to transact within this state the business specified in the articles of agreement.

(2) Upon the presentation of the *proposed* articles of agreement, together with the application, the department shall ascertain whether the requisite capital of the bank, *as required in 32-1-307,* has been subscribed and been paid up in cash. It shall also determine whether the corporation is being formed for any other purpose than the legitimate business contemplated by this chapter. It shall determine whether the corporate name assumed by the bank, by reason of the use of any one or more of the words "commercial", "trust", "savings", or "investment" in conjunction with any other word or words, resembles so closely the name of any other bank previously formed under this chapter as to be likely to cause confusion.

(3) The expenses of the department and the board incurred in the examinations and hearings provided for in this chapter for the formation of new banks must be paid by the proposed bank through advance payment of a reasonable nonrefundable application fee which must be determined by the board by rule.

(4) All information gathered by the department under this section shall be transmitted to the board for its use in conducting hearings on applications for certificates of authorization."

Section 2. **Repealer.** Section 32-1-304, MCA, is repealed.

Approved March 15, 1979.

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CHAPTER NO. 80

AN ACT REQUIRING BILLS OF SALE TO PROVE OWNERSHIP AT CHANGE OF OWNERSHIP BRAND INSPECTIONS; AND PERMITTING THE DEPARTMENT OF LIVESTOCK TO CHARGE A FEE FOR PROVIDING COPIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Bill of sale required to prove ownership.** (1) A bill of sale signed by the seller and adequately describing the livestock sold must be presented to the livestock inspector whenever the change of ownership inspection required by 81-3-211 is made or whenever a buyer of livestock requests a county-line or state-line inspection for livestock exempt from the change-of-ownership inspection when purchased in lots of 5 head or less. The bill of sale shall be in a form prescribed by the department of livestock and shall be taken up by the department with the certificate of inspection acting as a receipt.

(2) The department shall charge and receive a fee of $2.50 for each copy of a bill of sale requested after the original bill of sale has been taken up. Fees so received shall be paid to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department.

Approved March 15, 1979.

CHAPTER NO. 81

AN ACT AUTHORIZING THE STATE BOARD OF INVESTMENTS TO INVEST BEQUESTS, DEVISES, OR GIFTS TO THE STATE IN PREFERRED OR COMMON STOCKS; AMENDING SECTION 17-6-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-211, MCA, is amended to read:

"17-6-211. Permissible investments. (1) The following securities are permissible investments for all investment funds referred to in 17-6-203, except as indicated:

(a) any securities authorized to be pledged to secure deposits of public funds under 17-6-103;

(b) bonds, notes, debentures, equipment obligations, or any other kind of absolute obligation of any corporation organized and operating in any state of the United States or in Canada, if the obligations purchased are payable in United States dollars, provided that all investments under this subsection (b) must be rated by one nationally recognized rating agency among the top third of their quality categories, not applicable to defaulted bonds;

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(c) commercial paper of prime quality, as defined by one nationally recognized rating agency, issued by any corporation organized and operating in any state of the United States, provided that:

(i) such securities mature in 270 days or less;

(ii) the issuing corporation or the parent company of a finance subsidiary issuing commercial paper, at the time of the last financial reporting period, had a ratio of current assets to current liabilities, including among current liabilities long-term debt maturing within 1 year, of at least 1 ½ to 1 and had received net income averaging $1 million or more annually for the preceding 5 years; and

(iii) no investment may be made at any time under this subsection (c) which would cause the book value of such investments in any investment fund to exceed 10% of the book value of such fund or would cause the commercial paper of any one corporation to exceed 2% of the book value of such fund;

(d) bankers' acceptances guaranteed by any bank having its principal office in any state of the United States and having deposits in excess of $500 million;

(e) interest-bearing deposits in banks, building and loan associations, and savings and loan associations located in Montana, provided, however, that the board of investments shall require pledged securities as specified in 17-6-102 (interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds);

(f) unencumbered real property, first mortgages, and participations in first mortgages on unencumbered real property, provided that:

(i) no such mortgage or mortgage participation may be purchased unless:

(A) the principal amount of the loan secured by the mortgage or mortgage participation is 80% or less of the appraised value of the property;

(B) the principal amount of the loan secured by the mortgage or mortgage participation exceeds 80% of the appraised value of the property but the amount of the loan in excess of 80%, determined at the time the loan was made, is guaranteed or insured by a mortgage insurance company which the board of investments has determined to be a qualified private insurer;

(C) 25% or more of the loan or participation therein secured is guaranteed or insured in the event of default by the United States of America or an agency thereof; or

(D) the mortgagor has leased the mortgaged property to a person, firm, or corporation whose rental payments under the lease are guaranteed for the full term of the loan or participation therein by an agency of the United States; and

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(ii) no investment shall be made at any time under subsection (1)(f) which would cause the book value of such investments in any investment fund to exceed 50% of the book value of such fund.

(2) Investments from the pooled investment fund shall be restricted to fixed income securities described in subsections (1)(a) to (1)(e) above.

(3) Retirement funds *and the fund provided for in 17-6-203, subsection (4)* may be invested in preferred and common stocks of any corporation organized and operating in any state of the United States provided that:

(a) the corporation has assets of a value not less than $10 million;

(b) if the investment is preferred stock, the corporation's aggregate earnings available for payment of interest and preferred dividends, for a period of 5 consecutive years immediately before the date of investment, have been at least 1 ½ times the aggregate of interest and preferred dividends required to be paid during this period; and

(c) if the investment is common stock:

(i) the stock has paid cash dividends in each of at least 5 years immediately before it is purchased;

(ii) the aggregate earnings of the corporation during this period which were available for payment of dividends on common stock were at least equal to the aggregate of the cash dividends paid thereon; and

(iii) not more than 2% of the assets of any retirement fund may be invested in common stocks or in fixed income securities convertible into common stock not conforming to the dividend and earnings standards stated in subsections (3)(c)(i) and (3)(c)(ii) above, so long as the corporation maintains the asset value required in subsection (3)(a) and evidences appropriate growth potential and probable earnings gain; and

(d) no investment may be made at any time under subsection (3) which would cause the book value of such investments in any retirement fund to exceed 20% of the book value of such fund or would cause the stock of one corporation to exceed 1% of the book value of such retirement fund;

(e) subsections (c)(iii) and (d) herein do not apply to funds provided for in 17-6-203(4).

(4) The board of investments shall endeavor to direct the state's investment business to those investment firms and/or banks which maintain offices in the state and thereby make contributions to the state economy. Further, due consideration shall be given to investments which will benefit the smaller communities in the state. The state's investment business will be directed to out-of-state firms only when there is a distinct economic advantage to the state of Montana."

Approved March 15, 1979.

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CHAPTER NO. 82

AN ACT TO AMEND SECTION 61-3-313, MCA, TO PUT VEHICLES WITH PERSONALIZED LICENSE PLATES ON THE STAGGERED REGISTRATION SYSTEM.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-313, MCA, is amended to read:

"61-3-313. Vehicles subject to staggered registration. For purposes of 61-3-313 through 61-3-316 "vehicle" means any motor vehicle as defined in 61-1-102(7) subject to annual registration in this state except:

(1) vehicles owned or leased and operated by the government of the United States, of the state of Montana, or its political subdivisions;

(2) mobile homes and motor homes;

(3) vehicles that are registered in accordance with or subject to 10-2-301, 61-3-411, or 61-3-421;

(4) trucks exceeding a licensed gross vehicle weight of 10,000 pounds;

(5) trailers, semitrailers, tractors, buses, motorcycles, and cycle motors;

(6) special mobile equipment as defined in 61-1-104(2)."

Approved March 15, 1979.

CHAPTER NO. 83

AN ACT TO PROVIDE THAT REFUNDS OF REVENUE RECEIVED BY A SCHOOL DISTRICT ARE NOT CHARGED AGAINST A SCHOOL DISTRICT'S SPENDING AUTHORITY; AMENDING SECTION 20-9-224, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-224, MCA, is amended to read:

"20-9-224. Credit of refund — refund of revenue not charged against spending authority. *(1)* Whenever a school district deposits with the county treasurer a refund or rebate, the county treasurer shall credit the budgeted fund to which it is deposited and restore the school district's spending authority in that fund in the amount of the refund or rebate.

(2) A refund of revenue previously received by a school district shall not be charged against a school district's spending authority."

Approved March 15, 1979.

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CHAPTER NO. 84

AN ACT TO AMEND SECTION 32-1-322, MCA, TO ALLOW AN ANNUAL BANK STOCKHOLDERS' MEETING TO BE HELD ON ANY TUESDAY UP TO AND INCLUDING THE SECOND TUESDAY IN APRIL OF EACH CALENDAR YEAR.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-322, MCA, is amended to read:

"32-1-322. Board of directors — qualifications, tenure, and vacancies. (1) The affairs of the bank shall be managed by a board of directors, not less than 3 or more than 11 in number, all of whom shall be stockholders of the bank and citizens of the United States, and of whom at least two-thirds must be residents of this state. A person who has been convicted of a crime against the banking laws of the United States or of any state may not be elected a director.

(2) The directors shall be elected for a term of 1 year at the annual meeting of the stockholders, which shall be held on *any Tuesday up to and including* the second Tuesday in *April* of each *calendar* year. If the election is not held on the day fixed for the annual meeting, the corporation may not thereby be dissolved, but an election may be held at any other time agreeable to the bylaws of the corporation, and the persons so elected shall hold their office until the second Tuesday of the following January or until others are elected and qualified. Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in the office, that he will not knowingly violate or permit a violation of any of the provisions of this chapter, and that he is the owner in good faith of the required number of shares of stock in the bank standing in his name on the books of the bank. The oaths shall be made in duplicate, one copy of which shall be transmitted to the department and filed in its office and one copy shall be kept on file in the office of the bank.

(3) In case of death or resignation of one or more of the directors, the vacancy shall be filled by the board, and the directors so appointed shall hold office until the next annual election."

Approved March 15, 1979.

CHAPTER NO. 85

AN ACT AMENDING SECTION 18-1-202, MCA, TO AMEND THE BID SECURITY REQUIREMENTS FOR A BID FOR THE PURCHASE OF INDEBTEDNESS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-1-202, MCA, is amended to read:

"18-1-202. Advertisement for bid to specify required security. (1) The advertisement, request, or solicitation for bids or offers shall distinctly specify that all bidders, offerors, tenderers, or contractors shall:

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(a) in any case where bids are solicited other than for purchase of any forms of indebtedness, expressly covenant in any bid that if the bidder shall be awarded the contract the bidder will, within the time required as stated in the advertisement or solicitation, enter into a formal contract and give a good and sufficient bond to secure the performance of the terms and conditions of the contract; otherwise, the bidder will pay unto the public authority the difference in money between the amount of the bid of the bidder and the amount for which the public authority legally contracts with another party to perform the work or supply the property, commodities, or services, as the case may be, if the latter amount be in excess of the former; or

(b) in any case where the bids are solicited for the purchase and sale of any forms of indebtedness of such public authority, expressly covenant that the money or bank instrument accompanying the bid in the sum specified by the public authority shall be kept and retained by the public authority as liquidated damages for failure to consummate the purchase of such forms of indebtedness as may be awarded on acceptance of bid and in compliance with the terms thereof.

(2) The public authority shall distinctly specify in the solicitation or advertisement for bids the penal or other sum fixed by statute to be paid by any bidder failing or refusing as aforesaid in any case where such sum or sums are fixed by statute for bid security; otherwise, it shall in all cases specify the sum, but in no case less than *2% of the principal amount of the indebtedness for a bid for the purchase of indebtedness and* 10% of the bid price *for any other bid*, which it may deem reasonably necessary to protect and indemnify the public authority against the failure or refusal of the bidder to enter into the contract or consummate the purchase of indebtedness, as the case may be.

(3) The advertisement, request, or other solicitation for bids or offers shall distinctly specify that lawful moneys of the United States or a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by banks as herein specified, payable as aforesaid, or bid bond in any case appropriate therefor shall constitute compliance with the requirement for bid security."

Approved March 15, 1979.

CHAPTER NO. 86

AN ACT TO AMEND SECTIONS 33-17-502 AND 33-18-212, MCA, TO ALLOW A LICENSED CASUALTY INSURANCE AGENT TO COLLECT A FEE FROM THE INSURED FOR PLACING A POLICY WITH THE STATE COMPENSATION INSURANCE FUND.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-18-212, MCA, is amended to read:

"33-18-212. Illegal dealing in premiums — improper charges for insurance. (1) No person shall willfully collect any sum as premium

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or charge for insurance, which insurance is not then provided or is not in due course to be provided (subject to acceptance of the risk by the insurer) by an insurance policy issued by an insurer as authorized by this code.

(2) No person shall willfully collect as premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance and, as specified in the policy, in accordance with the applicable classifications and rates as filed with and approved by the commissioner; or in cases where classifications, premiums, or rates are not required by this code to be so filed and approved, such premiums and charges shall not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision shall not be deemed to prohibit the charging and collection, by surplus line agents licensed under chapter 2, part 3, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. It shall not be deemed to prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy. *The provision of this subsection does not prohibit the collection from an insured of a placement fee, not to exceed 7 ½% of the annual premium, for placement through the state compensation insurance fund by a duly licensed casualty insurance agent. This placement fee is not a premium as defined in 33-15-102.*

(3) Each violation of this section shall be punishable under 33-1-104."

Section 2. Section 33-17-502, MCA, is amended to read:

"33-17-502. Prohibition on holding out as consultant — receiving fee. (1) Any person not licensed as an insurance consultant in this state who identifies or holds himself out to be an insurance consultant without having been licensed as an insurance consultant under this part or any person who uses any other designation or title which is likely to mislead the public and holds himself out in any manner as having particular insurance qualifications other than those for which he may be otherwise licensed or otherwise qualified is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(2) Any person not licensed as an insurance consultant with respect to the relevant kinds of insurance who receives any fee for examining, appraising, reviewing, or evaluating any insurance policy, annuity or pension contract, plan, or program or who shall make recommendations or give advice with regard to any of the above without first having been licensed by the commissioner as an insurance consultant is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(3) Nothing in this part applies to:

(a) licensed attorneys at law in this state acting in their professional capacity;

(b) an actuary or a certified public accountant who provides information, recommendations, advice, or services in his professional capacity if neither he nor his employer receives any compensation directly or indirectly on account of any insurance, bond, annuity or pension contract that

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results in whole or part from that information, recommendation, advice, or services; *or*

(c) a duly licensed casualty insurance agent who accepts a fee from an insured for placement through the state compensation insurance fund as provided in 33-18-212."

Approved March 15, 1979.

CHAPTER NO. 87

AN ACT TO AMEND SECTION 69-14-113, MCA, TO REVISE THE PROVISIONS RELATED TO WITNESS FEES AND BRING THEM INTO AGREEMENT WITH SIMILAR PROVISIONS FOR WITNESSES IN CIVIL ACTIONS BEFORE THE DISTRICT COURT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-14-113, MCA, is amended to read:

"**69-14-113. Attendance and examination of witnesses.** (1) The commission in making any examination or investigation provided for in Chapter 37, Laws of 1907, shall have the power to issue subpoenas for the attendance of witnesses by such rules as it may prescribe. *Witness fees shall be the same as those provided for witnesses in civil actions before the district court, as provided in 26-2-501. However, no* witness furnished with free transportation shall receive mileage for the distance he may have traveled on such free transportation. No person shall be excused from attending or testifying or producing any books, papers, documents, or any thing or things, before any court or magistrate or commissioner or board, upon any investigation, proceeding, or trial under the provisions of Chapter 37, Laws 1907, or for any violation of any of them, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to convict him of a crime or subject him to a penalty or forfeiture. No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, and no testimony or evidence so given or produced shall be received against him upon any civil or criminal proceeding, action, or investigation.

(2) (a) The process issued by said commission shall be under seal and extend to all parts of the state. Said commission shall have power to issue process in like manner as courts of record. Such process may be served by any person authorized to serve process of courts of record or by any person appointed by the commission for such purpose.

(b) In the event the process issued by the commission is a subpoena for the attendance of a witness and he shall have failed, neglected, or refused to obey the same, the commission is hereby authorized to file a petition with any district court in the state, setting up the facts and the necessity of having such witness appear in such trial. The court shall thereupon summarily direct that a subpoena be issued out of the court requiring the

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attendance of any person or persons as a witness before the court. The commission shall thereupon have the power and authority to examine such witness before said court, under oath, respecting any inquiry or investigation being made by said commission, under and pursuant to the provisions of Chapter 37, Laws of 1907. The court shall likewise, when any petition is filed stating the necessity therefor, order the production by any person or corporation, for examination in said court, of any books, papers, records, or files necessary or pertinent to any inquiry or investigation then being made by said commission."

Approved March 15, 1979.

CHAPTER NO. 88

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO CREDIT TRANSACTIONS; AMENDING SECTIONS 31-1-231, 31-1-243, 31-1-301, 31-2-218, 31-2-224, AND 31-2-226, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-231, MCA, is amended to read:

"31-1-231. Requirements of retail installment contracts. (1) Each retail installment contract shall be in writing, signed by both the buyer and the seller, and completed as to all essential provisions prior to the signing of the contract by the buyer. However, if a retail installment transaction is a sale of goods other than a motor vehicle where no title, lien, or other security interest is retained or taken by the seller, then the retail installment contract need not be contained in a single document. In such case, if the contract is contained in more than one document, then one such document may be an original document executed by the retail buyer applicable to purchases of goods or services to be made by the retail buyer from time to time, and in such case such document, together with the sales slip, account book, or other written statement relating to each purchase, shall set forth all of the information required by this section and shall constitute the retail installment contract for each such purchase.

(2) The printed portion of the contract, other than instructions for completion, shall be in at least 8-point type. The contract shall contain the following notice in a size equal to at least 10-point bold type:

"1. Notice to the buyer. Do not sign this contract before you read it or if it contains any blank spaces.

2. You are entitled to an exact copy of the contract you sign.

3. Under the law, you have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge."

(3) If the contract covers the sale of a motor vehicle, it shall also contain, in a size equal to at least 10-point bold type, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included if that is the case.

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(4) The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer, and a description of the goods sold or services furnished or to be furnished and shall clearly state and describe any collateral security taken for the buyer's obligation.

(5) The contract shall contain the following items:

(a) the cash sale price of the goods or services;

(b) the amount of the buyer's down payment and whether made in money or goods or partly in money and partly in goods, including a brief description of the goods traded in;

(c) the difference between items (a) and (b);

(d) the amount, if any, included for insurance and other benefits if a separate charge is made therefor, specifying the types of coverage and benefits;

(e) the amount of official fees;

(f) the principal balance which is the sum of items (c), (d), and (e);

(g) the amount of the finance charge;

(h) the total amount of the time balance, stated as one sum in dollars and cents, which is the sum of items (f) and (g), payable in installments by the buyer to the seller;

(i) the number of installments;

(j) the amount of each installment; and

(k) the due date or period *of installments.*

(6) The items in (5) need not be stated in the sequence or order set forth *and* additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

(7) No retail installment contract *may* be signed by any party thereto when it contains blank spaces to be filled in after it has been signed, except that if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of 31-1-232, of delivery of a copy of a contract shall, in any action or proceeding by or against a holder of the contract without knowledge to the contrary when he purchases the contract, be conclusive proof:

(a) of such delivery;

(b) that the contract when signed did not contain any blank spaces except as herein provided; and

(c) of compliance with 31-1-231 through 31-1-236."

Section 2. Section 31-1-243, MCA, is amended to read:

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"**31-1-243. Refinancing retail installment contract.** The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments or defer payment or payments or renew or restate the unpaid time balance of such contract, the amount of the installments, and the time schedule therefor and may collect for such extension, deferment, renewal, or restatement a refinance charge. The holder may compute the refinance charge on the unpaid time balance to be extended, deferred, renewed, or restated by adding to such unpaid time balance the cost for any insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges, after deducting any refund which may be due the buyer as for a prepayment pursuant to 31-1-242 at the rate of the finance charge specified in 31-1-241(1) and by reclassifying in the case of motor vehicles by its then year model for the term of the refinancing agreement but otherwise subject to the provisions of this part governing computation of the original finance charge. The provisions of this part relating to minimum finance charges under 31-1-241(2) shall not apply in calculating refinance charges on the contract extended, deferred, renewed, or restated. If all unpaid installments are deferred for not more than 2 months, the holder may at his election charge and collect for such deferment an amount equal to the difference between the refund required for prepayment in full under 31-1-242 as of the scheduled due date of the first deferred installment and the refund required for prepayment in full as of 1 month prior to said date, times the number of months in which no scheduled payment is made."

Section 3. Section 31-1-301, MCA, is amended to read:

"**31-1-301. Wage brokers to procure license and give bond.** *No* person, company, corporation, or association *may* establish or conduct the business of wage broker within the state unless such person, company, corporation, or association *procures* a license from the proper authorities and *executes* a bond in such sum as *the* authorities may require for the faithful carrying out of the provisions of this part and of the ordinances of any town or city in which *the* business may be carried on."

Section 4. Section 31-2-218, MCA, is amended to read:

"**31-2-218. Assignment of real property.** When an assignment for the benefit of creditors embraces real property, it is subject to the provisions of this part, *70-21-102, and Title 70, chapter 21, part 3.*"

Section 5. Section 31-2-224, MCA, is amended to read:

"**31-2-224. Power of court.** The court shall have power to:

(1) authorize the business of the assignor to be conducted for a limited period by assignee, if necessary in the best interests of the estate, and allow additional compensation for such services;

(2) reopen estates when it appears they were closed before being fully administered and for that purpose to appoint another assignee who will take title to the property not administered;

(3) direct upon the final settlement of the estate that the assignee pay to the lawful creditors their proportionate dividend, notwithstanding their

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claim has not been presented in accordance with the notice sent out by the assignee, provided that 4 months have not elapsed since the first publication of notice to creditors;

(4) approve the final report and discharge the assignee and his surety from all further liabilities upon matters included in the accounting to creditors appearing and to creditors not having appeared after due citation or not having presented their claims after due advertisement."

Section 6. Section 31-2-226, MCA, is amended to read:

"31-2-226. Accounting of assignee. After 6 months from the date of an assignment for the benefit of creditors, the assignee may be required, on petition of any creditor, to *make an accounting* before the district court of the county where the accompanying inventory was filed."

Approved March 15, 1979.

CHAPTER NO. 89

AN ACT TO AMEND SECTION 69-12-505, MCA, TO REVISE AND CLARIFY THE PROVISIONS RELATING TO SUSPENSION OF PROPOSED REVISIONS OF MOTOR CARRIER RATES AND CLASSIFICATIONS, PROVIDING FOR VACATING A SUSPENSION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-505, MCA, is amended to read:

"69-12-505. Suspension of proposed rate revision — hearing. (1) Upon its own initiative or upon the complaint of any interested party filed with the commission within 20 days after the date upon which a change or revision of any rate, fare, charge, or classification is filed with the commission, the commission may suspend the operation of such rate, fare, charge, or classification for a period not to exceed 180 days. The order directing such suspension must be issued by the commission not less than 2 business days prior to the proposed effective date. The motor carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice by the complaining party, mailing a copy of the complaint concerning such proposed change or revision to the carrier or publishing agent, and such carrier or carriers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a motor carrier or carriers, notice to such bureau of any complaint will constitute notice to the participating carriers in such tariff.

(2) (c) If all the protests are withdrawn and the commission finds the proposed increase justified, the commission may vacate the suspension and permit the proposed rates to become effective without a public hearing.

(b) Unless the suspension has been vacated, whenever the suspension of any proposed change or revision in a tariff is ordered by the commission, it shall also order a public hearing to consider the reasonableness of

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the proposed change or revision. Due notice shall be given for such hearing to all known interested or affected persons, and the same shall be allowed to appear and present evidence. *Additional prepared testimony may be presented before or during the hearing and may also be submitted after the hearing with the permission of the commission.*

(3) After considering the evidence presented at such hearing, the commission shall issue an order approving, denying, or modifying the proposed change or revision. Unless such hearing is held and such order is issued within 180 days from the date upon which the suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed."

Approved March 15, 1979.

CHAPTER NO. 90

AN ACT TO AMEND SECTION 15-30-121, MCA, TO ALLOW A DEDUCTION FOR CHILD AND DEPENDENT CARE EXPENSES PAID TO RELATIVES UNDER CERTAIN CIRCUMSTANCES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the following exceptions which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(2) federal income tax paid within the taxable year;

(3) child and dependent care expenses determined in accordance with the provisions of section 214 of the Internal Revenue Code of 1954 that were in effect for the taxable year that began January 1, 1974. *However, the limitation set forth in section 214(e)(4) of the Internal Revenue Code of 1954 as that section was in effect for the taxable year that began January 1, 1974, applies only to payments made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and to payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) to the taxpayer or the taxpayer's spouse.*

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(4) that portion of an energy-related investment allowed as a deduction under 15-32-103."

Section 2. **Effective date.** This act is effective on its passage and approval and applies to taxable years beginning after December 31, 1978.

Approved March 15, 1979.

CHAPTER NO. 91

AN ACT TO REQUIRE NOTICE TO THE ATTORNEY GENERAL WHEN A STATE DEPARTMENT OR BOARD INITIATES OR INTERVENES IN A COURT ACTION OR INITIATES AN APPEAL.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Notice to be given to attorney general when state department or board initiates or intervenes in an action.** When a department or board of this state initiates or intervenes in an action in any court, a copy of the complaint, counterclaim, or cross-claim must be served on the attorney general.

Section 2. **Notice of appeal to be served on attorney general.** When a department or board of this state appeals from a judgment or order entered in any court of this state, a copy of the notice of appeal must be served on the attorney general.

Approved March 15, 1979.

CHAPTER NO. 92

AN ACT TO REDUCE THE NUMBER OF RESIDENT/NONRESIDENT DETERMINATIONS TO BE MADE BY THE DEPARTMENT OF REVENUE REGARDING PUBLIC CONTRACTORS; AND REPEALING SECTIONS 18-1-104 AND 18-1-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Department of revenue to determine residency of selected contractors — applications for redetermination — determination as prima facie evidence.** (1) The department of revenue shall determine whether or not certain contractors, issued public contractor's licenses under the provisions of Title 15, chapter 50, are residents of the state of Montana within the meaning of 18-1-102 and 18-1-103. Any public agency charged by law with the responsibility for the execution of any contract subject to the provisions of 18-1-102 may request that a determination of resident/nonresident status be made by the department.

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All requests must specify the name and address of the licensed public contractor for whom a determination of resident/nonresident status is required.

(2) If a determination is made that a licensed public contractor is not a resident but he thereafter qualifies as such, he may apply to the department of revenue for a redetermination of his residency. If, upon redetermination, the licensed public contractor is found to qualify as a resident, he shall be furnished a letter by the department attesting to such status.

(3) The determination of the department of revenue that a licensed public contractor is or is not a resident within the meaning of 18-1-102 and 18-1-103 is prima facie evidence of that fact.

Section 2. **Repealer.** Sections 18-1-104 and 18-1-105, MCA, are repealed.

Approved March 15, 1979.

CHAPTER NO. 93

AN ACT TO PROVIDE THAT THE COUNTY ATTORNEY OR DEPUTY COUNTY ATTORNEYS MAY NOT BE APPOINTED COUNSEL FOR A MINOR IN DIVORCE OR GUARDIANSHIP PROCEEDINGS; AMENDING SECTIONS 40-4-205 AND 72-5-225, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-205, MCA, is amended to read:

"**40-4-205. Representation of child.** The court may appoint an attorney to represent the interests of a minor dependent child with respect to his support, custody, and visitation. *The county attorney and the deputy county attorneys, if any, may not be appointed for this purpose.* The court shall enter an order for costs and fees in favor of the child's attorney. The order shall be made against either or both parents, except that if the responsible party is indigent, the costs shall be waived."

Section 2. Section 72-5-225, MCA, is amended to read:

"**72-5-225. Procedure for court appointment of guardian of minor — notice — hearing — representation by attorney.** (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by 72-1-301 to:

(a) the minor, if he is 14 or more years of age;

(b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and

(c) any living parent of the minor.

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(2) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interest of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 years of age or older. *The county attorney and the deputy county attorneys, if any, may not be appointed for this purpose.*"

Approved March 15, 1979.

CHAPTER NO. 94

AN ACT TO AMEND SECTION 69-12-504, MCA, TO REVISE AND CLARIFY THE PROCEDURE FOR REQUESTING RATE REVISIONS BY MOTOR CARRIERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-504, MCA, is amended to read:

"**69-12-504. Procedure to revise rate schedule.** (1) No motor carrier shall change or revise any rate, fare, charge, classification, or rule of service contained in its schedule without first obtaining approval therefor from the commission. Such changes or revisions shall be made by filing with the commission the tariff sheet or sheets containing such changes or revisions, plainly stating the changes or revisions to be made, *and by submitting at the same time testimony and exhibits supporting the requested change or revision and prepared by the motor carrier. Additional testimony or exhibits may be submitted before or during the hearing provided for in 69-12-505 and may be submitted after the hearing with the approval of the commission.* The public shall be provided with such notice of the proposed changes or revisions as the commission shall, by rule, require.

(2) The tariff sheets containing changes or revisions shall be *filed with the commission at least 45 days before the proposed effective date. The change or revision shall be effective on the stated effective date unless disallowed or suspended by the commission prior to this date. However, the* commission may, for good cause, allow any change or revision to become effective *on* less than *45 days' notice.*"

Approved March 15, 1979.

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CHAPTER NO. 95

AN ACT TO EXEMPT LIVESTOCK FROM THE IMPLIED WARRANTIES OF THE UNIFORM COMMERCIAL CODE; AND AMENDING SECTION 30-2-316, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-2-316, MCA, is amended to read:

"30-2-316. Exclusion or modification of warranties. (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this chapter on parol or extrinsic evidence (30-2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2):

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade; *and*

(d) in sales of cattle, hogs, sheep and horses, there are no implied warranties, as defined in this chapter, that the cattle, hogs, sheep, or horses are free from sickness or disease.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this chapter on liquidation or limitation of damages and on contractual modification of remedy (30-2-718 and 30-2-719)."

Approved March 15, 1979.

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CHAPTER NO. 96

AN ACT TO PROVIDE FOR RECYCLING OF USED OR OUTDATED LICENSE PLATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Recycling license plates.** The division is authorized to promote the recycling of used or outdated license plates for the metal content and may enter into contractual agreements with nonprofit organizations for the collection of used or outdated license plates and for their transportation to a central recycling point.

Section 2. **Codification.** Section 1 is intended to be codified as an integral part of Title 61, chapter 3, part 3, and the provisions contained in Title 61 apply to section 1.

Approved March 15, 1979.

CHAPTER NO. 97

AN ACT TO RESTRICT THE NATURE OF THE ESTATE WHICH MAY BE OBTAINED BY EMINENT DOMAIN FOR RESERVOIR AND DAM PURPOSES; AMENDING SECTION 70-30-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-30-104, MCA, is amended to read:

"70-30-104. What estates and rights in land may be taken. The following is a classification of the estates and rights in lands subject to be taken for the public use:

(1) such estate or rights as may be necessary up to and including a fee simple when taken for public buildings or grounds or for permanent buildings or for an outlet for a flow or a place for the deposit of debris or tailings of a mine or for the mining and extracting of ores, metals, or minerals when the same are owned by the plaintiff but located beneath or upon the surface of property where the title to said surface vests in others or for the underground storage of natural gas by a natural gas public utility as defined in 82-10-301. When the appropriation is for the underground storage of natural gas, all of the right, title, interest, and estate in the real property and in the subsand stratum, formation, or reservoir so appropriated shall be determinable and for all purposes terminate upon abandonment or upon cessation for the period of 1 year of the use for which the same was appropriated, and thereupon the ownership of the residue of natural gas therein remaining shall likewise vest in the then owners of such reservoir space.

(2) such estate or rights in the surface as are necessary for a reservoir or dam and for the permanent flooding that results, up to the edge of the maximum pool of the reservoir;

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(3) an easement when taken for any other use;

(4) the right of entry upon and occupation of land and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use."

Approved March 15, 1979.

CHAPTER NO. 98

AN ACT TO TRANSFER ALL MONEY REMAINING IN THE BOULDER RIVER SCHOOL SINKING FUND ACCOUNT AND ALL MONEY TO BE DEPOSITED IN THAT ACCOUNT TO THE GENERAL FUND OF THE STATE OF MONTANA AFTER ALL OUTSTANDING BONDS HAVE BEEN REDEEMED AND ALL EXPENSES OF LIQUIDATING THE BONDS HAVE BEEN PAID; AMENDING SECTION 6, CHAPTER 248, LAWS OF 1953.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 6, Chapter 248, Laws of 1953 is amended to read:

"Section 6. There shall be levied annually upon all property in the State of Montana subject to taxation an ad valorem tax upon each dollar of the taxable valuation of such property sufficient to pay the interest accruing on said bonds as such interest shall fall due and to pay the principal of said bonds as such principal becomes due, said levy, however, not to exceed one (1) mill per annum until the indebtedness herein provided for shall have been fully paid and discharged. The tax when collected by the county treasurers of the several counties of the state shall be by them accounted to and paid into the state treasury of the State of Montana, and by the state treasurer placed in the "Montana state training school bond interest and redemption fund," which fund shall be used exclusively for the payment of principal and interest on said bonds as the same become due, *except that any amount remaining after all bonds have been redeemed and all costs of liquidating the bonds have been paid shall be transferred to the general fund of the state of Montana.*"

Approved March 15, 1979.

CHAPTER NO. 99

AN ACT TO INCREASE THE FEE FOR DUPLICATE LICENSES IN ORDER TO MAKE THE FEE MORE COMMENSURATE WITH THE COSTS INVOLVED; AMENDING SECTION 87-2-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-104, MCA, is amended to read:

"87-2-104. Number of licenses allowed. Only one license of any one class, except Class B-3 and B-4 licenses, shall be issued to any one

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person. The department may prescribe rules and regulations for the issuance or sale of a replacement license of the same class in the event the original license is lost, stolen, or destroyed upon payment of the sum of *$3 or the cost of the original license, whichever is the smaller amount.*"

Approved March 19, 1979.

CHAPTER NO. 100

AN ACT TO PERMIT RESIDENTS WHO WILL HAVE REACHED 12 YEARS OF AGE PRIOR TO SEPTEMBER 15 OF A HUNTING SEASON TO APPLY FOR AND OBTAIN PERMITS FOR THAT SEASON IN THE SAME MANNER AS NONRESIDENTS; AMENDING SECTION 87-2-701, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-701, MCA, is amended to read:

"**87-2-701. Special licenses.** (1) Any *resident, as defined in 87-2-102* who *will be* 12 years of age or older *prior to September 15 of the season for which the license is issued* or any *person not a resident, as defined in 87-2-102,* who is the holder of a Class B-2 nonresident combination license may apply for a special license which, in the judgment of the department, is to be issued and shall pay the following fees therefor:

(a) moose—resident, $25; nonresident, $125;

(b) mountain goat—resident, $15; nonresident, $75;

(c) mountain sheep—resident, $25; nonresident, $125;

(d) antelope—resident, $5;

(e) grizzly bear—resident, $25; nonresident, $125;

(f) black or brown bear—nonresident, $50.

(2) In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of $25 within 10 days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

(3) In the event that the number of valid resident applications for licenses exceeds the number of licenses which the department desires to issue in any hunting district, then the number of licenses issued to nonresident license holders in that hunting district shall not exceed 10% of the total issued."

Approved March 19, 1979.

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CHAPTER NO. 101

AN ACT AMENDING SECTION 50-60-605, MCA, TO AUTHORIZE TEMPORARY ELECTRICAL CONNECTIONS BY POWER SUPPLIERS WITHOUT INSPECTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-60-605, MCA, is amended to read:

"50-60-605. Power supplier not to energize installation without inspection tag. Individuals, firms, cooperatives, corporations, or municipalities selling electricity are power suppliers. *Except for temporary connections which the department may authorize by rule for a period not exceeding 14 days without a preconnection inspection, power* suppliers may not connect with or energize an electrical installation under this part unless the owner or a licensed electrical contractor has delivered to the power supplier an inspection tag covering the installation, issued by the department of administration."

Approved March 19, 1979.

CHAPTER NO. 102

AN ACT AUTHORIZING ORIGINAL CUSTODIANS TO TRANSFER OFFICIAL RECORDS TO THE STATE ARCHIVES; ESTABLISHING THE LEGAL STATUS OF CERTIFIED COPIES OF PUBLIC AND OFFICIAL RECORDS; AND AMENDING SECTION 2-6-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Certified copies of public records.** (1) The Montana historical society shall reproduce and certify copies of public records in its possession upon application of any citizen of this state.

(2) The certified copy of a public record has the same force in law as if made by the original custodian.

Section 2. **Certified copies of official records.** (1) The Montana historical society shall reproduce and certify copies of official records in its possession upon application of any citizen of this state.

(2) The certified copy of an official record has the same force in law as if made by the original custodian.

Section 3. Section 2-6-303, MCA, is amended to read:

"2-6-303. Ownership of records — transfer. (1) Every public officer is entitled to the possession of all books and papers pertaining to his office or in the custody of a former incumbent by virtue of his office.

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(2) All official records shall remain the property of the state. They shall be delivered by outgoing officials to their successors and shall be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this part.

(3) A public officer may, with the concurrence of the Montana historical society, transfer to the state archives official records that he has been specifically directed by statute to preserve or keep in his office."

Section 4. **Codification instructions.** The code commissioner shall codify section 1 in chapter 6, part 2, of Title 2 and section 2 in chapter 6, part 3, of Title 2.

Approved March 19, 1979.

CHAPTER NO. 103

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO WORKERS' COMPENSATION; AMENDING SECTIONS 39-71-208, 39-71-210, 39-71-304, 39-71-405, 39-71-504, 39-71-603, 39-71-604, 39-71-609, 39-71-736, 39-71-901, 39-71-905, 39-71-906, 39-71-2202, 39-71-2301, AND 39-71-2306, MCA; AND REPEALING SECTIONS 39-71-305, 39-71-404, 39-71-2309, AND 39-71-2310, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-208, MCA, is amended to read:

"**39-71-208. Blank forms, minutes, and records.** The division shall cause to be printed such blank forms as it *considers necessary* to facilitate or promote the efficient administration of this chapter. It shall provide a *record of* all awards made by the division and such other books or records as it *considers necessary* for the purpose and efficient administration of this chapter. All such records are to be kept in the office of the division."

Section 2. Section 39-71-210, MCA, is amended to read:

"**39-71-210. Annual report of division — copies for general distribution.** The division shall, *after the end* of each *fiscal* year, make a report to the governor covering its entire operations and proceedings for the fiscal year, with such suggestions or recommendations as it may deem of value for public information. A reasonable number of copies of *the* report shall be printed for general distribution."

Section 3. Section 39-71-304, MCA, is amended to read:

"**39-71-304. Books, records, and payrolls to be open to inspection — penalty for refusal.** The books, records, and payrolls of *an* employer pertinent to the administration of this chapter shall always be open to inspection by the division or any duly authorized employee thereof for the purpose of ascertaining the correctness of the payroll, the

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number of *workers* employed, and such other information as may be necessary for the division and its management under this chapter. Refusal on the part of *an* employer to submit *the* books, records, and payrolls for such inspection shall subject the offending employer to a penalty *not exceeding $500* for each offense, to be collected *through a* civil action in the name of the state and paid into the state treasury."

Section 4. Section 39-71-405, MCA, is amended to read:

"39-71-405. Liability of employer who contracts work out. (1) *An* employer who contracts *with an independent contractor* to have work performed of a kind which is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such employer *is* liable for the payment of *benefits under this chapter* to the employees of *the contractor if the contractor has not properly complied with the coverage requirements of the Worker's Compensation Act.* Any *insurer* who *becomes* liable for *payment of benefits* may recover the amount of benefits paid *and to be paid* and necessary expenses from the *contractor* primarily liable therein.

(2) Where *an* employer *contracts to have* any work to be done by a contractor other than an independent contractor, and the work so *contracted* to be done is a part or process in the trade or business of *the* employer, then *the* employer *is* liable to pay all *benefits* under this chapter to the same extent as if the work were done without the intervention of *the* contractor, and the work so *contracted* to be done shall not be construed to be casual employment. Where *an* employer *contracts* work to be done as specified in this subsection, *the* contractor and *the contractor's* employees shall come under that plan of compensation adopted by the employer.

(3) Where *an* employer *contracts* any work to be done, wholly or in part for *the employer*, by *an independent* contractor, where the work so *contracted* to be done is casual employment as to such employer, *then the* contractor shall become the employer for the purposes of this chapter."

Section 5. Section 39-71-504, MCA, is amended to read:

"39-71-504. Funding of fund. The fund shall be funded in the following manner:

(1) The division shall require that the uninsured employer pay to the fund a penalty of either double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or *$200*, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the division shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. An assessment *for payroll paid by the uninsured employer for any time* prior to July 1, 1977, may not be made.

(2) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured

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employee of the uninsured employer. *However, the uninsured employer's liability under this subsection may not exceed $30,000.*

(3) The division may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) shall be paid to the uninsured employers' fund rather than the subsequent injury fund."

Section 6. Section 39-71-603, MCA, is amended to read:

"39-71-603. Notice of injuries other than death to be submitted within sixty days. No *claim* to recover *benefits* under *the Workers' Compensation Act,* for injuries not resulting in death, shall be *considered compensable* unless, within 60 days after the occurrence of the accident which is claimed to have caused the injury, notice *of* the time and place where the accident occurred and the nature of the injury *is given to* the employer or the *employer's* insurer *by the injured employee or someone on the employee's behalf. Actual* knowledge of *the* accident and injury on the part of *the* employer or *the employer's* managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the injury *is* equivalent to *notice.*"

Section 7. Section 39-71-604, MCA, is amended to read:

"39-71-604. Application for compensation. (1) Where a worker is entitled to *benefits* under *this chapter,* the worker shall file with the *insurer or the division all reasonable information needed by the insurer to determine compensability. It is* the duty of *the worker's attending* physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the division without charge to the *worker.* The filing of *forms or other documentation by* the attending physician does not constitute a claim for compensation.

(2) Where death results from *an* injury, the parties entitled to compensation or someone in their behalf shall *file a claim with the insurer or the division.* The *claim* must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the division."

Section 8. Section 39-71-609, MCA, is amended to read:

"39-71-609. Denial of claim after payments made or termination of benefits by insurer — fourteen days' notice required. If *an* insurer determines to deny a claim on which payments have been made *under 39-71-608* during a time of further investigation or, after a claim has been accepted, terminates biweekly compensation benefits, it may do so only after *14* days' written notice to the claimant, *the claimant's authorized representative, if any,* and the division. *However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work.*"

Section 9. Section 39-71-736, MCA, is amended to read:

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"39-71-736. Compensation — from what date paid. *No* compensation *may* be paid for the first *5 days loss of wages due to an* injury. *If loss of wages* continues *for more than 5 days*, compensation shall be paid from the date of injury. However, separate benefits of medical and hospital services shall be furnished from the date of injury."

Section 10. Section 39-71-901, MCA, is amended to read:

"39-71-901. Definitions. As used in this part, the following definitions apply:

(1) "Vocationally handicapped" means a person who has a medically certifiable permanent impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if *the* employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

(2) "Certificate" means documentation issued by the *division of workers' compensation* to an individual who is vocationally handicapped.

(3) "Fund" means the subsequent injury fund."

Section 11. Section 39-71-905, MCA, is amended to read:

"39-71-905. Certification as vocationally handicapped. A person who wishes to be certified as vocationally handicapped for purposes of this part may apply to the *division* on forms furnished by *the division.* The *division* shall conduct an investigation and shall issue a certificate to a person who, *in the division's discretion,* meets the requirements for vocationally handicapped certification. *An employee who is requesting reemployment may be certified as vocationally handicapped. An employee who is not employed at the time of application for certification must be certified as vocationally handicapped before entering new employment in order for the new employer to receive the benefits of this part.*"

Section 12. Section 39-71-906, MCA, is amended to read:

"39-71-906. Employer hiring or retaining certified vocationally handicapped person to file information with division — effect of failure to file. Upon commencement of employment or retention in employment of a certified vocationally handicapped person, the employer shall submit to the *division*, on forms furnished by the *division*, all pertinent information requested by the *division*. The *division* shall acknowledge receipt of the information. Failure to file the required information with the *division* within 60 days after the first day of the vocationally handicapped person's employment or retention in employment precludes the employer from the protection and benefits of this part unless the information is filed before an injury for which benefits are payable under this part."

Section 13. Section 39-71-2202, MCA, is amended to read:

"39-71-2202. Policies made subject to chapter. Every policy for insurance *written under compensation plan No. 2* shall be *considered* to be made subject to the provisions of this chapter."

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Section 14. Section 39-71-2301, MCA, is amended to read:

"39-71-2301. Intent and purpose of plan. It is the intent and purpose of compensation plan No. 3 *to allow an employer to insure with a state operated workers' compensation insurance system, known as the state compensation insurance fund or state fund. The state fund shall be administered by the division of workers' compensation and shall pay all benefits under this chapter to the employees of an employer who elects coverage with the state fund.*"

Section 15. Section 39-71-2306, MCA, is amended to read:

"39-71-2306. State fund authorized to charge interest. *The state fund may charge interest on any balance that is due and owing the state fund by an employer who has misrepresented the employer's payroll, improperly classified the employer's payroll, or defaulted in premium payments. The interest rate charged shall be set by the state fund at a reasonable rate. In determining what is a reasonable rate, the state fund shall review appropriate interest rates charged by financial institutions in this state.*"

Section 16. **Repealer.** Sections 39-71-305, 39-71-404, 39-71-2309, and 39-71-2310, MCA, are repealed.

Approved March 19, 1979.

CHAPTER NO. 104

AN ACT TO GENERALLY REVISE THE OCCUPATIONAL DISEASE ACT OF MONTANA; AMENDING SECTIONS 39-71-201, 39-72-102, 39-72-305, 39-72-402, 39-72-405, 39-72-406, 39-72-601, 39-72-602, 39-72-605, 39-72-606, 39-72-608, 39-72-610, 39-72-612, 39-72-703, 39-72-704, AND 39-72-711, MCA; AND REPEALING SECTIONS 39-72-205, 39-72-306 THROUGH 39-72-309, 39-72-501 THROUGH 39-72-508, 39-72-603, 39-72-604, 39-72-702, 39-72-710, AND 39-72-713, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-72-102, MCA, is amended to read:

"39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116(2).

(2) "Child" is as defined in 39-71-116(4).

(3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work *in the normal labor market.* Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "partial permanent disability".

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(4) "Division" is as defined in 39-71-116(5).

(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

(7) "Husband" is as defined in 39-71-116(7).

(8) "Independent contractor" is as defined in 39-71-120.

(9) "Insurer" is as defined in 39-71-116(8).

(10) "Invalid" is as defined in 39-71-116(9).

(11) "*Occupational* disease" *means* all diseases arising out of or contracted from and in the course of employment.

(12) "Order" is as defined in 39-71-116(10).

(13) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(14) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO_2), characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.

(15) "Wages" is as defined in 39-71-116(20).

(16) "Wife" is as defined in 39-71-116(21).

(17) "Year" is as defined in 39-71-116(6) and 39-71-116(22)."

Section 2. Section 39-72-305, MCA, is amended to read:

"39-72-305. Right to compensation exclusive remedy — uninsured employers. *(1)* The right to recover compensation pursuant to the provisions of this chapter for occupational diseases sustained by an employee and arising out of and in the course of employment, whether resulting in death or not, *is* the exclusive remedy therefor against *an* employer *who is properly insured under the Workers' Compensation Act and the Occupational Disease Act of Montana.*

(2) The provisions of the Workers' Compensation Act relating to uninsured employers and benefits due uninsured claimants apply to and are incorporated as part of this chapter."

Section 3. Section 39-72-402, MCA, is amended to read:

"39-72-402. Practice and procedure — applicability of Workers' Compensation Act. *(1) Except as otherwise provided in this chapter, the* practice and procedure prescribed in the Workers' Compensation Act *applies* to all proceedings under this chapter.

(2) Sections 39-71-304, 39-71-403, 39-71-406, 39-71-409, 39-71-411 through 39-71-413, and 39-71-742 in the Workers' Compensation Act specifically apply to and are incorporated as part of this chapter."

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Section 4. Section 39-72-405, MCA, is amended to read:

"39-72-405. General limitations on payment of compensation to disabled employee — exceptions. (1) Except as provided for in this section, compensation may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to July 1, 1959.

(2) Except as provided for in subsection *(3)* of this section, no compensation may be paid for silicosis unless during the 8 years immediately preceding the disablement the injured employee has been exposed to harmful quantities of silicon dioxide dust for a total period of not less than 1,000 workshifts in employment in this state and unless total disability results within *3* years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

(3) A silicotic employee who is discharged by his employer to escape liability for silicosis benefits under this chapter is eligible to receive compensation under this chapter when totally disabled if he has 700 actual workshifts since January 1, 1954, for that employer. When any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment which is not yet disabling, is discharged or transferred from the employment in which he is engaged or when he ceases his employment and it is in fact, as determined by the medical panel, inadvisable for him on account of a nondisabling occupational disease to continue in employment and he suffers wage loss by reason of the discharge, transfer, or cessation, the division may allow compensation on account thereof as it considers just, not exceeding $10,000."

Section 5. Section 39-72-406, MCA, is amended to read:

"39-72-406. General limitations on payment of death benefits — exceptions. Compensation shall be paid to the beneficiaries of every employee covered by this chapter in cases where death results from an occupational disease arising out of his employment, subject to the following conditions:

(1) Except as provided for in 39-72-405*(3)*, compensation may not be paid when the last day of injurious exposure of the employee to the hazards of the occupational diseases occurred prior to July 1, 1959.

(2) No compensation may be paid for death from silicosis unless during the 8 years immediately preceding the disablement the deceased employee has been exposed to harmful quantities of silicon dioxide dust for a period of not less than 1,000 workshifts in employment in this state.

(3) No compensation may be paid for death from silicosis unless the death results within *3* years from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from silicosis for which compensation has been paid or awarded or for which a claim, compensable but for such death, is on file with the division. In such cases, compensation shall be paid *to the beneficiaries* if death results *from the silicosis*.

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(4) No compensation may be paid for death from any occupational disease, other than silicosis or due to ionizing radiation, unless death results within *3 years* from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from an occupational disease, other than silicosis or ionizing radiation, for which compensation has been paid or awarded or for which a claim, compensable but for such death, is on file with the division. In such cases, compensation shall be paid *to the beneficiaries* if death results *from the occupational disease.*"

Section 6. **Benefits for pneumoconiosis.** Pneumoconiosis is an occupational disease that is compensable under this chapter. However, any benefits granted a claimant under this chapter for pneumoconiosis must be reduced, but not below zero, by an amount equal to the benefits granted the claimant under any program under federal law that pays benefits for a claimant suffering disability from pneumoconiosis.

Section 7. Section 39-72-601, MCA, is amended to read:

"**39-72-601. Medical panel.** (1) The Montana medical association may, at least annually, certify to the division as nominees *10* or more licensed physicians of the state *to serve on the medical panel. At least three of the physicians must* have had at the time of certification at least 5 years' practice in the diagnosis, care, and treatment of pulmonary *diseases* and the interpretation of x-ray films. *At least three of the physicians must have had* at the time of certification qualifications in the diagnosis, care, and treatment of nonpulmonary occupational diseases.

(2) From the *list* submitted as provided for in this section, the division shall appoint *five* or more physicians to serve on the medical panel.

(3) If the Montana medical association fails to submit the *list* of nominees as provided for in this section, the division shall appoint *as* members *of* the medical *panel five* or more licensed physicians in the state. *Three of the panel members must* have had at the time of appointment at least 5 years' practice in the diagnosis, care, and treatment of *pulmonary* diseases and the interpretation of x-ray films.

(4) The panel members shall appoint one member of the panel to be the chairman."

Section 8. Section 39-72-602, MCA, is amended to read:

"**39-72-602. Insurer may accept liability — procedure for medical examination when insurer has not accepted liability.** *(1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.*

(2) In order to determine the compensability of claims under this chapter *when an insurer has not accepted liability,* the following procedure *must* be followed:

(a) The division shall direct the claimant to a member of the medical panel for an examination. The *panel member* shall conduct an examination to determine whether the claimant is totally disabled and is suffering

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from *an* occupational disease. The *panel member* shall submit a report of his findings to the division.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first *panel member*, request that the claimant be examined by a second panel *member*. If a second examination is requested, the division shall direct the claimant to a second *panel member who* shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering from *an occupational* disease. The *panel member* shall submit a report of his findings to the division. When a second examination has been requested, the reports of the examinations shall be submitted to *three members of the* medical panel for review. *A medical panel member or the panel may, in order to assist the panel member or the panel in reaching a conclusion, consult with the claimant's attending physician.* The *three* panel *members* shall issue *a* report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) If a second examination is not requested, the division shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician. If a second examination is requested, the division shall issue its order based on the report of the *three members of the* medical panel.

(d) For the purpose of reviewing the reports of the examinations and issuing the report under subsection (2)(b), the three members of the medical panel shall be the two members of the panel who examined the claimant and the panel chairman. If the panel chairman has examined the claimant, the panel chairman shall appoint another member of the medical panel to be the third member."

Section 9. Section 39-72-605, MCA, is amended to read:

"**39-72-605. When occupational disease causes death.** When an occupational disease *is claimed to have caused* death and a claim for death benefits is filed therefor, the division shall select at least two physicians who in the division's judgment could properly determine the condition regarding the decedent's death in relation to a possible occupational disease, and the physicians shall examine all available evidence pertaining to the claim and shall make findings and report to the division. The report is prima facie evidence of fact as to the matters therein contained."

Section 10. Section 39-72-606, MCA, is amended to read:

"**39-72-606. Autopsy.** Upon the filing of a claim for compensation for death caused by an occupational disease where an autopsy is necessary to determine the cause of death, an autopsy shall be ordered by the division. The autopsy shall be made under the supervision of the county coroner. The division may designate a duly licensed physician who is a specialist in such examinations to perform or attend the autopsies and to certify his findings thereon. The findings shall be examined by the physicians submitting *a report* under 39-72-605 before the final *report* under *that section is* submitted to the division."

Section 11. Section 39-72-608, MCA, is amended to read:

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"39-72-608. Payment of medical examination and autopsy expenses. The expense of the first medical examination as provided in 39-72-602 shall be borne by the insurer. The expense of a reexamination shall be borne by the dissatisfied party requesting the reexamination. The expense of the periodic medical examinations, as provided in 39-72-607, shall be borne by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, shall be borne by the party requesting the autopsy."

Section 12. Section 39-72-610, MCA, is amended to read:

"39-72-610. Report of and examinations conducted by medical panel. *(1)* At a hearing held before the division or the workers' compensation judge, *there is a rebuttable presumption that* the report of the medical panel and *any* medical *examination reports* by members of the medical panel are *correct.*

(2) The claimant or the insurer may present additional medical information in order to rebut the medical examination report of a panel member or a panel report."

Section 13. Section 39-72-612, MCA, is amended to read:

"39-72-612. Rehearing and appeal to workers' compensation judge. (1) Within 20 days after the division has issued its order of determination as to whether the claimant is entitled to benefits under this chapter, a party may request a rehearing. In order to perfect an appeal to the workers' compensation judge, the appealing party must request a rehearing before the division. The division may grant a rehearing and, if a rehearing is granted, the division's final determination *may* not be issued until after the rehearing. If the division does not grant a rehearing, the division's final determination is issued on the date the rehearing is denied.

(2) Appeals from a final determination of the division shall be made to the workers' compensation judge *within 30 days after the division has issued its final determination.* The judge, after a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the claimant's claim. The judge may overrule the division only on the basis that the division's determination is:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

Section 14. **Costs and attorney fees.** (1) If an insurer requests that a hearing be held before the division and the claim is determined compensable by the division after the hearing and the insurer does not appeal the

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division's decision to the workers' compensation judge, reasonable costs and attorney fees, as determined by the division, shall be paid to the claimant's attorney by the insurer.

(2) If an insurer appeals a decision of the division to the workers' compensation judge or from the judge to the supreme court and the claim is determined compensable, reasonable costs and attorney fees, as determined by the workers' compensation judge, shall be paid to the claimant's attorney by the insurer for proceedings before the division, the workers' compensation judge, and the supreme court.

Section 15. Section 39-72-703, MCA, is amended to read:

"39-72-703. No compensation for partial disability. No compensation as provided in 39-72-701 *is* payable to an employee who is partially disabled from an occupational disease."

Section 16. Section 39-72-704, MCA, is amended to read:

"39-72-704. Medical and hospital expenses. In addition to the compensation provided by this chapter, *an employee who becomes either totally or partially disabled from an occupational disease is entitled to receive for treatment of the occupational disease, without limitation as to length of time or dollar amount, reasonable medical services, hospitalization, medicines, and other treatment approved by the division.*"

Section 17. Section 39-72-711, MCA, is amended to read:

"39-72-711. Lump-sum and compromise settlements. (1) No final and binding award made upon any claim pursuant to this chapter may be converted into a lump-sum payment, in whole or in part, except as provided in this section or 39-72-712.

(2) Whenever there are contested issues as to an insurer's liability for a claim under this chapter, including a claim based on 39-72-405*(3)*, a claimant and an insurer may enter into a full and final compromise settlement of the claim. However, no such settlements are binding on the parties until approved by the division. After the division approves a full and final compromise settlement, the claim is closed and the insurer's liability for a settled claim is forever released."

Section 18. Section 39-71-201, MCA, is amended to read:

"39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the division must administer are to be paid upon lawful appropriation. The following moneys collected by the division shall be deposited in the state treasury to the credit of the workers' compensation administrative fund and shall be used for the administrative expenses of the division:

(a) all fees and fines provided in 39-71-205 *and* 39-71-304;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

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(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state insurance fund. The assessments shall be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, no assessment of the plan No. 1 employer or plan No. 2 insurer shall be less than $200. The assessments shall be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans using proper accounting and cost allocation procedures. Plan No. 3 shall be assessed an amount sufficient to fund its direct costs and an equitable portion of the indirect costs as referred to above. Other sources of revenue, including unexpended funds from the preceding fiscal year, shall be used to reduce the costs before levying the assessments.

(2) The administration fund shall be debited with expenses incurred by the division in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the division either within or without the state.

(3) Disbursements from the administration money shall be made after being approved by the division upon claim therefor."

Section 19. **Repealer.** Sections 39-72-205, 39-72-306 through 39-72-309, 39-72-501 through 39-72-508, 39-72-603, 39-72-604, 39-72-702, 39-72-710, and 39-72-713, MCA, are repealed.

Section 20. **Codification.** The code commissioner shall codify section 6 of this act in Title 39, chapter 72, part 5, and section 14 of this act in Title 39, chapter 72, part 6, and the provisions of those parts apply, respectively, to section 6 and section 14.

Approved March 19, 1979.

CHAPTER NO. 105

AN ACT TO PROVIDE THAT A BOARD OF COUNTY COMMISSIONERS MAY ALLOCATE TO THE COUNTY ROAD FUND 50% OF THE PROCEEDS FROM LEASES BY THE COUNTY OF OIL AND GAS INTERESTS; AMENDING SECTION 7-8-2306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Allocation of proceeds of oil and gas leases and reserved royalty interests to county road fund.** Each board of county commissioners may allocate to the county road fund not more than 50% of the proceeds from oil and gas leases entered into and royalty interests reserved under Title 82, chapter 10, part 2.

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Section 2. Section 7-8-2306, MCA, is amended to read:

"7-8-2306. Distribution of sale and lease proceeds. The proceeds of every sale or lease under this part or part 25 shall be paid over to the county treasurer, who shall apportion and distribute the same in the following manner:

(1) (a) Upon a sale of such property, the proceeds of each sale up to the amount of $10 shall be credited to the county general fund to reimburse such for expenditures made therefrom in connection with the procurement of the tax deed and holding of the sale.

(b) Upon a sale of the property, if there be any amount remaining of such proceeds after the payment of the amount specified in subsection (1)(a) and such remainder is:

(i) in excess of the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty and interest, then so much of such remaining proceeds shall be credited to each fund or purpose as the same would have received had such taxes been paid before becoming delinquent, and all excess shall be credited to the general fund of the county; or

(ii) is less in amount than the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty or interest, such proceeds shall be prorated between such funds and purposes in the proportion that the amount of taxes and assessments accrued against such property for each such fund or purpose bears to the aggregate amount of taxes and assessments accrued against such property for all funds and purposes.

(2) Whenever tax-deed lands have been sold and the county has reserved a royalty interest, any sums of money received from such royalty interest shall be credited to the general fund of the county *except that the board of county commissioners may allocate to the county road fund not more than 50% of the money received from reserved royalty interests.*

(3) Upon a lease of the property, *except as otherwise provided,* the amount received as rent, royalty, or otherwise, including interest received on the payments under either a sale or lease, shall be apportioned on the current year's levy and shall be credited as earnings of tax-deed property and not considered as a credit to tax-deed accrued accounts as in the case of the principal received from sales of tax-deed lands."

Approved March 19, 1979.

CHAPTER NO. 106

AN ACT TO AMEND SECTION 61-3-335, MCA, TO INCREASE THE GRACE PERIOD FOR A TRANSFER OF LICENSE PLATES TO A NEWLY ACQUIRED MOTOR VEHICLE FROM 10 DAYS TO 20 DAYS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-335, MCA, is amended to read:

"61-3-335. Transfer of license plates to another motor vehicle. Should the transferor make application for the registration of another

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motor vehicle at any time during the remainder of the current registration year as shown on the original certificate of registration, he may file an application in the office of the county treasurer where the motor vehicle is taxable, upon a form to be prepared and furnished by the division, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates from the motor vehicle for which originally issued to a motor vehicle acquired by the same person in whose name the original license plates were issued shall be made within *20* days from date of acquiring the vehicle. The use of the license plates shall not be legalized until proper transfer of license plates has been made."

Approved March 19, 1979.

CHAPTER NO. 107

AN ACT TO AMEND SECTION 19-3-703, MCA, TO PERMIT THE PAYMENT OF ALL OR PART OF A PERS MEMBER'S REFUND OF ACCUMULATED CONTRIBUTIONS DIRECTLY TO HIS EMPLOYER WHENEVER THE MEMBER AND THE EMPLOYER SO REQUEST AND THE EMPLOYER HAS AN EMPLOYMENT-RELATED CLAIM AGAINST THE MEMBER.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-703, MCA, is amended to read:

"19-3-703. Refund of member's contributions on termination of service. (1) Except as provided in this section, any member whose service has been discontinued by other than death or retirement shall be paid such part of his accumulated contributions, including regular interest thereon, as he requests. If he has less than 5 years of service and he does not reenter service for a period of 5 years after such discontinuance, he shall automatically be paid any portion of his total accumulated contributions not previously withdrawn.

(2) Upon qualification for any other benefit under this chapter, a member having any accumulated normal contributions standing to his credit in the retirement fund shall receive the benefit based upon the creditable service during which such contributions were made.

(3) The board may, in its discretion, withhold, for not more than 1 year after a member last rendered service, all or part of his accumulated normal contributions if after a previous discontinuance of service he withdrew all or part of his normal contributions and failed to redeposit such withdrawn amount in the retirement fund as provided in 19-3-704.

(4) An employer who has an employment-related claim against a terminating member may, within 30 days after the date of termination, submit to the board a written request, signed by the employer and the member, authorizing the payment of all or any part of the accumulated contributions of the member directly to the employer to satisfy the claim

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in whole or in part. The request, if timely submitted, is sufficient authority for the department of administration to make such direct payment to the employer as part of the member's refund. The total of the payments made to the employer and those made to the member may not exceed the member's accumulated contributions."

Approved March 19, 1979.

CHAPTER NO. 108

AN ACT TO REPEAL SECTION 69-14-802, MCA, RELATING TO THE STRUCTURAL DETAILS OF LOADING PLATFORMS FOR RAILROADS; AMENDING SECTION 69-14-801, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-14-801, MCA, is amended to read:

"**69-14-801. Maintenance of loading platform by railroad.** (1) Every railroad company doing business in this state shall, within 60 days after notice from the commission, erect one or more platforms for the transfer of livestock, grain, and other commodities from wagons or otherwise to cars at each and every station or siding designated in such notice, such platforms to be erected so as not to endanger life and property.

(2) If any railroad company, after receiving notice as provided for in this section, shall fail, refuse, or neglect to erect platforms as required by this section within the required 60 days, the commission is authorized and empowered and it is made its duty to notify such railroad company to appear before it at a certain time and place and show cause, if there is any, why such commission should not issue an order requiring such railroad company to comply with the requirements of this section. The commission shall have power, after such hearing, to issue an order upon said railroad company commanding it to erect such platform if the commission shall upon such examination and hearing deem such platform necessary.

(3) Any notice required to be served upon any railroad company to carry out any of the provisions of this section or similar provisions relating to the enlarging of such platforms may be served upon any agent of said company within the state."

Section 2. **Repealer.** Section 69-14-802, MCA, is repealed.

Approved March 19, 1979.

CHAPTER NO. 109

AN ACT PERMITTING ALL COUNTY EMPLOYEES, COUNTY OFFICIALS, AND THEIR ASSISTANTS TO BE PAID EITHER MONTHLY, TWICE MONTHLY, OR EVERY 2 WEEKS; AND AMENDING SECTIONS 7-4-2502 AND 7-5-2107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2502, MCA, is amended to read:

"**7-4-2502. Payment of salaries of county officials and assistants.** (1) (a) Except as provided in subsection (2), the salaries of the

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several county officers and their assistants *may* be paid monthly, *twice monthly, or every 2 weeks* out of the general fund of the county and upon the order of the board of county commissioners.

(b) Salaries *may* be allowed and paid monthly, *twice monthly, or every 2 weeks* upon the order of the board and paid out of the contingent fund.

(2) (a) The salary of the county attorney is payable monthly, with one-half from the general fund of the county and the other one-half from the state treasury upon the warrant of the state auditor.

(b) The county commissioners of each county shall, within 30 days after the election or appointment to fill a vacancy for any cause of any county attorney, certify such election or appointment to the state auditor, who shall thereafter draw warrants for such salary in the same manner as for state officers. In case of a vacancy, the county commissioners shall immediately notify the state auditor, and the auditor shall compute the salary due on the basis of said notification.

(3) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to fix the compensation of all county officers not otherwise fixed in this code or by general or special law and to provide for the payment of the same."

Section 2. Section 7-5-2107, MCA, is amended to read:

"7-5-2107. Employment of personnel by county commissioners. The board of county commissioners may employ such persons as it deems necessary to assist the board in the performance of its duties. Each board may adopt a resolution defining the qualifications, duties, salary, and responsibilities of such persons. *Such persons may be paid monthly, twice monthly, or every 2 weeks.*"

Approved March 19, 1979.

CHAPTER NO. 110

AN ACT TO REVISE AND CLARIFY LAWS RELATING TO THE ISSUANCE OF DUPLICATE BONDS, WARRANTS, AND COUPONS; AMENDING SECTIONS 7-7-2104 AND 7-7-2106, MCA; AND REPEALING SECTION 7-7-2105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-2104, MCA, is amended to read:

"7-7-2104. Replacement of lost bond, warrant, or coupon. (1) The board *may* issue *a duplicate warrant, bond, or coupon whenever any warrant, bond, or coupon drawn by it upon the treasury of the county is lost or destroyed. The duplicate warrant, bond, or coupon must be in the same form as the original and* will take the place in order of registration and payment of *and supersede the* original bond, warrant, or coupon. *It must have the word "duplicate" plainly printed across its face.*

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(2) No duplicate warrant, bond, or coupon may be issued under this section unless the person entitled to receive the duplicate deposits with the county treasurer a bond in double the amount for which the duplicate warrant, bond, or coupon is issued, conditioned to render the county and its officers harmless from all loss, costs, or damages by reason of issuing the duplicate.

(3) No bond of indemnity is required:

(a) when a payee is the state of Montana or any agency, instrumentality, or officer of the state;

(b) when the owner or custodian is the state or any agency or officer thereof;

(c) when the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the state;

(d) when it can be established that a crime has been committed and that as a result of such crime a county warrant, bond, or coupon has been stolen or destroyed; or

(e) when it can be established that a county warrant, bond, or coupon has been mailed to an incorrect payee.

(4) If the owner or custodian applies under the provisions of subsection (3)(d) or (3)(e), a stop-payment order shall be placed on the original warrant, bond, or coupon by the county treasurer.

(5) If the owner or custodian applies under the provisions of subsection (3)(c), (3)(d), or (3)(e), the application shall include an agreement to indemnify and hold the county or its officers and employees harmless from any loss resulting from the issuance of a duplicate warrant, bond, or coupon. Any loss incurred in connection with the issuance of a duplicate warrant shall be charged against the account from which the payment was derived."

Section 2. Section 7-7-2106, MCA, is amended to read:

"7-7-2106. Procedure if original bond, warrant, or coupon is presented. It is the duty of the county treasurer, upon the production to him of any original bond, warrant, or coupon by the lawful owner or holder thereof, to assign by endorsement and to deliver to him the surety bond mentioned in *7-7-2104*. Such owner or holder may maintain an action in his own name upon such surety bond for the recovery of any money paid upon such duplicate, but the delivery of such surety bond does not relieve or exonerate the county from the payment of the amount specified therein upon a demand and refusal of the sureties named in the indemnifying surety bond to pay the same."

Section 3. **Repealer.** Section 7-7-2105, MCA, is repealed.

Approved March 19, 1979.

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CHAPTER NO. 111

AN ACT TO REVISE AND CLARIFY THE LAW RELATING TO THE ALLOWANCE OF AN INVESTMENT CREDIT FOR CERTAIN DEPRECIABLE PROPERTY AGAINST INDIVIDUAL INCOME TAXES AND CORPORATION LICENSE OR INCOME TAXES; AMENDING SECTIONS 15-30-161, 15-30-162, AND 15-31-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-161, MCA, is amended to read:

"15-30-161. Purpose and definition. (1) The purpose of 15-30-162 is to allow individuals, *estates, trusts,* and small businesses that meet the definition established in this section to take *an investment credit as provided for in 15-30-162* and thus to stimulate capital investment by the small business sector.

(2) For the purposes of 15-30-162, "small business" means a business that is eligible to elect to be taxed under the provisions of 15-31-202, whether or not such election is made."

Section 2. Section 15-30-162, MCA, is amended to read:

"15-30-162. Investment credit. *(1)* There is allowed as a credit against the taxes imposed by 15-30-103 and 15-30-104 a percentage of the *credit* allowed *with respect to certain depreciable property* under section 38 of the Internal Revenue Code of 1954, as amended, or as section 38 may be renumbered or amended.

(2) The amount of the credit allowed for the taxable year is the sum of:

(a) 20% of the amount of credit determined under section 46(a)(2) of the Internal Revenue Code of 1954, as amended, or as section 46(a)(2) may be renumbered or amended;

(b) the investment credit carryovers carried to the taxable year as provided in subsection (4); and

(c) the investment credit carrybacks carried to the taxable year as provided for in subsection (4).

(3) Notwithstanding the provisions of subsection (2), the investment credit allowed for the taxable year may not exceed the taxpayer's tax liability for the taxable year. In the event the taxpayer's tax liability for the taxable year exceeds $5,000, the investment credit may not exceed $5,000 plus 50% of the tax liability in excess of $5,000. In the case of a husband and wife who file separate returns, the investment credit may not exceed $2,500 plus 50% of the tax liability in excess of $2,500 unless the spouse of the taxpayer has no qualified investment for and no unused credit carryback or carryover to the taxable year of the spouse that ends with or within the taxpayer's taxable year.

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(4) If any part of the investment credit is not applied against the tax liability for the taxable year because of the limitations imposed under subsection (3), the unused portion shall be carried back and carried forward in accordance with the provisions of section 46(b) of the Internal Revenue Code of 1954, as amended, or as section 46(b) may be renumbered or amended.

(5) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code of 1954, as amended, or as section 47 may be renumbered or amended."

Section 3. Section 15-31-123, MCA, is amended to read:

"15-31-123. Investment credit. (1) The purpose of this section is to allow individuals, *estates, trusts,* and small businesses that meet the definition established in this section to take *an investment credit as provided for in subsection (3)* and thus to stimulate capital investment by the small business sector.

(2) For the purposes of this section, "small business" means a business that is eligible to elect to be taxed under the provisions of 15-31-202, whether or not such election is made.

(3) There is allowed as a credit against the taxes imposed by 15-31-101, 15-31-121, and 15-31-122 a percentage of the *credit* allowed *with respect to certain depreciable property* under section 38 of the Internal Revenue Code of 1954, as amended, or as section 38 may be renumbered or amended.

(4) The amount of the credit allowed for the taxable year is the sum of:

(a) 20% of the amount of credit determined under section 46(a)(2) of the Internal Revenue Code of 1954, as amended, or as section 46(a)(2) may be renumbered or amended;

(b) the investment credit carryovers carried to the taxable year as provided in subsection (6); and

(c) the investment credit carrybacks carried to the taxable year as provided for in subsection (6).

(5) Notwithstanding the provisions of subsection (4), the investment credit allowed for the taxable year may not exceed the taxpayer's tax liability for the taxable year. In the event the taxpayer's tax liability for the taxable year exceeds $5,000, the investment credit may not exceed $5,000 plus 50% of the tax liability in excess of $5,000.

(6) If any part of the investment credit is not applied against the tax liability for the taxable year because of the limitations imposed under subsection (5), the unused portion shall be carried back and carried forward in accordance with the provisions of section 46(b) of the Internal Revenue Code of 1954, as amended, or as section 46(b) may be renumbered or amended.

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(7) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code of 1954, as amended, or as section 47 may be renumbered or amended."

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 19, 1979.

CHAPTER NO. 112

AN ACT TO AMEND SECTION 33-2-302, MCA, RELATING TO SURPLUS LINE INSURANCE PROCUREMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-302, MCA, is amended to read:

"33-2-302. Conditions precedent to sale of surplus line insurance — agent's affidavit. (1) If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines", may be procured from unauthorized insurers subject to the following conditions:

(a) The insurance must be procured through a licensed surplus line agent.

(b) The full amount of insurance required must not be procurable, after diligent effort has been made to do so, from a majority of the insurers authorized to transact that kind and class of insurance in this state, and the amount of insurance placed in an unauthorized insurer shall be only the excess over the amount procurable from authorized insurers.

(c) The insurance must not be so procured for the purpose of securing advantages either as to:

(i) a lower premium rate than would be accepted by an authorized insurer; or

(ii) terms of the insurance contract.

(2) At the time of procuring, effecting, and issuing any such insurance, the surplus line agent shall execute an affidavit, in form as prescribed or accepted by the commissioner, setting forth facts referred to in subsection (1) and file such affidavit with the commissioner. Affidavits filed under this subsection shall be subject to public inspection unless the commissioner determines that the public interest requires otherwise."

Approved March 19, 1979.

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CHAPTER NO. 113

AN ACT TO AMEND SECTION 15-30-149, MCA, TO EXTEND, UNDER CERTAIN SPECIFIED CIRCUMSTANCES, THE PERIOD WITHIN WHICH REFUNDS MAY BE MADE BY THE DEPARTMENT OF REVENUE FOR THE OVERPAYMENT OF INCOME TAX; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-149, MCA, is amended to read:

"15-30-149. Credits and refunds — period of limitations. (1) If the department discovers from the examination of a return or upon claim duly filed by a taxpayer or upon final judgment of a court that the amount of income tax *collected* is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment shall be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of such excess shall be refunded to the taxpayer.

(2) Effective with taxable years ending on or after December 31, 1959, no such credit or refund shall be allowed or made after 5 years from the date prescribed by statute for filing the return *or after 1 year from the date the overpayment occurred, whichever period expires later,* unless before the expiration of such period a claim therefor is filed by the taxpayer or the department has determined the existence of the overpayment and has approved the refund or credit thereof. *However, if an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the taxable year of the net operating loss if that period expires later than 5 years from the due date of the return for the year to which the net operating loss is carried back.*

(3) Within 6 months after a claim for refund is filed, the department shall examine said claim and either approve or disapprove it. If said claim is approved, the credit or refund shall be made to the taxpayer within 60 days after the claim is approved; if the claim is disallowed, the department shall so notify the taxpayer and shall grant a hearing thereon upon proper application by the taxpayer. If the department disapproves a claim for refund, review of the determination of the department may be had as otherwise provided in this chapter.

(4) Except as hereinafter provided for, effective with taxable years ending on or after December 31, 1962, interest shall be allowed on overpayments at the rate of 6% per annum from the due date of the return or from the date of the overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment shall be deemed to be the date on which the return for the taxable year was due. No interest shall accrue on an overpayment if the taxpayer elects to have it applied to his estimated tax for the succeeding taxable year, nor

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shall interest accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. No interest shall be allowed if:

(a) the overpayment is refunded within 6 months from the date the return is due or the date the return is filed, whichever date is later;

(b) the overpayment results from the carryback of a net operating loss; or

(c) the amount of interest is less than $1.

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable."

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved March 19, 1979.

CHAPTER NO. 114

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO PUBLIC RETIREMENT SYSTEMS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-3-1344, MCA, is amended to read:

"7-3-1344. Prior rights of law enforcement officers. (1) Any police officer employed by any police department or departments established as required by law in any city or town of the county prior to the election and qualification of a commission under this part and part 12 *has* the same job tenure rights as though no such election and qualification had taken place.

(2) Any such police officer who has vested rights in *a* police *retirement* fund shall maintain prior vested rights in *the* fund upon its transfer to a consolidated county municipality. Any police *retirement* fund established as required by law in any city or town of the county prior to the election and qualification of a commission under this part and part 12 shall be continued as such for the police department of the municipality, subject, however, to the prior vested rights of any police officer employed by any police department or departments established as required by law in any city or town of the county prior to the election and qualification of a commission under this part and part 12. The board of trustees of such police *retirement* fund shall consist of the president, the director of finance, the director of law, and two members of the police department from the active list of the police officers of *the* municipality who shall be selected by a majority vote of the members of the police department on the active list of *the*

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municipality. *The* selection shall be made between May 1 and May 10 each year, and *the* active police officer members of *the* board shall serve overlapping 2-year terms. Except as provided in this section, the police *retirement* fund shall be continued and administered in the manner prescribed by law for such funds established in cities and towns."

Section 2. Section 19-1-104, MCA, is amended to read:

"19-1-104. Retirement systems to be considered separate. (1) Pursuant to section 218(d)(6) of the Social Security Act, the public employees' retirement system of the state of Montana is, for the purposes of this chapter, considered a separate retirement system with respect to the state and a separate retirement system with respect to each political subdivision having positions covered thereby.

(2) Pursuant to section 218(p)(1) of the Social Security Act, the highway patrolmen's retirement system of the state of Montana, the public employees' retirement system of the state of Montana, and each municipal police *retirement* fund and each *city participating in* the *municipal* police *officers' retirement system* are, for the purposes of this chapter, considered separate retirement systems with respect to the state and separate retirement systems with respect to each political subdivision having positions covered thereby."

Section 3. Section 19-3-104, MCA, is amended to read:

"19-3-104. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Accumulated additional contributions" means the sum of all the additional contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(2) "Accumulated contributions" means the sum of accumulated normal contributions and accumulated additional contributions.

(3) "Accumulated normal contributions" means the sum of all the normal contributions standing to the credit of a member's individual account without interest.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(5) "Actuary" means the actuary retained by the board in accordance with 19-3-305.

(6) "Additional contributions" means contributions by members under the provisions of 19-3-702.

(7) "Annuity" means payments for life derived from contributions made by a member as provided in this chapter.

(8) "Beneficiary" means the person so designated pursuant to part 13 of this chapter.

(9) "Benefit" means the retirement allowance, survivorship allowance, death benefit, or refund of accumulated contributions provided by this chapter.

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(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Compensation" means remuneration paid out of funds controlled by an employer. The compensation of each member of the legislature of Montana for any year shall be *considered* to be that portion of the product of the daily compensation for such position multiplied by 360 upon which such member elects to pay normal contributions during the year.

(12) "Contracting employer" means any political subdivision or governmental entity which has contracted to come into the system.

(13) "Creditable service" means the aggregate of membership service and prior service. A member employed on a part-time basis shall receive credit for a year of service for each fiscal year during which such member was employed throughout the year and was engaged in his duties the full amount of time he was required by his employment to be so engaged.

(14) "Disability" and "incapacity for performance of duty", referred to herein as a basis of retirement, mean disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(15) "Employee" means any person *who is* employed by an employer in any capacity whatever and whose salary is paid either by warrant of the employer or from the fees or income of any department or agency of the employer. "Employee" means further any person *considered* such pursuant to 19-3-402.

(16) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units thereof for the purposes of this chapter, or any political subdivision or governmental entity which has contracted to come into the system.

(17) "Employer contributions" means payments to the retirement fund from appropriations of the state of Montana pursuant to 19-3-801 and from contracting employers pursuant to the contracts between them and the board.

(18) "Final compensation" means a member's highest average annual compensation during any 3 consecutive years of membership service. Lump-sum payments for sick leave and annual leave paid to the employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(19) "Fiscal year" means any year commencing with July 1 and ending June 30 next following.

(20) "Head of department" means the head of any department, institution, or branch of the state service which directly pays salaries out of its income or which prepares, approves, and submits salary statements of its employees to the department of administration, state auditor, and state treasurer for payment.

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(21) "Member" means any person included in the membership of the retirement system set forth in 19-3-401 and not excluded in 19-3-402, 19-3-403, or 19-3-406.

(22) "Membership service" means service with respect to which normal contributions and employer contributions are paid. A member of the legislature of Montana shall be credited with membership service for that portion of each year for which he pays normal contributions pursuant to subsection (11) of this section.

(23) "Normal contributions" means contributions required *from* members under this chapter and any optional contributions made under the provisions of 19-3-502 and 19-3-704.

(24) "Pension" means payments for life derived from contributions made from the state controlled funds or, in the case of members from contracting employers, from the funds of such contracting employers, as provided in this chapter.

(25) "Prior service" *means* all service rendered as an employee of the state before July 1, 1945, and all service rendered as an employee of a contracting employer before July 1, 1947. Prior service includes all service rendered prior to July 1, 1945, as a member of the legislative assembly or lieutenant governor of Montana.

(26) "Regular interest" means interest at the rate set from time to time by the board.

(27) "Retirement" means withdrawal from active service with a retirement allowance granted under the provisions of this chapter.

(28) "Retirement allowance" means the periodic benefit payable following service, early, or disability retirement.

(29) "Retirement fund" means the public employees' retirement account in the agency fund.

(30) "Retirement system" means the public employees' retirement system created by this chapter.

(31) "Service" means employment of an employee, except as provided in 19-3-501 and 19-3-502.

(32) "Survivorship allowance" means payments for life to the beneficiary of a deceased member as provided in part 12 of this chapter.

(33) "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board *considers* necessary."

Section 4. Section 19-3-204, MCA, is amended to read:

"19-3-204. Tax levy to meet employer's obligations. (1) If the required contributions to the retirement system exceed the funds available to a contracting employer from general revenue sources, the contracting employer *may* budget, levy, and collect annually a special tax upon the assessable property of the contracting employer in the number of cents per

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$100 of assessable property as *is* sufficient to raise the amount estimated by the legislative body to be required to provide sufficient revenue to meet the obligation of the contracting employer to the retirement system. The rate of taxation may be in addition to the annual rate of taxation allowed by law to be levied by the contracting employer.

(2) *A* person who is a member or beneficiary of the retirement system on account of the participation of the contracting employer *has* the right to maintain the appropriate action or proceeding to require *the contracting employer to budget, levy, and collect the special tax authorized in subsection (1).*"

Section 5. Section 19-4-803, MCA, is amended to read:

"**19-4-803. Mandatory superannuation retirement.** (1) *A* member in service who has attained the age of 70 years during any school year *must* be retired on September 1 following his 70th birthday. This provision does not apply to teachers in the Montana university system, who may be employed beyond the age of 70 upon the recommendation of the president of the employing unit to the board of regents.

(2) *A member* over 70 years of age may not:

(a) be allowed creditable service for services rendered after the end of the school year in which the age of 70 was attained;

(b) contribute to the retirement system after the end of such school year; and

(c) have the compensation received after the end of such school year used in computing *his* average final *compensation.*"

Section 6. Section 19-6-101, MCA, is amended to read:

"**19-6-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana highway patrolmen's retirement account in the agency fund.

(2) "Accumulated deductions" means the total of the amounts deducted from the salary of a *member*, paid into the *account*, and standing to his credit in the *account*, together with the regular interest thereon.

(3) "Actuarial equivalent" means a benefit of equal value when computed on the basis of the actuarial tables in use by the system.

(4) "Beneficiary" means a person nominated to receive benefits under this chapter by a member's written designation, duly acknowledged and filed with the department.

(5) "Board" means the public employees' retirement board provided for in 2-15-1009.

(6) "Compulsory retirement age" means 60 years of age.

(7) "Department" means the public employees' retirement division of the department of administration.

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(8) "Final salary" means the average annual compensation received by a *member*, before any deductions have been made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total compensation earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(9) "Involuntary retirement" means a retirement not for cause and before retirement age.

(10) "Member" means a person who has accumulated deductions in the account standing to his credit.

(11) "Member's annuity" means payments for life derived from contributions made by the *member*.

(12) "Optional retirement age" means the age at which a *member* may retire after 20 years' service.

(13) "Retired patrolman" means a person in receipt of a retirement allowance under this chapter.

(14) "Retirement age" means the age at which a member retires after 25 years of creditable service with the Montana highway patrol.

(15) "Retirement allowance" means the state annuity plus the member's annuity.

(16) "State annuity" means payments for life derived from contributions made by the state of Montana."

Section 7. **Standardization of terminology.** Whenever the word "contributor" appears in Title 19, chapter 6, MCA, it shall be changed to "member". Plural and possessive forms shall be similarly changed.

Section 8. Section 19-7-101, MCA, is amended to read:

"19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana sheriffs' retirement account administered by the sheriffs' retirement board.

(2) "Accumulated contributions" or "accumulated deductions" means the total amount deducted from the salary of a member during a period of membership service plus the total amount deducted during a period of prior service and transferred from the public employees' retirement system standing to the member's credit in the account, together with the accrued interest.

(3) "Actuarial equivalent" means a benefit *of equal value when* computed *upon the basis of* the *actuarial* tables *in use by the system.*

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(4) "Beneficiary" means a person who is nominated by the member in an acknowledged document which is filed with the board.

(5) "Board" means the sheriffs' retirement board. The board shall consist of five persons who shall be the same persons that comprise the public employees' retirement board.

(6) "Creditable service" means the aggregate of all of a member's current and prior service.

(7) "Final salary" means the average annual salary received by a member, before any deductions are made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service from which contributions were deducted or, in the event that a member has not served 3 years, the total salary earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(8) "Member" means any person who has accumulated deductions in the account to his credit.

(9) "Member's annuity" means payments for life derived from contributions made by the *member* while employed.

(10) "Membership service" means service for which an amount is deducted from the salary of a member and paid into the account.

(11) "Prior service" means service for which credit was granted by the public employees' retirement system of the state of Montana.

(12) "Retired sheriff" means a person receiving a retirement allowance under this chapter.

(13) "Retirement allowance" means the state annuity plus the member's annuity.

(14) "Service" means employment as a sheriff.

(15) "Sheriff" means any elected or appointed county sheriff, undersheriff, or regularly appointed and acting deputy sheriff.

(16) "State annuity" means payments for life derived from county contributions into the sheriffs' retirement account, together with any supplemental legislative appropriations to the account.

(17) "Vested retirement" means a retirement not for cause and before retirement age."

Section 9. Section 19-7-502, MCA, is amended to read:

"19-7-502. Early retirement option. If a *member* has served 20 years of creditable service as a sheriff and has reached the age of 55 years, he is granted the option and privilege of retiring, and in such case his retirement allowance shall be the actuarial equivalent of his retirement

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allowance as otherwise accrued, based upon payment commencing when he would have completed 25 years of creditable service had he not retired."

Section 10. Section 19-7-503, MCA, is amended to read:

"19-7-503. Service retirement allowance. (1) The amount of any member's service retirement allowance shall be 2% of his final salary for each year of creditable service, up to a maximum of 50% of final salary.

(2) The *member's* retirement allowance shall be increased for any member who contributes after 25 years of service by an annuity calculated as twice the actuarial equivalent of the portion of the member's accumulated deductions arising from contributions after the completion of 25 years of service."

Section 11. Section 19-9-102, MCA, is amended to read:

"19-9-102. Purpose — application of prior law. (1) As cities other than those participating in the statewide police reserve fund provided for in Chapter 335, Laws of 1974, currently have local police *retirement* funds, the legislature finds and declares that the law regarding such funds, although in conflict with this chapter, cannot be repealed. It is the express intention of the legislature to allow two separate and distinct retirement systems to exist. The first, which includes local police *retirement* funds, applies to such cities, other than those of the first and second class, *that* wish to adopt it. The second, created by this chapter, applies to first- and second-class cities, those other cities *that* wish to adopt it, and any city *that* has adopted the above-mentioned statewide police reserve fund.

(2) The following may not be applied in any way to a city operating under the plan created by this chapter: 7-32-4107, 7-32-4120, 7-32-4131, and chapter 10 of this title."

Section 12. Section 19-9-1006, MCA, is amended to read:

"19-9-1006. Protection from legal process—nonassignability. *Except as provided in this chapter, the* benefits payable hereunder are not subject to the claims of any creditor of a member, beneficiary, or survivor or to attachment, garnishment, or other legal or equitable process *and no* member, beneficiary, or survivor may alienate, anticipate, commute, pledge, encumber, assign, or sell any of such benefits."

Section 13. Section 19-9-1007, MCA, is amended to read:

"19-9-1007. Supplement to certain pensions. (1) The payment for each fiscal year to the police officers, spouses, or minor children described in subsections (2)(a) through (2)(c) may be not less than one-half of the salary paid in that fiscal year in the appropriate city or town to newly confirmed police officers.

(2) On or before April 1 of each year, the department of administration shall make a report to the state auditor including the following information:

(a) the names of all police officers who are receiving payments from the *plan* as of the date of the report and were receiving payments *from a prior plan before* July 1, 1975;

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(b) the names of all spouses or minor children who are receiving payments from the *plan* because of the death of a police officer who was receiving payments *from a prior plan before* July 1, 1975;

(c) the names of all spouses or minor children who are receiving payments from the *plan* and who were receiving payments *from a prior plan before* July 1, 1975, or in the case of minor children, whose parent, the spouse of a police officer, was receiving such payments prior to July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection (4), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

(ii) the amount of the payments made in the base fiscal year to each spouse or minor child (or children) described in subsection (2)(b) or (2)(c);

(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from *a prior plan before* July 1, 1975, and who is survived by a spouse or minor children entitled to receive payments *from the plan*, the amount which would have been paid to an eligible spouse of such police officer had that spouse been receiving payments in the base fiscal year.

(3) Each fiscal year immediately after the adoption by a city or town *participating in the plan* of its budget for that fiscal year, each such city or town shall report to the state auditor the salary for that fiscal year of a newly confirmed police officer of that city or town.

(4) The state auditor shall, upon receipt of the reports referred to in subsections (2) and (3), compute the difference between each amount reported under subsections (2)(d)(i) through (2)(d)(iii) and one-half the salary for the current fiscal year of a newly confirmed police officer of the appropriate city or town. The difference shall be paid by the state auditor out of the premium tax collected on insurance *sold in this state to insure against the risks enumerated in 19-11-512(5)* to the *administrator* at the same time as and in addition to the payment to be made by the state auditor under 19-9-702.

(5) The *administrator* shall use the funds *received under subsection (4)* to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(6) If more than one minor child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to such minor children under this section shall be determined as if there were one such minor child and the supplementary payment shall be made to the minor children collectively."

Section 14. **Withholding of group insurance premium from retirement benefit.** A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following

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retirement may elect to have the monthly premium for such group insurance withheld by the department of administration and paid directly by the department to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

Section 15. Section 19-10-201, MCA, is amended to read:

"19-10-201. Local boards of trustees of funds. (1) Each city or town which has a police *retirement* fund must have a board of trustees of such fund, except as provided in subsection (4).

(2) A board of trustees existing under subsection (1) must consist of the mayor, clerk, and attorney of the city or town and two members from the active list of police officers of the city or town.

(3) The two trustees who are also police officers shall serve terms of 2 years. They shall be selected by a majority vote of the members of the police department on the active list of the city or town. One shall be selected each year between May 1 and May 10, so that their terms are staggered. Immediately after the selection has been made, a certificate of election *must* be certified to the city clerk by the chairman and secretary of the meeting at which the selection was made.

(4) The board of trustees of the police *retirement* fund of a city which elects to participate in the municipal police officers' retirement system under 19-9-107 is abolished as of the time that the transfer of the cash and securities and the certification required by that section is completed. The functions of the board are transferred as of the date of the election to the department of administration and the board, as provided in the Municipal Police Officers' Retirement Act."

Section 16. Section 19-10-202, MCA, is amended to read:

"19-10-202. Limit on use of fund. A police *retirement* fund may not be used for any purpose other than to make payments authorized by this chapter to members of the police department on the retired list and to make authorized investments."

Section 17. Section 19-10-203, MCA, is amended to read:

"19-10-203. Investment of fund. (1) All *money* in *the* fund in excess of such an amount as *is considered* necessary from time to time to meet current payments to *retired* police officers shall be invested as hereinafter provided. All interest on *money* belonging to *the* fund from *any* source *belongs* to and *must* be paid into *the* fund.

(2) Whenever the *money* in the police *retirement* fund *exceeds* the greater of the following amounts, the city treasurer shall remit the excess to the state treasurer, who shall invest the remittances under the direction of the board of investments as provided in 17-6-204:

(a) 1 ½ times the monthly benefit paid in the preceding month; or

(b) $5,000.

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(3) The funds deposited in the police *retirement* fund of a city or town after July 1, 1977, are limited to the investments in 17-6-211, except that the funds may not be invested in common stocks. However, these funds may be invested under the provisions of 17-6-204."

Section 18. Section 19-10-204, MCA, is amended to read:

"19-10-204. Trustees' report to state auditor. The board of trustees of each police *retirement* fund shall on or before April 1 of each year report to the state auditor as to the financial condition of its fund."

Section 19. Section 19-10-205, MCA, is amended to read:

"19-10-205. Actuarial valuation of police retirement fund. (1) The city treasurer shall submit to the department of community affairs before October 1 of each odd-numbered year all information requested by the department necessary to complete an actuarial valuation of the city's police *retirement* fund. The valuation shall consider the actuarial soundness of the police *retirement* fund for the 2 preceding fiscal years.

(2) The valuation is to be prepared by a qualified actuary selected by the department. A qualified actuary is a member of the American academy of actuaries or of any organization considered by the department to have similar standards.

(3) In each fiscal year in which an actuarial valuation is prepared, the department shall submit to the state auditor a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed $6,000 in any fiscal year. The state auditor shall make payment to the actuary designated in the request."

Section 20. Section 19-10-301, MCA, is amended to read:

"19-10-301. City's contribution to fund. Each city, other than one of the first or second class, which has a police *retirement* fund and which did not elect to join the statewide police reserve fund provided for in Chapter 335, Laws of 1974, and has not elected to participate in the plan under 19-9-107 shall deposit in its fund monthly an amount equal to 11% of the total salaries for the preceding month paid to active police officers of such city, exclusive of overtime and payments in lieu of sick leave and annual leave. If the demand against a city for deposits in its fund is such that it cannot be met within the general taxing authority of the city, an additional levy not to exceed 3 mills may be made until the general taxing authority is sufficient to meet the demand."

Section 21. Section 19-10-302, MCA, is amended to read:

"19-10-302. Officer's contribution deducted from salary. The treasurer of an incorporated city which has a police *retirement* fund shall retain from the monthly salary of each police officer on the active list a sum equal to 6% of his monthly compensation for his services as a police officer, exclusive of overtime and payments made in lieu of sick leave and annual leave. The monthly deduction from the salaries of police officers *must* be paid into the city's police *retirement* fund for the purpose of paying the salaries of police officers on the retired list."

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Section 22. Section 19-10-304, MCA, is amended to read:

"19-10-304. Gifts and money to be applied to fund. The following shall be placed in the police *retirement* fund and transmitted promptly to the board of trustees:

(1) all *money* withheld from salaries of police officers for the violation of rules of *the* police *department*;

(2) all bequests, gifts, or emoluments paid or given on account of any extraordinary service of *a* member of *the* police department, except when specifically allowed to be retained by *the* officer by the mayor, commissioners, and chief of police; and

(3) all *money* derived from the provisions of this chapter."

Section 23. Section 19-10-305, MCA, is amended to read:

"19-10-305. Annual state payments to municipality with police department. (1) At the end of each fiscal year, the state auditor shall issue and deliver to the treasurer of each city and town in Montana which has a police department and which is not a participant in the municipal police officers' retirement system his warrant for an amount computed in the same manner as the amount paid (or that would be paid if an existing relief association met the legal requirements for payment) to cities and towns for fire department relief associations pursuant to 19-11-512.

(2) The payments provided for by 19-10-205 and subsection (1) of this section shall be paid from the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-11-512. Such payments *may* only be made after deductions have been made from the gross premium tax for cancellations and returned premiums.

(3) Each city or town which has a police *retirement* fund shall deposit the payment to the credit of its police *retirement* fund.

(4) Payments provided for in 19-10-205 and subsection (1) of this section are in addition to those provided for in 19-10-301."

Section 24. Section 19-10-406, MCA, is amended to read:

"19-10-406. Election to qualify previous military service. (1) A member with 15 years or more of service *as a police officer* may, at any time prior to his retirement, make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not otherwise eligible to receive credit. To qualify this service he must contribute to the account the actuarial cost of granting the service to be determined by the board based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more of his military service than he has service *as a police officer* in excess of 15 years. Military service purchased under this section

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may not be used in the determination of eligibility for a service retirement requiring a minimum of 20 years service.

(2) If a member has retired from active duty in the armed forces of the United States with normal service retirement benefits, he may not qualify his military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify his active military service under subsection (1) if his active duty in the armed forces of the United States is not more than 25% of the total of all his years of military service, including reserve and active duty time."

Section 25. Section 19-10-501, MCA, is amended to read:

"19-10-501. Service retirement allowance. When a police officer is transferred from the active list to the retired list of a city, he shall thereafter receive monthly payments from the city's police *retirement* fund, as follows:

(1) A police officer who is eligible under 19-10-401(1) or (2) and does not elect to serve any additional years as an active police officer or who is placed on the retired list under 19-10-401(3) prior to reaching 20 years of service shall receive a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(2) A police officer who is eligible after 20 years of service and who elects to serve additional years shall receive the payment provided for in subsection (1) plus an additional 1% of such payment per year of additional service, up to a maximum of 60% of the base salary, excluding overtime and *payments* in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(3) A police officer who is placed on the retired list under 19-10-401(3) and who was theretofore eligible at his option to be placed on the retired list under 19-10-401(1) or (2) but elected to serve additional years shall be paid for the additional years over his original eligibility at the rate prescribed in subsection *(2)* of this section."

Section 26. Section 19-10-502, MCA, is amended to read:

"19-10-502. Disability retirement allowance. When a police officer is transferred from the active list to the retired list of a city, he shall thereafter receive monthly payments from the city's police *retirement* fund, as follows:

(1) A police officer who is eligible under 19-10-402 before completing 20 years of service shall receive a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(2) A police officer who is placed on the retired list under 19-10-402 and who, at the time of his injury or disability, was eligible at his option

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to be placed on the retired list under 19-10-401(1) or (2) but had elected to serve additional years and was then serving such additional years shall be paid for the additional years over his original eligibility at the rate prescribed in 19-10-501*(2)*."

Section 27. Section 19-10-503, MCA, is amended to read:

"**19-10-503. Death benefits.** (1) Upon the death of a police officer on the active list or retired list of a city, his surviving spouse, if there *is* one, shall, as long as such spouse remains the surviving spouse, be paid from the city's police *retirement* fund a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave *and* annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(2) If the officer leaves one or more dependent minor children, upon his death if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, his surviving dependent minor children, collectively if there is more than one, shall receive the same monthly payments as a surviving spouse would receive, until they reach the age of 18 years or are married. The payments shall be made to their duly appointed, qualified, and acting guardian for their use. If there is more than one such child, upon each child reaching the age of 18 or marrying, the pro rata payments to that child shall cease and shall be made to the remaining children, until all the children have either reached the age of 18 or are married."

Section 28. Section 19-10-506, MCA, is amended to read:

"**19-10-506. Supplement to certain pensions.** (1) The payment for each fiscal year to the police officers, spouses, or minor children described in subsections (2)(a) through (2)(c) may be not less than one-half of the salary paid in that fiscal year in the appropriate city or town to newly confirmed police officers.

(2) On or before April 1 of each year, the board of trustees shall make a report to the state auditor including the following information:

(a) the names of all police officers who are receiving payments from the police *retirement* fund of the city or town as of the date of the report and were receiving such payments prior to July 1, 1975;

(b) the names of all spouses or minor children who are receiving payments from the police *retirement* fund because of the death of a police officer who was receiving such payments prior to July 1, 1975;

(c) the names of all spouses or minor children who are receiving payments from the police *retirement* fund and who were receiving such payments prior to July 1, 1975, or in the case of minor children, whose parent, the spouse of a police officer, was receiving such payments prior to July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection (4), the following information relating to the base fiscal year commencing July 1, 1976:

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(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

(ii) the amount of the payments made in the base fiscal year to each spouse or minor child (or children) described in subsection (2)(b) or (2)(c);

(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from the police *retirement* fund prior to July 1, 1975, and who is survived by a spouse or minor children entitled to receive payments therefrom, the amount which would have been paid to an eligible spouse of such police officer had that spouse been receiving payments in the base fiscal year.

(3) Each fiscal year immediately after the adoption by a city or town having a police *retirement* fund of its budget for that fiscal year, each such city or town shall report to the state auditor the salary for that fiscal year of a newly confirmed police officer of that city or town.

(4) The state auditor shall, upon receipt of the reports referred to in subsections (2) and (3), compute the difference between each amount reported under subsections (2)(d)(i) through (2)(d)(iii) and one-half the salary for the current fiscal year of a newly confirmed police officer of the appropriate city or town. The difference shall be paid by the state auditor out of the premium tax collected on insurance, as provided in 19-10-305(2), to the treasurer of the appropriate city or town at the same time as and in addition to the payment to be made by the state auditor under 19-10-305(1).

(5) The treasurer of each city or town receiving funds under subsection (4) shall immediately deposit them to the credit of the city or town's police *retirement* fund. The board of trustees of the fund shall use the funds to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(6) If more than one minor child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to such minor children under this section shall be determined as if there were one such minor child and the supplementary payment shall be made to the minor children collectively."

Section 29. Section 19-11-603, MCA, is amended to read:

"19-11-603. Partial service pension. (1) A member of a fire department relief association is eligible to receive a partial service pension if he:

(a) has completed at least 10 years of active duty as a fully paid member of a fire department but has not both completed 20 years of service and attained age 50 as an active firefighter;

(b) is permanently separated from service on or after July 1, 1977;

(c) does not qualify for a disability pension under 19-11-604; and

(d) does not receive a refund of his contributions under 19-11-502.

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(2) The right to receive the pension vests upon the firefighter's permanent separation from service, but the payments may not commence until the date he would have both reached his 50th birthday and completed 20 years of service as a member of a fire department had his active duty not been terminated.

(3) The pension shall be paid out of the disability and pension fund and shall consist of monthly payments in an amount equal to the number of years of the firefighter's service divided by the number of years of service the firefighter would have had if he had remained in active duty as a member of a fire department until the date he would have both attained age 50 and completed 20 years of service, multiplied by one-half of the sum last received by the firefighter as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department.

(4) If the firefighter dies after he is permanently separated from service and before he both reaches the age of 50 years and *would have completed* 20 years of service as an active member of a fire department, the payments prescribed in subsection (3) shall be made to the surviving spouse commencing on the date the firefighter would have both reached his 50th birthday and completed 20 years of service as an active member of a fire department and terminating upon the surviving spouse's death or remarriage. If there is no surviving spouse or the surviving spouse dies or remarries and if the firefighter leaves one or more children who have not reached the age of 18 years, the children shall receive the payments until the youngest reaches the age of 18 years.

(5) If the firefighter dies after he both reaches the age of 50 years and *would have completed* 20 years of service as an active member of a fire department, the payments shall be made to the surviving spouse or children as provided in subsection (4).

(6) The pension escalation provisions of 19-11-602 do not apply to pensions received under this section."

Section 30. Section 19-11-612, MCA, is amended to read:

"19-11-612. Protection of benefits from legal process — nonassignability. Any payments made or to be made under this chapter are not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may not assign the right, and the association and trustees may not recognize any assignment or pay over any sum so assigned."

Section 31. Section 19-12-104, MCA, is amended to read:

"19-12-104. Penalty for false statements or claims. A person required to make a statement or affidavit by this chapter who willfully falsifies such statement or affidavit *or* a person who files a false claim under this chapter is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding $500 or imprisonment not exceeding 6 months, or both."

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Section 32. **Codification.** Section 14 of this act is intended as an addition to Title 19, chapter 9, part 10, and the code commissioner shall codify it in that part. All references in MCA to Title 19, chapter 9, part 10, include section 14.

Approved March 19, 1979.

CHAPTER NO. 115

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO PROPERTY; AND REPEALING SECTIONS 67-1001 THROUGH 67-1008 AND 34-106, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-2-202, MCA, is amended to read:

"70-2-202. General procedural provisions applicable. The provisions of *Title 25, chapter 3, parts 2 and 3,* and Rules 4, 12(a), and 41(e), M.R.Civ.P., are applicable to the action for which provision is made in 70-2-201."

Section 2. Section 70-5-103, MCA, is amended to read:

"70-5-103. Duty to inform owner when known. If any person *finds* any money, goods, things in action, or other personal property or *saves* any domestic animal from drowning or starvation when *the* property is of *a* value of $10 or more *and he knows or suspects who the owner is,* he must *use reasonable diligence to* inform the owner thereof and make restitution without compensation, further than a reasonable charge for saving and taking care thereof. *If he fails to do so, he is liable in damages to the owner and has no claim to any reward offered by the owner for the recovery of the thing or to any compensation for his trouble or expenses.*"

Section 3. Section 70-6-504, MCA, is amended to read:

"70-6-504. How exempted from liability — safe. If an innkeeper keeps a fireproof safe and gives notice to a guest, either personally or by *placing* a printed notice in a prominent place in the room occupied by the guest, that he keeps such a safe and will not be liable for money, jewelry, documents, or other articles of value and small compass unless placed therein, he is not liable, except so far as his own acts contribute thereto, for any loss of or injury to such articles not deposited with him and not required by the guest for present use."

Section 4. Section 70-9-302, MCA, is amended to read:

"70-9-302. Notice of property presumed abandoned — publication — mail. (1) Within 120 days from the filing of the report required by 70-9-301, the department of revenue shall *publish* notice at least once each week for 2 successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last

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known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(2) The published notice shall be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property" and shall contain:

(a) the names in alphabetical order and last known addresses, if any, *of persons* listed in the report and entitled to notice within the county as hereinbefore specified;

(b) a statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the department;

(c) a statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within 65 days from the date of the second published notice, the abandoned property will be placed not later than 85 days after such publication date in the custody of the department to whom all further claims must thereafter be directed.

(3) The department is not required to publish in such notice any item of less than $25 unless the department *considers* such publication to be in the public interest.

(4) Within 120 days from the receipt of the report required by 70-9-301, the department shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of $25 or more presumed abandoned under parts 1 through 3.

(5) The mailed notice shall contain:

(a) a statement that, according to a report filed with the department, property is being held to which the addressee appears entitled;

(b) the name and address of the person holding the property and any necessary information regarding changes of name and address of the holder;

(c) a statement that if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the department to whom all further claims must be directed.

(6) This section is not applicable to sums payable on travelers' checks or money orders presumed abandoned under 70-9-201."

Section 5. Section 70-16-104, MCA, is amended to read:

"70-16-104. Rights of tenant for years or at will. (1) A tenant for years or at will, unless he is a wrongdoer by holding over, may occupy the buildings, take the annual products of the soil, *and* work mines and quarries open at the commencement of his tenancy; and a tenant at will

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or for an indefinite term may cultivate and harvest the crops growing at the end of his tenancy.

(2) A tenant for years or at will has no other rights to the property than *those* given to him by the agreement or instrument by which his tenancy is acquired or by subsection (1).

(3) Subsection (2) does not apply to arrangements governed by chapter 24 of this title."

Section 6. Section 70-19-413, MCA, is amended to read:

"**70-19-413. Certain disabilities to suspend running of statutory period.** (1) *Subsection (2) applies if* a person entitled to commence an action for the recovery of real property or for the recovery of the possession thereof or for dower or to make any entry or defense founded on the title to real property or to rents or services out of the same is, at the same time such title first descends or accrues:

(a) *under* the age of majority;

(b) *seriously mentally ill*; or

(c) imprisoned on a criminal charge or in execution upon conviction of a criminal offense for a term of less than for life.

(2) The time during which disability continues is not *considered* any portion of the time in this chapter limited for the commencement of such action or the making of such entry or defense, but such action may be commenced or entry or defense made within the period of 5 years after such disability *ceases* or after the death of the person entitled who *dies* under such disability, but such action *may* not be commenced or entry or defense made after that period."

Section 7. Section 70-20-101, MCA, is amended to read:

"**70-20-101. Transfer to be in writing — statute of frauds.** No estate or interest in real property, other than *an estate at will or* for a term not exceeding 1 year, or any trust over or power concerning it or in any manner relating thereto can be created, granted, assigned, surrendered, or declared otherwise than by operation of law or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring *it* or by his lawful agent thereunto authorized by writing."

Section 8. Section 70-20-107, MCA, is amended to read:

"**70-20-107. Power of attorney of married person — how acknowledged.** A power of attorney of a married *person*, authorizing the execution of an instrument transferring an estate in *his* separate real property, has no validity for that purpose unless acknowledged by *him* in the manner provided in 1-5-206 and 1-5-207."

Section 9. Section 70-20-310, MCA, is amended to read:

"**70-20-310. Conveyance in joint tenancy — right of survivorship.** In all conveyances of real property made in joint tenancy where the

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right of survivorship is contained in the grant of such conveyance, the right of survivorship *exists* by virtue of such grant."

Section 10. Section 70-20-405, MCA, is amended to read:

"70-20-405. Other provisions on unlawful transfers — where found. Other provisions concerning unlawful transfers are contained in *Title 31, chapter 2, part 3,* concerning the special relations of debtor and creditor."

Section 11. Section 70-23-204, MCA, is amended to read:

"70-23-204. Refund of purchaser's funds for change in building plans — final report. (1) *The* funds *of any purchaser* obtained prior to issuance of final reports shall be refunded if there is any change in the condominium building plans subsequent to execution of the contract requiring approval of a city or county officer having jurisdiction over issuance of permits for construction of buildings unless *the* purchaser's written acceptance of the specific change is obtained.

(2) Rights under contracts of sale of condominium units under a preliminary report are not enforceable against purchasers until purchasers have had a full opportunity to read the department's final report on the project and to obtain a refund of any moneys paid as well as a release from all obligations if the final report differs in any material respect from the preliminary report.

(3) If the final report is not issued within 1 year from the date of issuance of the preliminary report, purchasers are entitled to refund of all moneys paid by the purchasers thereunder without further obligation."

Section 12. Section 70-23-611, MCA, is amended to read:

"70-23-611. Joint liability of grantor and grantee for unpaid common expenses. In a voluntary conveyance of a unit, the grantee *is* jointly and severally liable with the grantor for all unpaid charges against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from *the grantor* the amounts paid by the grantee therefor. However, upon request of a prospective purchaser, the manager shall make and deliver a statement of the unpaid charges against the prospective grantor, and the grantee in that case *is* not liable for nor *is* the unit when conveyed subject to a lien filed thereafter for any unpaid charges against the grantor in excess of the amount therein set forth."

Section 13. Section 70-25-103, MCA, is amended to read:

"70-25-103. Waivers and contrary provisions invalid. Any provision of a leasehold agreement, either oral or written, that is contrary to this *chapter is* invalid. Any attempted waiver of this *chapter* by the tenant *is* invalid."

Section 14. Section 70-25-201, MCA, is amended to read:

"70-25-201. Security deposit — deductions authorized therefrom. (1) Any landlord renting property covered by this *chapter* may

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deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant, together with a sum equal to the unpaid rent owing to the landlord at the time of such deduction and a sum for actual cleaning expenses.

(2) No cleaning charges may be imposed for normal maintenance performed on a cyclical basis by the landlord as noted by the landlord at the time the tenant occupies the space unless the landlord is forced to perform this maintenance because of negligence of the tenant. Additionally, no cleaning charges *may* be deducted until notice has been given to the tenant. The notice shall include the cleaning not accomplished by the tenant and the additional and type or types of cleaning which need to be done by the tenant to bring the premises back to its condition at the time of its renting. After the delivery of the notice, the tenant *has* 48 hours to complete the required cleaning.

(3) No person may deduct or withhold from the security deposit any amount for purposes other than those set forth in this *section.*"

Section 15. Section 70-26-202, MCA, is amended to read:

"**70-26-202. Rent — when payable.** When there is no usage or contract to the contrary, rents *for real property under an arrangement not governed by chapter 24 of this title* are payable at the termination of the holding *if* it does not exceed 1 year. If the holding is by the day, week, month, quarter, or year, rent is payable at the termination of the respective periods, as it successively becomes due."

Section 16. Section 70-26-203, MCA, is amended to read:

"**70-26-203. Failure of lessor to repair — lessee's remedies.** *(1)* If within a reasonable time after notice to the lessor of dilapidations which he ought to repair, he neglects to do so, *and if* the *cost* of such repairs *does* not require an expenditure greater than 1 month's rent of the premises, *the lessee may perform such repairs himself* and deduct the expenses of such repairs from the rent, or the lessee may vacate the premises, in which case he *is* discharged from further payment of rent or performance of other conditions.

(2) Subsection (1) does not apply to real property leased under an arrangement governed by chapter 24 of this title."

Section 17. Section 70-26-204, MCA, is amended to read:

"**70-26-204. Renewal of lease by lessee's continued possession.** If a lessee of real property *leased under an arrangement not governed by chapter 24 of this title* remains in possession thereof after the expiration of the hiring and the lessor accepts a rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding 1 month when the rent is payable monthly, or in any case 1 year."

Section 18. Section 70-26-205, MCA, is amended to read:

"**70-26-205. Notice required to terminate lease.** *(1)* A hiring of real property for a term not specified by the parties is *presumed* to be

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renewed as stated in 70-26-204 at the end of the term implied by law unless one of the parties gives notice to the other of his intention to terminate the *hiring* at least as long before the expiration thereof as the term of the hiring itself, not exceeding 1 month.

(2) Subsection (1) does not apply to real property leased under an arrangement governed by chapter 24 of this title."

Section 19. Section 70-26-206, MCA, is amended to read:

"70-26-206. Rights of tenant for years or at will. (1) A tenant for years or at will, unless he is a wrongdoer by holding over, may occupy the buildings, take the annual products of the soil, *and* work mines and quarries open at the commencement of his tenancy; and a tenant at will or for an indefinite term may cultivate and harvest the crops growing at the end of his tenancy.

(2) A tenant for years or at will has no other rights to the property than *those* given to him by the agreement or instrument by which his tenancy is acquired or by subsection (1).

(3) Subsection (2) does not apply to arrangements governed by chapter 24 of this title."

Section 20. Section 70-27-109, MCA, is amended to read:

"70-27-109. General rules of practice applicable. Except as otherwise provided in this chapter, *the* provisions of *Title 25* are applicable to and constitute the rules of practice mentioned in this chapter."

Section 21. Section 70-27-115, MCA, is amended to read:

"70-27-115. Defendant's appearance and answer. On or before the day fixed for his appearance, the defendant may appear and answer or *move to dismiss the complaint for failure to state a claim."*

Section 22. Section 70-28-102, MCA, is amended to read:

"70-28-102. General procedural provisions applicable. The provisions of *Title 25, chapter 3, parts 2 and 3,* and Rules 4, 12(a), and 41(e), M.R.Civ.P., so far as *they* are not in conflict with this part, are applicable to the action herein provided for."

Section 23. Section 70-29-113, MCA, is amended to read:

"70-29-113. Death or incompetency of parties — proceedings not delayed. (1) If during the pendency of the action any of the parties *dies* or *becomes seriously mentally ill* or otherwise incompetent, the proceedings *may* not for that cause be delayed or suspended, but the attorney who has appeared for *the* party may continue to represent such interest. *If* any party has not appeared by an attorney, the court shall appoint an attorney to represent the interest which was held by *the* party until his heirs or legal representatives or successors in interest have appeared in the action.

(2) An attorney so appointed shall be allowed by the court a reasonable compensation for his services, which may be taxed as costs against the

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share or interest represented by *the* attorney and may be adjudged a lien thereon, in the discretion of the court."

Section 24. Section 70-29-210, MCA, is amended to read:

"70-29-210. Consent of guardian to share of ward. The general guardian of an infant and the guardian entitled to the custody and management of the estate of *a seriously mentally ill* person or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in joint tenancy or in common or in any other manner so as to authorize his being made a party to an action, may agree upon the share to be set off to such infant or other person entitled and may execute a release, in his behalf, to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the court."

Section 25. Section 70-29-328, MCA, is amended to read:

"70-29-328. Incompetent's share of proceeds — payment to guardian. The guardian who may be entitled to the custody and management of the estate of *a seriously mentally ill* person or other person adjudged incapable of conducting his own affairs, whose interest in real property has been sold, may receive in behalf of such person his share of the proceeds of such real property from the referees on executing with sufficient sureties an undertaking, approved by a judge of the court, that he will faithfully discharge the trust reposed in him and will render a true and just account to the person entitled or to his legal representative."

Section 26. Section 70-30-201, MCA, is amended to read:

"70-30-201. Applicable rules of practice. Except as otherwise provided in this chapter, the provisions of *Title 25* are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter."

Section 27. Section 70-30-303, MCA, is amended to read:

"70-30-303. Final report and award of commissioners — procedure on failure to agree. (1) The report of commissioners shall be made on such forms as are provided for their use by authority of the court. *The* report must be filed within 10 days after the completion of the hearing or within such additional time as allowed by the judge upon a clear showing of necessity and must be filed with the clerk of court. *The* clerk *shall* notify the parties interested that *the* report has been filed, *which* notice, together with a true copy of *the* report, must be served upon all the parties interested in the same manner as a summons.

(2) A concurrence of two commissioners *is* necessary to the making of a final report or award as to any parcel of property or interest therein. *If* no two of the commissioners are able to agree as to the amount of any award, they shall report *the* fact to the judge or court within the time *herein* specified and the court *shall* forthwith impanel and appoint new commissioners as *herein* provided, which commissioners shall proceed as provided herein to determine any award upon which the previous commissioners failed to agree.

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(3) The report of *the* commissioners shall also state the number of days or portions thereof consumed by the commissioners in performance of their duties as prescribed herein."

Section 28. **Repealer.** Sections 67-1001 through 67-1008 (as enacted by sections 1 through 8, chapter 58, Laws 1923) and 34-106, R.C.M. 1947, are repealed.

Approved March 19, 1979.

CHAPTER NO. 116

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO CRIMINAL PROCEDURE; AND REPEALING SECTIONS 95-1709 AND 95-2010, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-4-203, MCA, is amended to read:

"46-4-203. Subpoenaing of witnesses. A coroner may issue subpoenas for witnesses, returnable *immediately* or at such time and place as he may *designate*, which may be served by any competent person. He *shall* summon and examine as *a witness each* person who, in his opinion or that of the jury, has any knowledge of the facts and may summon a surgeon or physician to inspect the body and give a professional opinion as to the cause of the death."

Section 2. Section 46-5-201, MCA, is amended to read:

"46-5-201. Search warrant defined. A "search warrant" is an order:

(1) in writing;

(2) in the name of the state;

(3) signed by a judge;

(4) particularly describing the thing, place, *or person* to be searched and the instruments, articles, or things to be seized;

(5) directed to a peace officer commanding him to search for personal property and bring it before the judge."

Section 3. Section 46-5-202, MCA, is amended to read:

"46-5-202. Grounds for search warrant. Any judge may issue a search warrant upon the written application of any person, made under oath or affirmation before the judge, which:

(1) states that an offense has been committed;

(2) states facts sufficient to show probable cause for issuance of the warrant;

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(3) particularly describes the place, things, *or persons* to be searched; and

(4) particularly describes the things to be seized."

Section 4. Section 46-5-305, MCA, is amended to read:

"46-5-305. Disposition of unclaimed property. If property seized as evidence is not claimed within 6 months of completion of the case for which it was seized and if after proper inquiry the judge cannot ascertain or locate any person entitled to its possession, he must order the property to be sold by the sheriff. The proceeds from *the* sale, after deduction of the costs of storage, preservation of the property, *and the sale,* must be paid into the county treasury."

Section 5. Section 46-6-203, MCA, is amended to read:

"46-6-203. Manner of arrest with a warrant. When making an arrest *pursuant to* a warrant, *a* peace officer shall inform the person to be arrested of *the officer's* authority, of the intention to arrest him, of the cause of the arrest, and of the fact that a warrant has been issued for his arrest, except when he flees or forcibly resists before the *peace* officer has an opportunity to *so* inform him or when the giving of such information will imperil the arrest. The peace officer need not have the warrant in his possession at the time of the arrest, but after the arrest the warrant *must* be shown to *the person arrested* as soon as practicable *if such person so requests.*"

Section 6. Section 46-9-203, MCA, is amended to read:

"46-9-203. Report to county attorney concerning drug users. *A* city *judge, judge* of *a* municipal *court, or justice* of the peace *shall* report immediately to the county attorney of the county wherein *his court is located* any knowledge or information acquired by *him* in a trial of *a cause* or *hearing* before *him,* which knowledge or information shows or tends to show that any person is a drug user or drug addict. If *such* person is under arrest or liberated on bail at the time *the* knowledge or information is acquired, *such* person *may* not be liberated, if under arrest, or *the* bail discharged by *the* judge or justice of the peace until *the* report is made to the county attorney."

Section 7. Section 46-9-311, MCA, is amended to read:

"46-9-311. Reduction, increase, revocation, or substitution of bail. (1) Upon application by the state or the defendant, the court before which the proceeding is pending may increase or reduce the amount of bail, substitute one bail for another, alter the conditions of the bail, or revoke bail.

(2) Reasonable notice of such application must be given to the opposing parties or their attorneys by the applicant."

Section 8. Section 46-9-403, MCA, is amended to read:

"46-9-403. Qualifying property as bail. (1) If the bail is stock or bonds or both, the accused or sureties shall file a sworn schedule which

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must contain a list of the stocks and bonds deposited describing each in sufficient detail that it may be identified, the market value of each stock or bond, and the total market value of the stocks *and* bonds listed.

(2) (a) If the bail is real estate, the accused or sureties shall file a sworn schedule which *must* contain a legal description of the real estate, a description of any and all encumbrances on the real estate including the amount of each and the holder thereof, and the market value of the unencumbered equity owned by the affiant.

(b) A certified copy of the schedule of real estate *must* be filed immediately by the court in the office of the clerk and recorder of the county in which the property is situated, and the state *has* a lien on such real estate from the time the *copy is* filed. The clerk and recorder shall enter, index, and record *the schedule* without requiring any fee.

(3) If the bail is a written undertaking with sureties, each surety must be a resident or freeholder within the state. *Each surety* must be worth the amount specified in the undertaking, exclusive of property exempt from execution, but the court or magistrate on taking bail may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking if the whole justification *is* equivalent to that of sufficient bail.

(4) If the bail is a commercial surety bond, it may be *executed* by any domestic or foreign surety company which is qualified to transact surety business in this state."

Section 9. Section 46-10-102, MCA, is amended to read:

"46-10-102. Waiver of preliminary examination. If the defendant waives *the* preliminary examination, the *justice* shall hold him to answer to the court having jurisdiction of the offense."

Section 10. Section 46-10-201, MCA, is amended to read:

"46-10-201. When examination not public. The *justice* may, in his discretion, and must upon the request of the defendant exclude from the preliminary examination every person not officially associated with the case before the court."

Section 11. Section 46-10-202, MCA, is amended to read:

"46-10-202. Presentation of evidence. (1) The defendant *may* not enter a plea. The *justice* shall hear the evidence without unnecessary delay. All witnesses *must* be examined in the presence of the defendant. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf.

(2) During the examination of any witness or when the defendant is making a statement or testifying, the *justice* may, and on the request of the defendant or state shall, exclude all other witnesses. He may also cause the witnesses to be kept separate and to be prevented from communicating with each other until all are examined."

Section 12. Section 46-10-203, MCA, is amended to read:

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"46-10-203. Disposition of defendant. If from the evidence it appears that there is probable cause to believe that an offense has been committed by the defendant, the *justice* shall hold him to answer to the court having jurisdiction of the offense; otherwise, the *justice* shall discharge him."

Section 13. Section 46-10-204, MCA, is amended to read:

"46-10-204. Record of examination. (1) The testimony of each witness, in *cases* of homicide, must be reduced to writing as a deposition by a court-appointed stenographer. In cases other than homicide, the testimony of each witness *must* be taken by a court-appointed stenographer upon demand by the county attorney, the defendant, or the defendant's counsel.

(2) After concluding the proceeding, if the *justice* holds the defendant to answer, he shall transmit *immediately* to the clerk of the court having jurisdiction of the offense all papers in the proceeding and any bail taken by him."

Section 14. Section 46-13-203, MCA, is amended to read:

"46-13-203. Change of place of trial. (1) The defendant or the prosecution may move for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in such county. The motion *must* be made at least 15 days prior to trial *except that, if* good cause *is* shown, it may be made thereafter.

(2) The motion *must* be in writing and supported by *an* affidavit which *must* state facts showing the nature of the prejudice alleged. The defendant or the state may file counteraffidavits. The court shall conduct a hearing and determine the merits of the motion.

(3) If the court determines that there exists in the county *in which* the prosecution is pending such prejudice that a fair trial cannot be had, it shall transfer the cause to any other court of competent jurisdiction in any county *in which* a fair trial may be had."

Section 15. Section 46-14-302, MCA, is amended to read:

"46-14-302. Discharge or release upon motion of superintendent. (1) If the superintendent of Warm Springs state hospital believes that a person committed to his custody under 46-14-301 may be discharged or released on condition without danger to himself or others, he shall make application for the discharge or release of the person in a report to the court by which the person was committed and shall send a copy of the application and report to the county attorney of the county from which the defendant was committed.

(2) The court shall then appoint at least two qualified psychiatrists to examine the person and to report their opinion as to his mental condition within 60 days or a longer period which the court determines to be necessary for the purpose. To facilitate the examinations and the proceedings thereon, the court may have the person confined in any institution located near the place where the court sits which may hereafter be designated by

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the superintendent of Warm Springs state hospital as suitable for the temporary detention of irresponsible persons.

(3) If the court is satisfied by the report filed under subsection (1) of this section and the testimony of the reporting psychiatrists which the court considers necessary that the committed person may be discharged or released on condition without danger to himself or others, the court shall order his discharge or his release on conditions which the court determines to be necessary.

(4) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may safely be discharged or released. A hearing is considered a civil proceeding, and the burden is upon the committed person to prove by a preponderance of the evidence that he may safely be discharged or released. According to the determination of the court upon the hearing, the committed person shall then be discharged or released on conditions which the court determines to be necessary or shall be recommitted to the custody of the superintendent of Warm Springs state hospital, subject to discharge or release only in accordance with the *procedures* prescribed in this section *and 46-14-303.*"

Section 16. Section 46-14-304, MCA, is amended to read:

"**46-14-304. Recommitment after conditional release.** If within 5 years after the conditional release of a committed person the court determines after hearing evidence that the conditions of release have not been fulfilled and that for the safety of the person or for the safety of others his conditional release should be revoked, the court shall immediately order him to be recommitted to the superintendent of Warm Springs state hospital, subject to discharge or release only in accordance with the *procedures* prescribed in 46-14-302 *and 46-14-303.*"

Section 17. Section 46-16-103, MCA, is amended to read:

"**46-16-103. Who decides questions of law and fact.** (1) All prosecutions deciding issues of fact *must* be tried by the court and jury, except on a plea of guilty.

(2) Questions of law *must* be decided by the court and questions of fact by the jury except *that* on a trial for *criminal defamation* the jury shall determine both questions of law and of fact. Questions of law and fact *must* be decided by the court when a trial by jury is waived under 46-16-102(2)."

Section 18. Section 46-16-503, MCA, is amended to read:

"**46-16-503. Conduct of jury after retirement — advice from court.** (1) When the jury retires to consider its verdict, an officer of the court *must* be appointed to keep *the jurors* together and to prevent conversations between the jurors and others.

(2) After the jury has retired for deliberation, if there *is* any disagreement among *the jurors* as to the testimony or if *the jurors* desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. *When the jurors are* brought into court, the information requested may be given in the discretion of the

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court. If such information is given, it must be given in the presence of the county attorney and the defendant and his counsel."

Section 19. Section 46-16-702, MCA, is amended to read:

"46-16-702. Motion for a new trial. (1) Following a verdict or finding of guilty, the court may grant the defendant a new trial if required in the interest of justice.

(2) The motion for a new trial *must* be in writing and *must* specify the grounds therefor. It *must* be filed by the defendant within 30 days following a verdict or finding of guilty. Reasonable notice of the motion *must* be served on the state.

(3) On hearing the motion for a new trial, if justified by law and the weight of the evidence, the court may:

(a) deny the motion;

(b) grant a new trial; or

(c) modify or change the verdict or finding by finding the defendant guilty of a lesser included *offense* or finding the defendant not guilty."

Section 20. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal. (1) All cases on appeal from justices' or city courts must be tried anew in the district court and may be tried before a jury of six selected *in the same manner as a trial jury in a civil action, except that the total number of jurors drawn shall be at least six plus the total number of peremptory challenges.*

(2) The defendant may appeal to the district court by giving written notice of his intention to appeal within 10 days after judgment.

(3) Within 30 days, the entire record of the justice's or city court proceedings *must* be transferred to the district court or the appeal *must* be dismissed. It is the duty of the defendant to perfect the appeal."

Section 21. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 90 days;

(iii) conditions for probation;

(iv) restitution;

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(v) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(vi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions during the period of suspended sentence. Such reasonable restrictions may include *any of those listed in subsections (1)(a)(i) through (1)(a)(vi).*

(c) impose a fine as provided by law for the offense;

(d) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(e) impose any combination of subsections (1)(b), (1)(c), and (1)(d).

(2) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, *is* not a credit against the sentence unless the court orders otherwise.

(3) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-102(2), 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2), 45-9-102(3), and 45-9-103(2)."

Section 22. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1) The district court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 which it considers necessary to obtain the objectives of rehabilitation and the protection of society:

(a) *prohibition of* the *defendant's holding* public office;

(b) *prohibition of his owning* or *carrying* a dangerous weapon;

(c) *restrictions on his* freedom of association;

(d) *restrictions on his* freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation and the protection of society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the prisoner furlough program while serving his term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment shall contain a statement of the reasons for the restriction.

(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an individual's rights as enumerated in subsections (1) and (2)."

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Section 23. Section 46-18-401, MCA, is amended to read:

"46-18-401. Merger of sentences. (1) Unless the judge otherwise orders:

(a) *whenever* a person serving a term of commitment imposed by a court in this state is committed for another offense, the shorter term or shorter remaining term shall be merged in the other term *except as provided in subsection (5)*; and

(b) *whenever* a person under suspended sentence or on probation for an offense committed in this state is sentenced for another offense, the period still to be served on suspended sentence or probation shall be merged in any new sentence of commitment or probation.

(2) The court merging the sentences shall *immediately* furnish each of the other courts and penal institutions in which the defendant is confined under sentence with authenticated copies of its sentence, which *must* cite the sentences being merged.

(3) If an unexpired sentence is merged pursuant to subsection (1), the court which imposed such sentence shall modify it in accordance with the effect of the merger.

(4) Separate sentences *for* two or more *offenses* shall run concurrently unless the court otherwise orders.

(5) Except as provided in this subsection, *whenever* a prisoner is sentenced for an offense committed while he was imprisoned in the state prison or while he was released on parole or under the prisoner furlough program, the new sentence runs consecutively with the remainder of the original sentence. The prisoner starts serving the new sentence when the original sentence has expired or when he is released on parole under chapter 23, part 2, of this title in regard to the original sentence, whichever is sooner. In the latter case, the sentences run concurrently from the time of his release on parole."

Section 24. Section 46-20-318, MCA, is amended to read:

"46-20-318. Dismissal for failure to cause timely transmission — transmission at instance of respondent. (1) If the appellant *fails* to cause timely transmission of the record, any respondent may file a motion in the supreme court to dismiss the appeal. The motion *must* be supported by:

(a) a certificate of the clerk of the district court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, and the expiration date of any order extending the time for transmitting the record; and

(b) proof that 7 days' notice in writing has been served on the appellant that application will be made for dismissal of the appeal.

(2) Instead of filing a motion to dismiss the appeal, the respondent may cause the record to be transmitted and may docket the appeal, in which event the appeal shall proceed as if the appellant had caused it to be docketed."

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Section 25. Section 46-22-201, MCA, is amended to read:

"46-22-201. Application for writ. (1) Application for the writ is made by petition signed either by the party for whose relief it is intended or by some person in his behalf. It must specify:

(a) that the person in whose behalf the writ is applied for is unlawfully imprisoned or restrained of his liberty;

(b) why the imprisonment or restraint is unlawful;

(c) *the place where and* the officer or person by whom he is so confined or restrained.

(2) All the parties *must be named* if they are known or *described* if they are not known.

(3) The petition must be verified by the oath or affirmation of the party making the application."

Section 26. Section 46-22-202, MCA, is amended to read:

"46-22-202. By whom issued and before whom returnable. The writ of habeas corpus may be granted:

(1) by the supreme court or any justice thereof upon petition by or on behalf of any person restrained of his liberty in this state. When so issued it may be made returnable before the court or any justice thereof or before any district court or judge thereof.

(2) by *a* district *court* or a judge thereof upon petition by or on behalf of any person restrained of his liberty in *the court's or judge's* respective *district* or *county*."

Section 27. Section 46-23-108, MCA, is amended to read:

"46-23-108. Records and reports — confidentiality. The department shall keep a record of the board's acts and decisions available to the public. However, all social records, including the presentence report, the preparole report, and the supervision history obtained in the discharge of official duty by the department, *are* confidential and *may* not be disclosed directly or indirectly to anyone other than the members of the board or a judge. The board or a court may, in its discretion, when the best interests or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection of the *social record* or any parts thereof by the prisoner or his attorney."

Section 28. Section 46-23-217, MCA, is amended to read:

"46-23-217. Service of term for additional crime. *A* prisoner who commits a crime while at large *on* parole or conditional release and who is convicted and sentenced therefor shall serve such sentence *consecutively with the remainder of the original sentence as provided in 46-18-401*."

Section 29. Section 46-23-306, MCA, is amended to read:

"46-23-306. Record of hearing. At the hearing the board must cause to be kept a record showing:

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(1) the names of all persons appearing before the board on behalf of the person *seeking clemency from* the governor;

(2) the names of all persons appearing before the board in opposition to the granting of the same;

(3) the testimony of all persons giving evidence before the board;

(4) that the affidavit and return from the printer of the publication of the notice and order of hearing was on file prior to the hearing."

Section 30. Section 46-23-402, MCA, is amended to read:

"46-23-402. Purpose of prisoner furlough program. (1) The purpose and intent of this part *are* to:

(a) establish a program for the rehabilitation, education, and betterment of selected prisoners confined in the state prison, placing the establishment, regulation, guidance, and control of such program under the direction of the department of institutions;

(b) increase *such prisoners'* responsibility to society;

(c) provide for the minimum hourly wage required by law or the prevailing rate of pay for persons employed in similar occupations by the same employer to be paid to *such prisoners* while so employed;

(d) make it possible *for them to* work gainfully to support their dependents in whole or in part while serving their sentences, continue their education or training, and at the same time fulfill the obligations of the sentence of imprisonment imposed.

(2) The prisoner *furlough* program shall operate by supplementing and not replacing established penal procedures now or hereafter established by law and shall serve to extend the limits of confinement for treatment as well as jurisdictional purposes.

(3) This part is to be liberally construed to effect the overall objectives set forth in this section."

Section 31. **Repealer.** Sections 95-1709 and 95-2010, R.C.M. 1947, are repealed.

Approved March 19, 1979.

CHAPTER NO. 117

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO CONTRACTS AND OTHER OBLIGATIONS AND REPEALING SECTION 64-104, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 28-1-103, MCA, is amended to read:

"28-1-103. What rules govern interpretation of contracts and other obligations. The rules which govern the interpretation of contracts are prescribed by this title and *Title 1*. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted."

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Section 2. Section 28-1-504, MCA, is amended to read:

"28-1-504. When obligation to be interpreted as though a particular alternative did not exist. If one of the alternative acts required by an obligation is such as the law will not enforce or becomes unlawful or impossible of performance, the obligation is to be interpreted as though the other *or others* stood alone."

Section 3. Section 28-1-1002, MCA, is amended to read:

"28-1-1002. When burden of obligation may be transferred. The burden of an obligation may be transferred with the consent of the party entitled to its benefits, but not otherwise, except as provided by *Title 70, chapter 17, part 2.*"

Section 4. Section 28-1-1103, MCA, is amended to read:

"28-1-1103. Performance to one of several joint creditors. An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common or in joint ownership, which is regulated by Title 70, *chapter 6.*"

Section 5. Section 28-1-1106, MCA, is amended to read:

"28-1-1106. Application of performance when there are several obligations. *Whenever* a debtor under several obligations to another does an act by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

(1) If, at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation *is* manifested to the creditor, it must be so applied.

(2) If no such *intention or desire is* then *manifested*, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation performance of which was due to him from the debtor at the time of such performance, except that if similar obligations were due to him, both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion. *An* application once made by the creditor cannot be rescinded without the consent of the debtor.

(3) If application *is not made as prescribed in subsection (1) or (2)* within the time prescribed, the performance must be applied to the extinction of obligations in the following order and, if there *is* more than one obligation of a particular class, to the extinction of all in that class, ratably:

(a) first—interest due at the time of the performance;

(b) second—principal due at that time;

(c) third—the obligation earliest in date of maturity;

(d) fourth—an obligation not secured by a lien or collateral undertaking;

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(e) fifth—an obligation secured by a lien or collateral undertaking."

Section 6. Section 28-1-1111, MCA, is amended to read:

"28-1-1111. Receipt for money, instrument, or property delivered. Whoever pays money or delivers an instrument or property is entitled to a *written* receipt therefor from the person to whom the payment or delivery is made and may demand a proper signature to such receipt as a condition of the payment or delivery."

Section 7. Section 28-1-1202, MCA, is amended to read:

"28-1-1202. Effect of offer. (1) *An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property.*

(2) An offer of payment or other performance duly made stops the running of interest on the obligation and has the same effect upon all incidents *of the obligation* as a performance thereof, *whether or not the title to anything offered is transferred to the creditor.*"

Section 8. Section 28-1-1205, MCA, is amended to read:

"28-1-1205. To whom offer must be made. An offer of performance must be made to the creditor, to any one or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation."

Section 9. Section 28-1-1212, MCA, is amended to read:

"28-1-1212. Objections to mode of offer — waiver. All objections to the mode of an offer of performance which the creditor has an opportunity to state at the time to the person making the offer and which could then *be* obviated by *such person* are waived by the creditor if not then stated. *If the objection is to the amount of money, the terms of the instrument, or the amount or kind of property offered, the creditor must specify the amount, terms, or kind which he requires.*"

Section 10. Section 28-1-1303, MCA, is amended to read:

"28-1-1303. Effect when performance prevented by other causes. If *full* performance of an obligation is prevented by any cause excusing performance other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance, according to the benefit which the creditor receives from the actual performance."

Section 11. Section 28-2-102, MCA, is amended to read:

"28-2-102. Essential elements of a contract. It is essential to the existence of a contract that there be:

(1) *identifiable* parties capable of contracting;

(2) their consent;

(3) a lawful object; and

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(4) a sufficient cause or consideration."

Section 12. Section 28-2-201, MCA, is amended to read:

"28-2-201. Who may contract. All persons are capable of contracting except minors, persons of unsound mind, and persons deprived of civil rights. Minors and persons of unsound mind have only such capacity as is defined by *this part*, 28-10-104, and Title 41, chapter 1."

Section 13. Section 28-2-206, MCA, is amended to read:

"28-2-206. Assignment of nonnegotiable written contract. A nonnegotiable written contract for the payment of money or *the delivery of* personal property may be transferred by endorsement *the same as a* negotiable *instrument*. Such endorsement *transfers* all the rights of the assignor under the *contract* to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the endorsement *or arising before notice of the assignment is received by him*."

Section 14. Section 28-2-403, MCA, is amended to read:

"28-2-403. What constitutes menace. Menace consists in a threat of:

(1) such duress as is specified in subsections (1) and (3) of 28-2-402;

(2) unlawful and violent injury to the person or property of any such person *in circumstances described* in 28-2-402; or

(3) injury to the character of any such person."

Section 15. Section 28-2-501, MCA, is amended to read:

"28-2-501. How consent is communicated. (1) Consent can be communicated with effect only by some act or omission of the party contracting by which he intends to communicate it or which necessarily tends to such communication.

(2) If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases, any reasonable and usual mode *in conformity with subsection (1)* may be adopted."

Section 16. Section 28-2-502, MCA, is amended to read:

"28-2-502. When consent is considered fully communicated. Consent is *considered* to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer in conformity *with 28-2-501*."

Section 17. Section 28-2-504, MCA, is amended to read:

"28-2-504. Acceptance to be absolute. An acceptance must be absolute and unqualified or must include in itself an acceptance of that character which the proposer can separate from the rest and which will *bind* the person accepting. A qualified acceptance is a new proposal."

Section 18. Section 28-2-512, MCA, is amended to read:

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"28-2-512. How proposal revoked. A proposal is revoked by:

(1) the communication of notice of revocation by the proposer to the other party in the manner prescribed by *28-2-501* and 28-2-502 before his acceptance has been communicated to the former;

(2) the lapse of the time prescribed in such proposal for its acceptance or, if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance;

(3) the failure of the acceptor to fulfill a condition precedent to acceptance; or

(4) the death or *serious mental illness* of the proposer."

Section 19. Section 28-2-707, MCA, is amended to read:

"28-2-707. What conditions void. A condition in a contract the fulfillment of which is impossible or unlawful within the meaning of part 6 *and this part* or which is repugnant to the nature of the interest created by the contract is void."

Section 20. Section 28-2-722, MCA, is amended to read:

"28-2-722. Contracts for personal services limited to two years. A contract to render personal *services* cannot be enforced against the employee beyond the term of 2 years from the commencement of service under it, but if the employee voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation."

Section 21. Section 28-2-903, MCA, is amended to read:

"28-2-903. What contracts must be in writing. (1) The following *agreements* are invalid unless the same or some note or memorandum thereof *is* in writing and subscribed by the party to be charged or his agent:

(a) an agreement that by its terms is not to be performed within a year from the making thereof;

(b) a special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in 28-11-105;

(c) an agreement made upon consideration of marriage other than a mutual promise to marry;

(d) an agreement for the leasing for a longer period than 1 year or for the sale of real property or of an interest therein. Such agreement, if made by an agent of the party sought to be charged, is invalid unless the authority of the agent *is* in writing *and* subscribed by the party sought to be charged.

(e) an agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission.

(2) *Evidence* of *an* agreement *described in (a) through (d) of subsection (1) is not admissible* without the writing or secondary evidence of its contents.

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(3) No evidence is admissible to charge a person upon a representation as to the credit of a third person unless such representation or some memorandum thereof *is* in writing and either subscribed by or in the handwriting of the party to be charged.

(4) Subsections (1) and (2) *do* not apply to agreements subject to the Uniform Commercial Code."

Section 22. Section 28-2-905, MCA, is amended to read:

"28-2-905. When extrinsic evidence concerning a written agreement may be considered. (1) *Whenever* the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms. *Therefore,* there can be between the parties and their representives or successors in interest no evidence of the terms of the agreement other than the contents of the writing except in the following cases:

(a) *when* a mistake or imperfection of the writing is put in issue by the pleadings;

(b) *when* the validity of the agreement is the fact in dispute.

(2) *This* section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as *described* in 1-4-102, or *other evidence* to explain an extrinsic ambiguity or to establish illegality or fraud.

(3) The term "agreement", *for the purposes of this section,* includes deeds and wills as well as contracts between parties."

Section 23. Section 28-2-1701, MCA, is amended to read:

"28-2-1701. How contract extinguished. (1) A contract may be extinguished in *the same* manner *as* any other obligation and also in the manner prescribed by *part 16 and* this *part.*

(2) A contract is extinguished by its rescission."

Section 24. Section 28-2-1711, MCA, is amended to read:

"28-2-1711. When party may rescind. A party to a contract may rescind the same in the following cases only:

(1) if the consent of the party rescinding or of any party jointly contracting with him was given by mistake or obtained through duress, menace, fraud, or undue influence exercised by or with the connivance of the party as to whom he rescinds or of any other party to the contract jointly interested with such party;

(2) if, through the fault of the party as to whom he rescinds, the consideration for his obligation fails in whole or in part;

(3) if such consideration becomes entirely void from any cause;

(4) if such consideration, before it is rendered to him, fails in a material respect from any cause; or

(5) *if* all the other parties *consent.*"

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Section 25. Section 28-3-206, MCA, is amended to read:

"28-3-206. Uncertainty to be resolved against party causing it. In cases of uncertainty not removed by parts 1 through 5 of this chapter, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party, except *that* in *the case of* a contract between a public officer or body, as such, and a private party, it is presumed that all uncertainty was caused by the private party."

Section 26. Section 28-3-403, MCA, is amended to read:

"28-3-403. Evidence of usage to clarify. In conformity with the rules of evidence, upon a trial evidence may be given of usage to explain the true character of *a* contract *if* such true character is not otherwise plain, but usage is never admissible except as an instrument of interpretation."

Section 27. Section 28-3-702, MCA, is amended to read:

"28-3-702. Necessary and incidental terms. All things that in law or usage are considered as incidental to a contract or as necessary to carry it into effect are implied therefrom unless some of them are expressly mentioned therein, *in which case* all other things of the same class are *considered* to be excluded."

Section 28. Section 28-10-104, MCA, is amended to read:

"28-10-104. Who may appoint an agent, who may be an agent. Any person having capacity to contract, *except a minor,* may appoint an agent, and any person may be an agent."

Section 29. Section 28-10-211, MCA, is amended to read:

"28-10-211. How agent's act ratified. A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified or, *whenever* an oral authorization would suffice, by *knowingly* accepting or *retaining* the benefit of the act."

Section 30. Section 28-10-301, MCA, is amended to read:

"28-10-301. Agent not to exceed actual authority. An agent must not exceed the limits of his actual authority as defined by this chapter and parts 5 and 6 of chapter 11 of Title 30."

Section 31. Section 28-10-404, MCA, is amended to read:

"28-10-404. When and as to whom agent's authority restricted. Every agent has actually such authority as is defined by this chapter and parts 5 and 6 of chapter 11 of Title 30 unless specially deprived thereof by his principal and has even then such authority ostensibly except as to persons who have actual or constructive notice of the restriction upon his authority."

Section 32. Section 28-10-405, MCA, is amended to read:

"28-10-405. Implied powers of agent. An agent has authority to:

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(1) do everything necessary and proper and usual, in the ordinary course of business, for effecting the purpose of his agency; and

(2) make a representation respecting any matter of fact, *except* the terms of his authority, upon which his right to use his authority depends and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made."

Section 33. Section 28-10-703, MCA, is amended to read:

"28-10-703. Responsibility of agent when third person claims property received for principal. If an agent receives anything for the benefit of his principal to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same. *He* is responsible therefor if, after *such demand*, he delivers it to his principal."

Section 34. Section 28-10-704, MCA, is amended to read:

"28-10-704. Applicability of laws relating to capacity to contract. The provisions of this part are subject to the provisions of *chapter 2, part 2;* 28-10-104*;* and Title 41, chapter 1."

Section 35. **Repealer.** Section 64-104, R.C.M. 1947, is repealed.

Approved March 19, 1979.

CHAPTER NO. 118

AN ACT TO TRANSFER AUTHORITY TO ESTABLISH A QUARTERLY ALLOTMENT SYSTEM FROM THE DEPARTMENT OF ADMINISTRATION TO THE BUDGET DIRECTOR; AMENDING SECTION 17-8-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Allotment system.** The budget director may, when authorized by the governor, require a quarterly allotment system of expenditure for any office, institution, or agency. The amount of the respective appropriation made by the legislature shall then, except with respect to items of capital outlay and repairs and replacement through the long-range building program, be made available to the office, institution, or agency in quarterly allotments. However, the quarterly allotment shall be based on the requirements of that office, institution, or agency during that quarter based on previous experience of that office, institution, or agency and not on a prorated quarterly basis.

Section 2. Section 17-8-102, MCA, is amended to read:

"17-8-102. Expenditure procedures. The department may establish procedures necessary to ensure that expenditures are made and

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accounted for in accordance with the budget plan authorized by the legislature in the enactment of the appropriations, including but not limited to procedures to accrue expenses incurred in one fiscal period and paid in a subsequent fiscal period and procedures for the issuance of purchase orders or contracts to be paid from succeeding year appropriations that will become available within 3 months from the date of the issuance of the purchase order or contract."

Approved March 19, 1979.

CHAPTER NO. 119

AN ACT TO GENERALLY REVISE THE LAWS IN TITLE 1, MCA, COMPOSED OF GENERAL LAWS AND DEFINITIONS; REPEALING SECTIONS 12-212 AND 93-1101-1, R.C.M. 1947; AND REPEALING SECTIONS 1-5-501 THROUGH 1-5-507, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Relationship by affinity.** (1) Unless the context requires otherwise, in this code "affinity" means the relation which one spouse has, by virtue of the marriage, to blood relatives of the other. Therefore, a person has the same relation by affinity to his spouse's blood relatives as his spouse has to them by consanguinity and vice versa.

(2) Degrees of relationship by affinity are computed in the same manner as degrees of relationship by consanguinity.

(3) Notwithstanding subsection (1), the term "affinity" includes the relation of husband and wife. Husband and wife are considered to be related by affinity in the first degree.

Section 2. Section 1-2-201, MCA, is amended to read:

"1-2-201. Statutes — effective date. (1) Every statute, unless a different time is prescribed therein, takes effect on *the first day of* July *following* its passage and approval.

(2) "Passage", as used in subsection (1), means the enactment into law of a bill which has passed the legislature either with or without the approval of the governor, as provided in the constitution."

Section 3. Section 1-5-102, MCA, is amended to read:

"1-5-102. Acknowledgments taken outside this state. The proof *of* acknowledgment of an instrument may be made *outside* this state but within the United States and within the jurisdiction of the officer, before:

(1) a justice, judge, or clerk of any court of record of the United States;

(2) a justice, judge, or clerk of any court of record of any state or territory;

(3) a notary public; or

(4) any other officer of the state or territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment."

Section 4. Section 1-5-105, MCA, is amended to read:

"1-5-105. Notarial acts by officers in the armed services. (1) In addition to the acknowledgment of instruments and the performance of other notarial acts in the manner and form otherwise authorized by law, instruments may be acknowledged, documents attested, oaths and affirmations administered, depositions and affidavits executed, and other notarial acts performed before or by any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army or marine corps, with the rank of ensign or higher in the navy or coast guard, or with equivalent rank in any other component part of the armed forces of the United States, *at the request of* any person who:

(a) is a member of the armed forces of the United States;

(b) is serving as a merchant seaman outside the limits of the *continental* United States, *excluding Alaska*; or

(c) is outside the limits of the United States of America by permission, assignment, or direction of any department or official of the United States government in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged.

(2) Such acknowledgment of instruments, attestation of documents, administration of oaths and affirmations, execution of depositions and affidavits, and performance of other notarial acts, heretofore or hereafter made or taken, are valid and binding; and instruments and documents so acknowledged, authenticated, or sworn to *are* admissible in evidence and eligible to *be recorded* in this state under the same circumstances and with the same effect as if such acknowledgment, attestation, oath, affirmation, deposition, affidavit, or other notarial act had been made or taken within this state before or by a duly qualified officer or official as otherwise provided by law.

(3) In the taking of acknowledgments and the performing of other notarial acts requiring certification, a certificate endorsed upon or attached to the instrument which shows the date of the notarial act and which states, in substance, that the person appearing before the officer acknowledged the instrument as his act or made or signed the instrument under oath *is* sufficient for all purposes. The instrument *is* not rendered invalid by the failure to state the place of execution or acknowledgment.

(4) The signature, rank, and branch of service or subdivision thereof of any such commissioned officer *must* appear upon *the* instrument or certificate, and no further proof of the authority of *the* officer to *so* act *is* required. Such action by *the* commissioned officer *is* prima facie evidence that the person making *the* oath or acknowledgment is within the purview of this section."

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Section 5. Section 1-5-301, MCA, is amended to read:

"1-5-301. Who may prove execution of instrument. Proof of the execution of an instrument *which has* not *been* acknowledged may be made by:

(1) *all of the parties who executed it or any one* of them;

(2) a subscribing witness; or

(3) other witnesses in cases mentioned in 1-5-302."

Section 6. Section 1-5-303, MCA, is amended to read:

"1-5-303. Facts which must be shown when offering proof of handwriting. The evidence taken under 1-5-302 must satisfactorily prove to the officer the following facts:

(1) the existence of one or more of the conditions mentioned in 1-5-302;

(2) that the witness testifying knew the person whose name purports to be subscribed to the instrument as a party and is well acquainted with his signature;

(3) that the witness testifying personally knew the person who subscribed the instrument as a witness and is well acquainted with his signature;

(4) that the signature or signatures in question are genuine; and

(5) the place of residence of the witness."

Section 7. Section 1-5-304, MCA, is amended to read:

"1-5-304. Powers of officer taking proof of execution. Officers authorized to take the proof of instruments are authorized in such proceedings to:

(1) administer oaths or affirmations as prescribed *by law*;

(2) employ and swear interpreters; *and*

(3) issue subpoenas as prescribed *by law.*"

Section 8. Section 1-5-416, MCA, is amended to read:

"1-5-416. Powers and duties. *A* notary public *shall*:

(1) *whenever* requested, demand acceptance and payment of foreign, domestic, and inland bills of exchange or promissory notes and protest the same for nonacceptance or nonpayment and exercise such other powers and duties as by the law of nations and according to commercial usages or by the laws of any other state, government, or country may be performed by notaries and keep a record of such acts;

(2) take the acknowledgment or proof of *any power* of attorney, *mortgage, deed, grant, transfer, or* other *instrument* executed by any person and give a certificate of such proof or acknowledgment, endorsed *on* or attached to the instrument;

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(3) take depositions and affidavits and administer oaths and affirmations in all matters incident to the duties of *his* office or to be used before any court, judge, officer, or board in this state;

(4) *whenever* requested and upon payment of his fees therefor, make and give a certified copy of any record in his office;

(5) provide and keep an official seal, upon which must be engraved the name of the state of Montana and the words "Notarial Seal", with the surname of the notary and at least the initials of his *given* name;

(6) authenticate with his official seal all official acts. *Whenever* the notary public signs his name officially as a notary public, he *shall* add to his signature the words "Notary Public for the State of Montana, residing at.... (stating the name of his post office)" and *shall* endorse upon the instrument the date of the expiration of his commission."

Section 9. Section 1-6-103, MCA, is amended to read:

"1-6-103. Variation of oath to suit witness's belief. *The court shall vary the mode of swearing or affirming to accord with the witness's beliefs whenever it is satisfied that the witness has a distinct mode of swearing or affirming.*"

Section 10. Section 1-11-102, MCA, is amended to read:

"1-11-102. Name — citation. The *recodified laws* shall be known as the "Montana Code Annotated" *and may be cited as "MCA".*"

Section 11. Section 1-11-103, MCA, is amended to read:

"1-11-103. Effect of Montana Code Annotated. (1) The Montana Code Annotated shall be enacted as a reenactment of the Revised Codes of Montana, 1947, and the supplements thereto.

(2) The enactment of the Montana Code Annotated shall not:

(a) revive a law repealed or superseded before the effective date of the Montana Code Annotated;

(b) affect an act done, right accrued, or obligation incurred or imposed by law prior to the effective date of the Montana Code Annotated;

(c) affect any action, suit, or proceeding pending on such effective date;

(d) repeal statutes of a nongeneral, nonpermanent nature such as severability, construction, validating, repealing, or similar statutes omitted from the Montana Code Annotated.

(3) The Montana Code Annotated shall be given effect as a continuation of the Revised Codes of Montana and not as a new enactment. A defect in title of any act set out in prior laws and reenacted by the Montana Code Annotated is cured by such enactment.

(4) No implication or presumption of legislative construction is to be drawn from the classification or arrangement of the Montana Code Annotated.

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(5) Unless specifically adopted as such by the legislature, annotations, code commissioner notes, catchlines, or other editorial material included in the Montana Code Annotated may not be construed as part of the legislative text but are only for the purpose of convenience, orderly arrangement, and information.

(6) *After enactment, the Montana Code Annotated, including all subsequent replacement volumes, shall be prima facie the official laws of Montana.* In case of any inconsistency in meaning arising through omission or otherwise between the provisions of the Montana Code Annotated and the corresponding portion of the official enrolled bill on file with the secretary of state, effect shall be given to the official enrolled bill."

Section 12. Section 1-11-204, MCA, is amended to read:

"1-11-204. Duties of code commissioner. (1) Prior to January 1, 1979, the code commissioner shall recodify all the laws of a general and permanent nature appearing in the codes and session laws and prepare them for publication.

(2) Prior to January 1, 1979, the commissioner shall prepare and submit to the legislature a report which is certified by the commissioner as the "Official Report of the Montana Code Commissioner", together with a bill enacting the Montana Code Annotated. A copy of the report and bill shall be deposited with the secretary of state. The report shall explain and indicate, in tabular or other form, all changes made during recodification, other than punctuation and capitalization, to clearly indicate the character of each change.

(3) Prior to *the* November 1 *immediately preceding each regular legislative session,* the commissioner shall prepare and submit to the legislative council a report, in tabular or other form, indicating the commissioner's recommendations for legislation which will:

(a) eliminate archaic or outdated laws;

(b) eliminate obsolete or redundant wording of laws;

(c) eliminate any duplications in law and any laws repealed directly or by implication;

(d) clarify existing laws;

(e) correct errors and inconsistencies within the laws.

(4) The commissioner shall cause to be prepared for publication with the Montana Code Annotated the following material:

(a) Statutory history of each code section;

(b) Annotations of state and federal court decisions relating to the subject matter of the code;

(c) Such editorial notes, cross-references, and other matter as the commissioner considers desirable or advantageous;

(d) The Declaration of Independence;

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(e) The Constitution of the United States of America and amendments thereto;

(f) Acts of congress relating to the authentication of laws and records;

(g) The Organic Act of the Territory of Montana;

(h) The Enabling Act;

(i) The 1972 Constitution of the State of Montana and any amendments thereto;

(j) The Ordinances relating to federal relations and elections;

(k) Rules of civil, criminal, and appellate procedure and such other rules of procedure as the Montana supreme court may adopt; and

(l) A complete subject index, a popular name index, and comparative disposition tables or cross-reference indexes relating sections of the Montana Code Annotated to prior compilations and session laws.

(5) After publication of the Montana Code Annotated, the code commissioner shall:

(a) annotate, arrange, and prepare for publication all laws of a general and permanent nature enacted at each legislative session and assign catchlines and code section numbers to each new section;

(b) continue to codify, index, arrange, rearrange, and generally update the Montana Code Annotated to maintain an orderly and logical arrangement of the laws in order to avoid future need for bulk revision;

(c) prepare and submit to each legislature a report certified as the "Official Report of the Montana Code Commissioner—(year)" which indicates, in tabular or other form, all changes made during the continuous recodification, other than punctuation, *spelling*, and capitalization, to clearly indicate the character of each change made since the *last such report*.

(6) From time to time the commissioner shall confer with members of the judiciary and the state bar relative to recodification procedures."

Section 13. Section 1-11-302, MCA, is amended to read:

"1-11-302. Updates of Montana Code Annotated. (1) The publication of updates to the Montana Code Annotated may be as a cumulative supplement or replacement volume or in any other format approved by the legislative council.

(2) The supplements or replacements shall be certified, published, copyrighted, and deposited with the secretary of state. The supplements and replacements become effective on the date deposited with and certified to the secretary of state."

Section 14. **Repealer.** Sections 12-212 and 93-1101-1, R.C.M. 1947, are repealed. Sections 1-5-501 through 1-5-507, MCA, are repealed.

Approved March 19, 1979.

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CHAPTER NO. 120

AN ACT TO REQUIRE THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO ISSUE AS PART OF A CERTIFICATE A TIME LIMIT DURING WHICH A FACILITY MUST BE CONSTRUCTED; AMENDING SECTION 75-20-303, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion issued with decision — contents. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation which would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it shall state in its opinion the reasons therefor.

(3) Any certificate issued by the board shall include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement shall include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups;

(iv) alternatives to the proposed facility;

(v) a plan for monitoring environmental effects of the proposed facility; *and*

(vi) a time limit as provided in subsection (4), during which construction of the facility must be completed;

(b) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) The board shall issue as part of the certificate the following time limits during which construction of a facility must be completed:

(a) For a facility as defined in (b) or (c) of 75-20-104(7) that is more than 30 miles in length, the time limit is 10 years.

(b) For a facility as defined in (b) or (c) of 75-20-104(7) that is 30 miles or less in length, the time limit is 5 years.

(c) The time limit shall be extended for periods of 2 years each upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction. Under this subsection, a good faith

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effort to complete construction includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 19, 1979.

CHAPTER NO. 121

AN ACT TO RAISE THE RATE OF PAY FROM $40 TO $56 A DAY FOR SPECIAL DEPUTY STATE FIRE MARSHALS; AMENDING SECTION 50-3-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-3-106, MCA, is amended to read:

"50-3-106. Appointment of special deputy state fire marshals. (1) The state fire marshal may appoint special deputy state fire marshals throughout the state and define their duties.

(2) When performing these duties or attending a training course conducted by the state fire marshal, special deputy fire marshals may be paid at a rate not to exceed *$56* a day plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 19, 1979.

CHAPTER NO. 122

AN ACT TO PROVIDE COORDINATION OF BENEFITS FOR LAW ENFORCEMENT OFFICERS WHO HAVE COMBINED SERVICE IN THE SHERIFFS' RETIREMENT SYSTEM AND THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM AS A RESULT OF A CITY-COUNTY CONSOLIDATION; PROVIDING FOR RETROACTIVE APPLICATION; AND AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Service under municipal police officers' retirement system prior to or following city-county consolidation.** (1) A law enforcement officer who has not changed his employment but who has,

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because of a city-county consolidation, been transferred either from a city police force to a county sheriff's department or from a county sheriff's department to a city police force as a law enforcement officer is eligible for a service retirement benefit if his combined service in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum membership service requirement of the system to which he last made contributions. A sheriff who has elected to continue membership in the public employees' retirement system under 19-7-301 may continue his election. However, credit for service in the PERS which has not been transferred prior to January 1, 1979, may not be transferred.

(2) Eligibility for disability retirement, death benefits, and a refund of contributions is governed by the provisions of the retirement system to which the officer last made contributions.

(3) The service retirement benefit of an officer described in subsection (1) shall be calculated separately for each system based on the service credited under each system. The final salary or final average salary for each calculation shall be based on the highest salary earned while a member of either system. Each system shall pay its proportionate share, based on the number of years of service credited, of the combined benefit. The combined benefit may not exceed 60% of the final salary or final average salary.

Section 2. **Service under sheriffs' retirement system prior to or following city-county consolidation.** A law enforcement officer who has combined service in the municipal police officers' retirement system and the sheriffs' retirement system because of a city-county consolidation, as provided in [section 1], is eligible for benefits as provided in [section 1].

Section 3. **Codification.** Section 1 of this act shall be codified in chapter 7, Title 19, MCA, and all references in the MCA to such chapter 7 include section 1. Section 2 shall be codified in chapter 9, Title 19, MCA, and all references in the MCA to such chapter 9 include section 2.

Section 4. **Retroactive application.** This act applies retroactively to January 1, 1979.

Section 5. **Effective date.** This act is effective retroactively to January 1, 1979.

Approved March 19, 1979.

CHAPTER NO. 123

AN ACT PROVIDING FOR REQUIRED REHABILITATION PROGRAMS UNDER CERTAIN CONDITIONS FOR INDIVIDUALS RECEIVING WORKERS' COMPENSATION BENEFITS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Required rehabilitation.** (1) The division may, under the provisions and procedures set forth in this section, require a claimant to pursue a vocational rehabilitation course in order to be entitled to continued workers' compensation benefits.

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(2) The division shall make a determination, on a case-by-case basis, of the availability and appropriateness of a rehabilitation program for a claimant receiving workers' compensation benefits. The determination shall be made only after consultation with the department of social and rehabilitation services and division-sanctioned rehabilitation committees that are able to provide competent information regarding the rehabilitation of a claimant.

(3) If the division determines that a rehabilitation program is feasible and appropriate for a claimant receiving workers' compensation benefits, the division must require the claimant to enter into the program. If a claimant refuses to enter the program, the claimant's biweekly benefits may be ordered terminated.

(4) Any order terminating benefits may only be issued after the claimant has an opportunity for a hearing before a workers' compensation judge regarding the feasibility and appropriateness of the rehabilitation program. After the hearing, the judge may approve or deny the division's determination regarding the feasibility or appropriateness of the proposed rehabilitation program.

(5) If a claimant does not request a hearing and benefits are terminated, and subsequently the claimant requests a hearing, the claimant is entitled to retroactive weekly benefits for a maximum of 8 weeks from the date of request for hearing, and to continued weekly benefits pending a decision by the workers' compensation judge.

Approved March 19, 1979.

CHAPTER NO. 124

AN ACT TO REPEAL SECTION 40-1-211, MCA, REQUIRING THAT A LICENSE TO MARRY MAY NOT BE ISSUED IF EITHER APPLICANT FOR SUCH LICENSE HAS FAILED TO SUPPORT LAWFUL DEPENDENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 40-1-211, MCA, is repealed.

Approved March 19, 1979.

CHAPTER NO. 125

AN ACT TO ELIMINATE THE REQUIREMENT PROVIDING THAT A JUSTICES' COURT WAIT FOR A DEFENDANT 1 HOUR BEYOND THE TIME SET FOR TRIAL BEFORE THE COURT MAY ENTER A DEFAULT; AMENDING SECTION 25-31-702, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-31-702, MCA, is amended to read:

"25-31-702. Trial to be timely. Unless postponed as provided in this part or transferred to another court, the trial of the action *may commence at the time set by the court as specified in the notice mentioned*

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in 25-31-701, and after the trial has commenced there must be no adjournment for more than 24 hours at any one time until all the issues therein are disposed of."

Approved March 19, 1979.

CHAPTER NO. 126

AN ACT TO AMEND SECTION 39-4-102, MCA, TO EXEMPT BUSDRIVERS EMPLOYED BY A CITY, TOWN, COUNTY, OR POLITICAL SUBDIVISION THEREOF FROM THE LIMITATION ON WORK HOURS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-4-102, MCA, is amended to read:

"39-4-102. Drivers and attendants of motor buses. (1) Drivers or attendants of motor buses employed in the state shall not be employed for more than 8 hours in the 24-hour period. Drivers or attendants of motor buses shall be allowed a rest of at least 12 hours between the completion of their services in any 24-hour period and the beginning of their services in the next succeeding 24-hour period. In computing the number of hours of employment made by the provisions of this section, evidence may be introduced showing that part of said time shall be consumed prior to entry within the state.

(2) The provisions of this section do not apply to drivers or attendants employed by a city, town, county, or political subdivision thereof.

(3) The provisions of this section shall not be effective when life is in danger of destruction or in case of danger of property in imminent danger of destruction or in case of delay due to accident or unpassable roads, abnormal road conditions, or snow blockades or shall not affect the delay of mails for said drivers or attendants.

(4) Attendants, for the purpose of this section, are defined as any employee engaged for a portion of the 24-hour period in a day driving or repairing a motor bus and who is required to remain on said vehicle as a relief driver or mechanic for time in excess of the 8-hour period, of which he shall be rightly employed.

(5) Any employer or supervisor in charge of employee who shall require a driver or attendant as above defined to labor contrary to the provisions of this section shall be declared guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $100 or more than $600 or by imprisonment of not less than 30 days or more than 7 months or both such fine and imprisonment.

(6) All motor bus companies operating lines in this state shall be liable in damage for all injuries to the person or persons resulting in the violation of the provisions of said section."

Approved March 19, 1979.

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CHAPTER NO. 127

AN ACT PROVIDING FOR A CUSTODY HEARING, IF REQUESTED, UPON THE DEATH OF A CUSTODIAL PARENT; AND AMENDING SECTIONS 40-4-219 AND 40-6-221, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Hearing upon death of custodial parent.** Upon the death of a parent granted custody of a child, custody shall pass to the noncustodial parent unless one or more parties named in [section 2] request a custody hearing. The noncustodial parent shall be a party in any proceeding brought under this section.

Section 2. **Parties who may request a hearing.** Upon the death of a parent granted custody of a child, any of the following parties may request a custody hearing and seek custody of the child:

(1) the noncustodial natural parent;

(2) the surviving spouse of the deceased custodial parent;

(3) a person nominated by the will of the deceased custodial parent;

(4) any person nominated by the child if the child is at least 12 years old;

(5) any other person if that person has actual physical control over the child;

(6) any other party whom, upon showing of good cause, the court permits to intervene as an interested party.

Section 3. **Determination of custody.** The hearing and determination of custody shall be governed by [Title 40, chapter 4, part 2].

Section 4. Section 40-4-219, MCA, is amended to read:

"40-4-219. Modification. (1) No motion to modify a custody decree may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral, or emotional health.

(2) The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child. In applying these standards the court shall retain the custodian appointed pursuant to the prior decree unless:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian; or

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(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him.

(3) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(4) A custody decree may be modified upon the death of the custodial parent pursuant to [sections 1 through 3]."

Section 5. Section 40-6-221, MCA, is amended to read:

"**40-6-221. Custody, services, and earnings of child.** The father and mother of an unmarried minor child are equally entitled to the custody, services, and earnings of the child. If either parent be dead or unable or refuses to take the custody or has abandoned his or her family, the other is entitled to the custody, services, and earnings of the child, *unless custody is determined otherwise pursuant to [sections 1 through 3].*"

Approved March 19, 1979.

CHAPTER NO. 128

AN ACT TO REQUIRE CERTAIN AGENCIES, IN THE COURSE OF CONDUCTING REGULAR AUDITS OR INVESTIGATIONS, TO IDENTIFY ABANDONED PROPERTY; AMENDING SECTION 70-9-314, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-9-314, MCA, is amended to read:

"**70-9-314. Examination of records for failure to report.** *(1)* The department of revenue or its designated agent may at reasonable times and upon reasonable notice examine the records of any person if the department has reason to believe that such person has failed to report property that should have been reported pursuant to parts 1 through 3. *In addition, the department shall, in the course of conducting an investigation, examination, or audit under Title 15, identify any abandoned property which is subject to parts 1 through 3.*

(2) The commissioner of insurance shall, in the course of conducting an investigation, examination, or audit under Title 33, identify any abandoned property which is subject to parts 1 through 3 and shall, as soon as practicable, give a detailed report of any such identification to the department of revenue.

(3) The department of business regulation shall, in the course of conducting an investigation, examination, or audit under Title 32, identify

any abandoned property which is subject to parts 1 through 3 and shall, as soon as practicable, give a detailed report of any such identification to the department of revenue."

Approved March 19, 1979.

CHAPTER NO. 129

AN ACT TO AMEND SECTION 15-30-121, MCA, TO SPECIFICALLY PROVIDE THAT INDIVIDUALS MAY DEDUCT POLITICAL CONTRIBUTIONS AS DETERMINED IN ACCORDANCE WITH THE INTERNAL REVENUE CODE IN COMPUTING NET INCOME FOR INDIVIDUAL INCOME TAX PURPOSES; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the following exceptions which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(2) federal income tax paid within the taxable year;

(3) child and dependent care expenses determined in accordance with the provisions of section 214 of the Internal Revenue Code of 1954 that were in effect for the taxable year that began January 1, 1974;

(4) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(5) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable year ended December 31, 1978."

Section 2. **Effective date and applicability.** This act is effective on passage and approval and applies to taxable years after December 31, 1978.

Approved March 19, 1979.

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CHAPTER NO. 130

AN ACT TO SPECIFY THE COMPOSITION OF THE WESTERN INTERSTATE COMMISSION FOR HIGHER EDUCATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appointment of commissioners to the western interstate commission for higher education.** (1) In making the appointments of commissioners provided for in 20-25-801, the governor shall appoint three members as follows:

(a) one member who is an educator engaged in the field of higher education in Montana;

(b) one member who is engaged in a professional occupation; and

(c) one member who is a legislator.

(2) The term of each commissioner is 4 years as provided in the compact. The legislator appointed shall serve until the expiration of his appointment, even though his legislative term may have ended.

Approved March 19, 1979.

CHAPTER NO. 131

AN ACT TO ALLOW THE TRUSTEES OF A SCHOOL DISTRICT TO SET THE TIME AND PLACE OF THE FINAL BUDGET MEETING HELD ANNUALLY ON THE FOURTH MONDAY OF JULY; AMENDING SECTIONS 20-9-115 AND 20-9-131, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-115, MCA, is amended to read:

"20-9-115. Notice of preliminary budget filing and final budget meeting. (1) Between July 10 and July 20 of each year, the clerk of each district shall publish notice one time in the official newspaper of the county stating that the preliminary budget for the district for the school fiscal year just beginning, as prepared and adopted by the trustees, is on file in his office and open to inspection by all taxpayers. The notice shall also state *the time and place* that the trustees will meet on the fourth Monday in July for the purpose of considering and adopting the final budget of the district, that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and that any taxpayer in the district may appear at such meeting and be heard for or against any part of the budget.

(2) Notice given under this section meets the requirement for notice contained in 15-10-203."

Section 2. Section 20-9-131, MCA, is amended to read:

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"20-9-131. Final budget meeting. (1) On the fourth Monday in July, at the *time and place noticed pursuant to 20-9-115*, the trustees of each district shall meet to consider the preliminary budget submitted to or prepared by the county superintendent, including all information and any attachments required by law.

(2) The trustees may continue the meeting from day to day but shall adopt the final budget for the district and determine the amounts to be raised by tax levies for the district not later than the second Monday in August and before the fixing of the tax levies for each district. Any taxpayer in the district may attend any portion of the trustees' meeting and be heard on the budget of such district or on any item or amount contained in such budget."

Approved March 19, 1979.

CHAPTER NO. 132

AN ACT TO AMEND 15-57-102, MCA, TO PROVIDE THAT GRAIN MERCHANDISERS ARE EXEMPT FROM STATE STORE LICENSING REQUIREMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-57-102, MCA, is amended to read:

"15-57-102. License to operate store — exception for grain merchandisers. *(1)* It shall be unlawful for any person to open, establish, operate, or maintain any store or stores in this state without first having obtained a license to do so from the department of revenue as hereinafter provided.

(2) A person establishing or operating any store in this state engaged solely in the business of grain merchandising and who is licensed under Title 80, chapter 4, part 2, is exempt from the provisions of this chapter as to such store."

Approved March 19, 1979.

CHAPTER NO. 133

AN ACT TO REVISE THE DEFINITION OF A FACILITY UNDER THE MONTANA MAJOR FACILITY SITING ACT AS IT APPLIES TO GEOTHERMAL RESOURCES; AMENDING SECTION 75-20-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise the following definitions apply:

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(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the certificate was issued.

(2) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(5) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection (7), including upgrading to a design capacity covered by subsection (7)(b), except that the term does not include normal maintenance or repair of an existing facility.

(6) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(7) "Facility" means:

(a) each plant, unit, or other facility and associated facilities, except for oil and gas refineries, designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of $250,000;

(ii) producing 25 million cubic feet of gas per day or more or any addition thereto having an estimated cost in excess of $250,000;

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(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of $250,000;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of $250,000; or

(v) utilizing, refining, or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $250,000;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(c) each pipeline and associated facilities designed for or capable of transporting gas, water, or liquid hydrocarbon products from or to a facility located within or without this state of the size indicated in subsection (7)(a) of this section;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, *designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of $250,000*;

(e) any underground in situ gasification of coal.

(8) "Municipality" means any county or municipality within this state.

(9) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Approved March 19, 1979.

CHAPTER NO. 134

AN ACT TO CHANGE THE EXPIRATION DATE OF THE LAW RELATING TO JOINT UNDERWRITING ASSOCIATIONS FOR MEDICAL LIABILITY INSURANCE FROM DECEMBER 31, 1979 TO DECEMBER 31, 1981; AMENDING SECTION 11, CHAPTER 246, LAWS OF 1977.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11, Chapter 246, Laws of 1977 is amended to read:

"Section 11. **Effective date.** This act is effective on its passage and approval and expires on December 31, *1981*, after which no new policies may be issued by the association. However, all issued policies continue in force until their expiration date."

Approved March 19, 1979.

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CHAPTER NO. 135

AN ACT TO ELIMINATE THE REQUIREMENT OF CERTAIN COUNTY FINANCIAL REPORTS TO THE STATE AUDITOR CONCERNING RECEIPT AND DISPOSITION OF FEES BY COUNTY OFFICIALS AND THE REQUIREMENT THAT THE STATE AUDITOR PUBLISH SUCH REPORTS; REPEALING SECTIONS 7-6-2215 AND 7-6-2216, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 7-6-2215 and 7-6-2216, MCA, are repealed.

Approved March 19, 1979.

CHAPTER NO. 136

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO BOATS AND SNOWMOBILES; AMENDING SECTIONS 23-2-511, 23-2-512, 23-2-513, 23-2-514, 23-2-529, AND 23-2-632, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-511, MCA, is amended to read:

"23-2-511. Operation of unnumbered motorboats prohibited — display of decals. (1) Every motorboat on the waters of this state, propelled by a motor or an engine of any description, *must* be properly numbered and display valid license decals. No person may operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered and displays valid license decals in accordance with this part, with applicable federal law, or with a federally approved numbering system of another state and unless:

(a) the certificate of number *assigned* to the motorboat is in full force and effect; and

(b) the identifying number set forth in the certificate of number and the valid license decals are displayed on such motorboat.

(2) Any person who operates a motorboat on the waters of this state without displaying the appropriate numbers and license decals as required by this section is punishable by a fine not to exceed $10. However, the arresting officer may issue a courtesy citation in lieu of the penalty provided for in this subsection."

Section 2. Section 23-2-512, MCA, is amended to read:

"23-2-512. Identification number. (1) The owner of each motorboat requiring numbering by this state shall file an application for number

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in the office of the county treasurer where the motorboat is owned or taxable on forms prepared and furnished by the division of motor vehicles. The application *must* be signed by the owner of the motorboat and be accompanied by a fee of $1. Any alteration, change, or false statement contained in the application will render the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the division of motor vehicles, stating the number *assigned* to the motorboat and the name and address of the owner.

(2) Before filing the application with the county treasurer, the applicant shall submit it to the county assessor, who shall enter on the application, in a space to be provided for that purpose, the market value and taxable value of the motorboat for the year for which the application for registration is made.

(3) The applicant, upon the filing of the application, shall pay to the county treasurer the registration fee and the personal property taxes assessed against the motorboat or vessel for the current year of registration before the application for registration or reregistration may be accepted by the county treasurer.

(4) Should the ownership of a motorboat change, a new application form with fee *must* be filed within a reasonable time with the county treasurer and a new certificate of number *assigned* in the same manner as provided for in an original *assignment* of number.

(5) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the division of motor vehicles *must* be in conformity.

(6) Every certificate of number and the license decals *assigned* under this part *continues* in effect for a period not to exceed 1 year unless terminated or discontinued in accordance with the provisions of this part. Certificates of number and license decals *must* show the date of expiration and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(7) Certificates of number expire on April 30 of each year and may not be in effect unless renewed under this part.

(8) In event of transfer of ownership, the purchaser shall furnish the county treasurer notice within a reasonable time of the acquisition of all or any part of his interest, other than the creation of a security interest, in a motorboat numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat does not terminate the certificate of number.

(9) A holder of a certificate of number shall notify the county treasurer within reasonable time if his address no longer conforms to the address appearing on the certificate and furnish the county treasurer with his new

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address. The division of motor vehicles may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(10) (a) The number *assigned* must be painted on or attached to each outboard side of the forward half of the motorboat or, if there are no such sides, at a corresponding location on both outboard sides of the foredeck of the motorboat. The number *assigned must* read from left to right in Arabic numerals *and* block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and legible. The number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. No numerals, letters, or devices other than those used in connection with the identifying number issued may be placed in the proximity of the identifying number. No numerals, letters, or devices *that* might interfere with the ready identification of the motorboat by its identifying number may be carried as to interfere with the motorboat's identification. No number other than the number and license decal *assigned* to a motorboat or granted reciprocity under this part *may* be painted, attached, or otherwise displayed on either side of the forward half of the motorboat.

(b) The certificate of number shall be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat whenever the motorboat is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat, but a rental agreement must be carried on board livery motorboats in place of the certificate of number.

(11) Fees collected under this section shall be transmitted to the state treasurer who shall deposit the fees in the motorboat certificate identification account of an earmarked revenue fund. These fees shall be used only for the administration and enforcement of this part, as amended.

(12) An owner of a motorboat must within a reasonable time notify the division of motor vehicles, giving the motorboat's identifying number and the owner's name when that motorboat becomes documented as a vessel of the United States or is transferred, lost, destroyed, abandoned, or frauded or within 60 days after change of state of principal use."

Section 3. Section 23-2-513, MCA, is amended to read:

"23-2-513. Dealer's identification number. (1) A dealer or manufacturer may apply directly to the division of motor vehicles for one identifying number and one or more certificates of number. A dealer's or manufacturer's identifying number shall be displayed on his boat while the boat is operating for a purpose related to the buying, selling, or exchanging of the boat by the dealer or manufacturer.

(2) The application for a dealer's or manufacturer's identifying number *must* include his name and business address. Each dealer or manufacturer will have one identifying number assigned to his business.

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(3) An application for dealer's or manufacturer's identifying number and certificate of number must be accompanied by the following fees:

(a) for the identifying number, first certificate of number, and set of license decals, $5;

(b) for each additional certificate of number and set of license decals applied for in any application, $2.

(4) The division of motor vehicles shall issue certificates of number for the identifying numbers *assigned* to a dealer or manufacturer in the same manner as provided in 23-2-512(1) and (10), as amended, except that no boat *may* be described in the certificate and each certificate *must* state that the identifying number has been *assigned* to a dealer or manufacturer. A dealer's or manufacturer's certificate of number expires on April 30 of the year for which it is issued.

(5) A dealer's or manufacturer's identifying number shall be displayed in the same manner as provided in 23-2-512(10), as amended, except that the number may be temporarily attached. The last three letters shall be "DLR" for dealer and "MFR" for manufacturer. These letters shall be included, respectively, in dealer or manufacturer identification numbers only.

(6) No person other than a dealer or manufacturer or an employee of a dealer or manufacturer may display or use a dealer's or manufacturer's identifying number. A dealer's or manufacturer's identifying number may be displayed only on motorboats owned by the dealer or manufacturer.

(7) No dealer or manufacturer or employee of a dealer or manufacturer may use a dealer's or manufacturer's identifying number for any purpose other than the purpose described in subsection (1) of this section."

Section 4. Section 23-2-514, MCA, is amended to read:

"23-2-514. Exemption from numbering provisions. A motorboat *is* not required to be numbered under this part if it is:

(1) covered by a number in full force and effect *that* has been *assigned* to it pursuant to federal law or a federally approved numbering system of another state, provided that such vessel shall not have been within this state for a period in excess of 60 consecutive days. After 60 consecutive days within this state, this state becomes the motorboat's state of principal use and the owner must apply for a Montana number, certificate of number, and license decal.

(2) a motorboat from a country other than the United States temporarily using the waters of this state;

(3) a motorboat whose owner is the United States, a state, or subdivision thereof;

(4) a ship's lifeboat."

Section 5. Section 23-2-529, MCA, is amended to read:

"23-2-529. Water skis and surfboards. (1) No person may operate a motorboat or vessel on any waters of this state for the purpose of

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towing a person or persons on water skis, a surfboard, or similar device unless the operator is at least 12 years of age and there is a second person, at least 12 years of age, in the vessel to observe the person being towed.

(2) No person may engage in waterskiing, surfboarding, or similar activity or towing some other contrivances at any time between the hours from 1 hour after sunset to 1 hour before sunrise, except that this subsection does not apply to a performer engaged in a professional exhibition or a person engaged in a regatta or race authorized under this part.

(3) All right-of-way rules applying to *a* towing vessel apply *to a person being towed.*"

Section 6. Section 23-2-632, MCA, is amended to read:

"23-2-632. Unlawful operation on streets and highways. *(1)* It is unlawful for *a* person to operate *a* snowmobile *on* a public street or highway:

(a) at a rate of speed greater than provided by law for motor vehicles;

(b) while under the influence of intoxicating liquor or narcotics or habit-forming drugs;

(c) in a careless or reckless manner so as to endanger the person or property of another or to cause injury or damage to either; or

(d) if that person by reason of age or mental or physical disability is incapable of operating the snowmobile safely under the prevailing circumstances.

(2) It is unlawful to permit the operation *of a snowmobile on a public street or highway* by *a* person who by reason of age or physical or mental disability is incapable of operating the snowmobile *safely* under the prevailing circumstances."

Approved March 20, 1979.

CHAPTER NO. 137

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO TRADE AND COMMERCE; AMENDING SECTIONS 30-7-102, 30-7-210, 30-9-105, 30-10-201, 30-11-115, 30-12-1002, 30-13-133, 30-14-142, 30-14-224, AND 30-14-506, MCA; AND REPEALING SECTIONS 67-1705, 84-2805 THROUGH 84-2812, AND 85-201 THROUGH 85-208, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-7-102, MCA, is amended to read:

"30-7-102. Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in 30-1-201*(15)*.

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:

"Duly negotiate". 30-7-501.

"Person entitled under the document". 30-7-403(4).

(3) Definitions in other chapters applying to this chapter and the sections in which they appear are:

"Contract for sale". 30-2-106.

"Overseas". 30-2-323.

"Receipt" of goods. 30-2-103.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 2. Section 30-7-210, MCA, is amended to read:

"30-7-210. Enforcement of warehouseman's lien. (1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in *block* or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. *The* notification must include a statement of the amount due, the nature of the proposed sale

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and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for 2 weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this chapter.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against

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whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion."

Section 3. Section 30-9-105, MCA, is amended to read:

"30-9-105. Definitions and index of definitions. (1) In this chapter unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper, contract right or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts, contract rights and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, contract rights or chattel paper. *When* the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Document" means document of title as defined in 30-1-201*(15)*;

(f) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (30-9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. "Goods" also *includes* the unborn young of animals and growing crops;

(g) "Instrument" means a negotiable instrument (defined in 30-3-104), or a security (defined in 30-8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or

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lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment;

(h) "Security agreement" means an agreement which creates or provides for a security interest;

(i) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Account". 30-9-106.

"Consumer goods". 30-9-109(1).

"Contract right". 30-9-106.

"Equipment". 30-9-109(2).

"Farm products". 30-9-109(3).

"General intangibles". 30-9-106.

"Inventory". 30-9-109(4).

"Lien creditor". 30-9-301(3).

"Proceeds". 30-9-306(1).

"Purchase money security interest". 30-9-107.

(3) The following definitions in other chapters apply to this chapter:

"Check". 30-3-104.

"Contract for sale". 30-2-106.

"Holder in due course". 30-3-302.

"Note". 30-3-104.

"Sale". 30-2-106.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 4. Section 30-10-201, MCA, is amended to read:

"30-10-201. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, unless he is registered under parts 1 through 3 of this chapter. It is unlawful for any person to transact business in this state as an investment adviser unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter; or

(c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.

(2) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. Salesmen shall also file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in the sum of $5,000, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(3) The application shall contain whatever information the commissioner requires.

(4) If no denial order is in effect and no proceeding is pending under subsection (8) of this section, registration becomes effective at noon of the 30th day after an application is filed. The commissioner may specify an earlier effective date, and he may by order defer the effective date for an additional 60 days. The effective day after the filing of any amendment shall be noon of the 30th day thereafter unless otherwise accelerated by the commissioner.

(5) Registration of a broker-dealer, salesman, or investment adviser shall be effective until March 1 following such registration and may be renewed. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(6) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer, *by filing* a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

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(7) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(8) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesman or the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but:

(i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on; and

(ii) he may not enter any order under this subsection (f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

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(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under subsection (8) of this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected. The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(9) Upon the entry of the order under subsection (8) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

(10) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, or salesman or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application."

Section 5. Section 30-11-115, MCA, is amended to read:

"30-11-115. Uniform Commercial Code overrides. The provisions of this part *do* not apply to exchanges subject to the Uniform Commercial Code."

Section 6. Section 30-12-1002, MCA, is amended to read:

"30-12-1002. Enforcement of part. The department of business regulation shall enforce this part. The department shall have access to all places of business, factories, stores, and buildings used for the manufacture or sale of paints or other products described in 30-12-1001. The department may purchase and open any package, can, jar, *tube*, or other receptacle containing any of the articles described in 30-12-1001 and found during an inspection."

Section 7. Section 30-13-133, MCA, is amended to read:

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"30-13-133. Transfer. The owner of any product of the mind or of any representation or expression thereof may transfer his *interest* in the same."

Section 8. Section 30-14-142, MCA, is amended to read:

"30-14-142. Penalties. (1) *A* person who violates the terms of an injunction issued under 30-14-111 shall forfeit and pay to the state a civil penalty of not more than $10,000 per violation. For the purposes of this section, the district court issuing an injunction retains jurisdiction and the cause *shall be* continued, and in such cases the department acting in the name of the state may petition for recovery of civil penalties.

(2) In *an* action brought under 30-14-111, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by 30-14-103, the department, upon petition to the court, may recover on behalf of the state a civil penalty of not more than $500 per violation.

(3) *A* person who engages in a fraudulent course of conduct declared unlawful by 30-14-103 shall upon conviction be fined not more than $2,000, imprisoned for not more than 1 year, or both, in the discretion of the court. Nothing in this subsection limits any other provision of this part.

(4) For purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of 30-14-103."

Section 9. Section 30-14-224, MCA, is amended to read:

"30-14-224. Penalties. (1) Except as otherwise provided in this section, a person, whether as principal, agent, officer, or director, who violates any of the provisions of *30-14-206* through 30-14-218 is guilty of a misdemeanor for each single violation and upon conviction thereof shall be fined not less than $100 or more than $1,000 or imprisoned for a term not to exceed 6 months, or both.

(2) A violation of 30-14-205 is punishable by imprisonment in the county jail for a period not less than 24 hours or more than 1 year or by fine not exceeding $25,000, or both.

(3) When there is a violation of 30-14-216, in addition to the penalty specified in *subsection* (1), the court before which a conviction is had shall, within 10 days after judgment of conviction is given, forward a certified copy of the judgment to the department of agriculture and that department shall revoke any license issued to the person so convicted. In such case no new license may be granted to the person whose license is revoked or to anyone either directly or indirectly engaged with him in such business for a period of 1 year."

Section 10. Section 30-14-506, MCA, is amended to read:

"30-14-506. Repayment to buyer — retention of goods by buyer. (1) Except as provided in this section, within 10 days after a personal solicitation sale has been canceled or an offer to purchase revoked,

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the seller shall tender to the buyer any payments made by the buyer and any note *or* other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) If the seller refuses within the period prescribed by subsection (1) to return the cash down payment or goods tendered as down payment, he shall be liable to the buyer for the entire down payment, and if the buyer is successful in his action therefor, the court shall also award him $100 plus reasonable attorneys' fees and costs.

(4) Until the seller has complied with this section, the buyer may retain possession of goods delivered to him by the seller and shall have a lien on the goods in his possession or control for any recovery to which he may be entitled."

Section 11. **Repealer.** Sections 67-1705, 84-2805 through 84-2812, and 85-201 through 85-208, R.C.M. 1947, are repealed.

Approved March 20, 1979.

CHAPTER NO. 138

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE LEGISLATIVE BRANCH; AMENDING SECTIONS 5-5-202, 5-11-202 THROUGH 5-11-208, 5-11-211, 5-11-212, AND 22-1-218, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-5-202, MCA, is amended to read:

"5-5-202. Interim activities of committees. During an interim when the legislature is not in session, all regularly appointed standing or select committees of either house not formally discharged prior to the final adjournment of the preceding session shall continue as such committees. They are empowered to continue to sit as such committees as provided in this *title*."

Section 2. Section 5-11-202, MCA, is amended to read:

"5-11-202. Printing of the house and senate journals and session laws. *The* legislative council shall deliver to the printer entitled to *them*, at the earliest practicable *day* after the final adjournment of each session of the legislature, copies of all laws, resolutions, and journals passed, adopted, *or kept* at *the* session, with proper indexes to the same."

Section 3. Section 5-11-203, MCA, is amended to read:

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"5-11-203. Distribution of senate and house journals and session laws. (1) Immediately after the senate and house journals and the session laws are bound the legislative council shall distribute them.

(2) *The council* shall distribute the house and senate journals as follows:

(a) to each county clerk, one copy of each for the use of the county;

(b) to the state historical library, such number of copies of both, not exceeding 150 of each, as may be required by it for purposes of distribution and exchange;

(c) to the state law librarian, two copies of each for the use of the library and such additional copies as may be necessary for the purposes of exchange;

(d) to the library of congress, two copies of each; and

(e) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives at the session at which the journals were adopted, one copy of each.

(3) *The council* shall distribute the session laws as follows:

(a) to each department of the government at Washington and of the government of this state, one copy;

(b) to the library of congress, eight copies;

(c) to the state library, two copies;

(d) to the state historical library, two copies;

(e) to the state law librarian, four copies for the use of the library and such additional copies as may be required for exchange with libraries and institutions maintained by other states *and* territories and public libraries;

(f) to the library of each custodial institution, one copy;

(g) to each Montana member of congress, each United States district judge in Montana, each of the judges of the state supreme and district courts, and each of the state officers, one copy;

(h) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives at the session at which the laws were adopted, one copy;

(i) to each of the incorporated colleges of the state and each unit of the *Montana* university system, one copy;

(j) to each county clerk, three copies for the use of the county; and

(k) to each county attorney and to each clerk of a district court, one copy."

Section 4. Section 5-11-204, MCA, is amended to read:

"5-11-204. Secretary of state to assign chapter numbers to new laws. It shall be the duty of the secretary of state, when bills passed

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by any legislature of Montana are filed in his office as directed in 5-4-302 and 5-4-305, to note thereon the date of filing and to number such bills, except resolutions and bills appropriating money, in the order of their reception by him, chapter 1 and upwards, using Arabic numerals."

Section 5. Section 5-11-205, MCA, is amended to read:

"5-11-205. Publication of laws — format. (1) *The legislative council shall publish all laws and resolutions passed or adopted by each session of the legislature in a publication to be known as the "Laws of Montana".*

(2) Laws of each session other than appropriations must be printed in the Laws of Montana in the order that they have been filed in the office of the secretary of state with the chapter number assigned by the secretary of state as the heading. The chapter number must also appear as part of each page heading. In all laws containing amendments to an existing law, the new parts designated in the act by underlining must be printed in italics in the Laws of Montana. The senate or house bill number may be omitted from each act.

(3) Reference to the laws of *a* legislative session may be made as follows: "Chapter.... (giving number), *Laws* of.... (giving the year enacted)".

(4) Appropriations passed by each session of the legislature must be printed in a separate section of the Laws of Montana with the house bill number as a heading.

(5) Resolutions adopted by each session of the legislature must be printed in a separate section of the Laws of Montana with the type of resolution and its number as a heading.

(6) The legislative council shall also *publish in the Laws of Montana* the indexes *required by* 5-11-206."

Section 6. Section 5-11-206, MCA, is amended to read:

"5-11-206. Index. (1) *The* legislative council *shall* prepare a suitable index of all the laws and resolutions passed or adopted at each session of the legislature. *The* index shall be a thorough index of *the* laws and resolutions and of each subject contained in or covered by *the* laws and resolutions, together with *a* cross-index *to* assist in readily finding any subject contained in *each* volume.

(2) For the purpose of uniformity in indexes, the index of each succeeding *publication* of the session laws shall conform as nearly as practicable with those of the volumes preceding it.

(3) There shall also be prepared for each *publication* of *the session* laws *a "code index"* showing what sections of the *Montana Code Annotated* have been amended *or* repealed by any laws *enacted by that session of the legislature.*"

Section 7. Section 5-11-207, MCA, is amended to read:

"5-11-207. Description of county boundaries included in session laws. *The* legislative council *shall* include in the published

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session laws a description of the county boundaries of *any* new counties of the state created by petition and election, commencing with counties created after January 1, 1921, *by* inserting in each *set of* session laws new counties *that* have been created since the publication of the *laws* of the previous session."

Section 8. Section 5-11-208, MCA, is amended to read:

"5-11-208. Expenses. The expenses incurred by the legislative council in carrying into effect 5-11-202 *through* 5-11-207, *as amended,* must be paid out of *money specifically* appropriated for *that* purpose."

Section 9. Section 5-11-211, MCA, is amended to read:

"5-11-211. Definitions. For the purposes of *this part*, the following definitions *apply*:

(1) "Person" *means* any person, firm, corporation, or association.

(2) "Proceedings of the legislature" *means* status sheets, daily *journals*, reproduced bills, reproduced resolutions, printed bills, printed resolutions, and amendments thereto.

(3) "One complete set" *means* one copy of each item of the proceedings of a session, regular or special, of the legislature.

(4) "Session Laws" for a particular year means the laws and resolutions passed or adopted by that year's session of the legislature."

Section 10. Section 5-11-212, MCA, is amended to read:

"5-11-212. Fees for proceedings. (1) A complete set of the proceedings of a regular session of the legislature *may be purchased from the* secretary of state *for* the amount prescribed in the joint legislative rules. Upon receipt of *payment*, the secretary of state shall transmit the name of the *purchaser* to the executive director of the legislative council, who shall supply the *purchaser* with a complete set of the proceedings.

(2) A *purchaser* who requests that a set of the proceedings be mailed shall pay an additional fee as prescribed in the joint legislative rules to the secretary of state for each complete set that is mailed.

(3) *Single* copies of bills, resolutions, or amendments thereto *may be purchased* from the legislative council for a price varying with the length of the document as prescribed in the joint rules.

(4) *Single* copies of status sheets or status of proceedings may *be purchased* from the legislative council for a price per copy as prescribed in the joint rules. A person may subscribe to receive daily copies of the status sheets or status of proceedings by mail for a fee *set by* the legislative council *to cover the costs of the service.*

(5) The executive director of the legislative council and the secretary of state shall account for all funds collected by their respective offices under this section and shall transmit *the* funds to the treasurer of the state of Montana, who shall credit them to the general fund."

Section 11. Section 22-1-218, MCA, is amended to read:

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"22-1-218. Exemptions. This part *does* not apply to officers of or affect the duties concerning publications distributed by:

(1) the state law library;

(2) the secretary of state in connection with his duties under 2-15-401(16);

(3) the code commissioner in connection with his duties under Title 1, chapter 11, as amended; and

(4) the legislative council in connection with its duties under 5-11-203, as amended."

Approved March 20, 1979.

CHAPTER NO. 139

AN ACT PERMITTING THE DEPARTMENT OF REVENUE TO LICENSE THE CATERING OF ALCOHOLIC BEVERAGES OFF THE PREMISES OF A TAVERN; AMENDING SECTION 16-4-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-204, MCA, is amended to read:

"16-4-204. Contents of license — posting — privilege — transfer — expiration. (1) Every license issued under this part shall set forth the name of the person to whom issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the department shall deem necessary. If the licensee is a partnership or if more than one person has any interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises wherein the business authorized under the license is conducted, and such license shall be exhibited upon request to any authorized representative of the department or to any peace officer of the state of Montana.

(2) Any license issued under the provisions of this part shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license unless sooner revoked or suspended.

(3) A license may be transferred to the executor or administrator of the estate of any deceased licensee when such estate consists in whole or in part of the business of selling liquor under a license, and in such event the license may descend or be disposed of with the business to which it is applicable under appropriate probate proceedings.

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(4) In the event of a major loss or damage to licensed premises by unforeseen natural causes or in case of expiration of lease of the licensed premises or in the event of eviction or increase of rent by the landlord (in case of rented licensed premises) or in case of proposed removal of license to premises as substantially suited for the retail liquor business as the premises vacated, the licensee may apply to the department for a transfer of the license to different premises. The department may in its discretion permit a transfer in such cases if it appears to the department that such a transfer is required to do justice to the licensee applying for the transfer. The department shall in no event nor for any cause permit a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than such facilities which exist or had existed at the premises from which the transfer is proposed to be made.

(5) Upon a bona fide sale of the business operated under any license, the license may be transferred to a qualified purchaser. No transfer of any license as to person or location shall be effective unless and until approved by the department, and any licensee or transferee or proposed transferee who operates or attempts to operate under any supposedly transferred license prior to the approval of such transfer by the department, endorsed upon the license in writing, shall be considered as operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval, providing the application for transfer has been filed with the department.

(6) (a) A license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred did not exceed that area's quota by more than 25% in the most recent census; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license transferred between quota areas under this section may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee. A license transferred between quota areas under this section may be held only by natural persons. For the purpose of this section, natural persons shall not include limited partnerships or other business entities of any kind in which each natural person is not a full participant in the ownership and operation of the business authorized by the license.

(7) (a) Any all-beverage licensee is, upon the approval and in the discretion of the liquor division, entitled to a catering endorsement to his all-beverage license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed

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for the sale of alcoholic beverages such beverages to be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) A written application for each event for which the licensee intends to provide catering services, the written approval of the catering application by the sponsor of the special event, and a fee of $40 must be filed with the department at least 10 days prior to the event and shall describe the location of the premises where the event is to be held, the nature of the event, and the period during which the event is to be held. An all-beverage licensee who holds an endorsement granted under this subsection (7) may not receive approval to cater an event of which he is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business. If obtained, the licensee shall display in a prominent place on those premises, the written approval from the department for each event which is catered pursuant to this subsection.

(d) The licensee shall file with each application for an event to be catered a written statement of approval of the premises where the event is to be held issued by the department of health and environmental sciences.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(8) Except as above provided, no license shall be transferred or sold nor shall it be used for any place of business not described in the license; provided, however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license.

(9) All licenses shall expire at midnight of June 30 of each year."

Approved March 20, 1979.

CHAPTER NO. 140

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO AERONAUTICS; AMENDING SECTIONS 67-1-105, 67-10-101, 67-10-103, 67-10-104, 67-10-201, 67-10-203, 67-10-204, 67-10-207, 67-10-221, 67-10-222, 67-10-231, 67-10-303, 67-10-401, 67-10-402, 67-10-404 THROUGH 67-10-406, 67-11-211, AND 67-11-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 67-1-105, MCA, is amended to read:

"67-1-105. Penalties. *Unless otherwise provided, any* person violating any of the provisions of *chapters 1 through 3* or any of the rules or

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orders issued pursuant thereto *is* guilty of a misdemeanor and punishable by a fine of not more than $500 or by imprisonment in a county jail for not more than 90 days, or both."

Section 2. Section 67-10-101, MCA, is amended to read:

"67-10-101. Short title. This *chapter* may be cited as the "Municipal Airports Act"."

Section 3. Section 67-10-103, MCA, is amended to read:

"67-10-103. Public purpose. (1) Any lands acquired, owned, controlled, or occupied by any county, city, or town, individually or pursuant to joint action as herein provided for the purposes enumerated in 67-10-102, are acquired, owned, controlled, and occupied for a public use and as a matter of public necessity, and such counties, cities, and towns, whether acting individually or jointly, have the right to acquire property for such purposes under the power of eminent domain as and for a public use or necessity.

(2) The acquisition of any land or interest therein pursuant to this *chapter*; the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of airports and air navigation facilities, including the acquisition or elimination of airport hazards; and the exercise of any other powers herein granted to municipalities and other public agencies, to be severally or jointly exercised, are public and governmental functions, exercised for a public purpose and matters of public necessity and, in the case of any county, are county functions and purposes as well as public and governmental and, in the case of any municipality other than a county, are municipal functions and purposes as well as public and governmental. All land and other property and privileges acquired and used by or on behalf of any municipality or other public agency in the manner and for the purposes enumerated in this *chapter* are acquired and used for public and governmental purposes and as a matter of public necessity and, in the case of a county or municipality, for county or municipal purposes, respectively."

Section 4. Section 67-10-104, MCA, is amended to read:

"67-10-104. Construction. This *chapter* shall be so interpreted and construed as to make uniform so far as possible the laws and regulations of this state and other states and of the government of the United States having to do with the subject of municipal airports."

Section 5. Section 67-10-201, MCA, is amended to read:

"67-10-201. General municipal powers. (1) Every municipality *may*, out of any appropriations or other *money* made available for such purposes, plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police airports and air navigation facilities, either within or without the territorial limits of such municipality and within or without the territorial boundaries of this state, including the construction, installation, equipment, maintenance, and operation at such airports of buildings and other facilities for the servicing of aircraft or for

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the comfort and accommodation of air travelers and the purchase and sale of supplies, goods, and commodities as an incident to the operation of its airport properties. For such purposes the municipality may use any available property that it may now or hereafter own or control and may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire property, real or personal, or any interest therein, including easements, in airport hazards or land outside the boundaries of an airport or airport site, as is necessary to permit safe and efficient operation of the airport; to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards; or to prevent the establishment of airport hazards.

(2) The municipality may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire existing airports and air navigation facilities, provided however it *may* not acquire or take over any airport or air navigation facility owned or controlled by another municipality or public agency of this or any other state without the consent of such municipality or public agency.

(3) For the purposes of this *chapter*, a municipality may establish or acquire and maintain, within or bordering upon the territorial limits of the municipality, airports in, over, and upon any public waters of this state, any submerged lands under such public waters and any artificial or reclaimed lands which before the artificial making or reclamation thereof constituted a portion of the submerged lands under such public waters, and may construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any such airport, and landing floats and breakwaters for the protection thereof.

(4) All air navigation facilities established or operated by municipalities shall be supplementary to and coordinated in design and operation with those established and operated by the federal and state governments.

(5) A municipality may enter into any contracts necessary *for* the execution of the powers granted it and for the purposes provided by this *chapter*."

Section 6. Section 67-10-203, MCA, is amended to read:

"67-10-203. Mutual assistance. If any municipality determines that the public interest and the interests of the municipality will be served by assisting any other municipality or municipalities in exercising the powers and authority granted by this *chapter*, such municipality may furnish assistance by gift of real or personal property or lease or loan thereof with or without charge or interest. In appropriating such property or money and providing for such assistance by taxation, the issuance of bonds, or other means, the municipality may exercise all of its powers as though used for its own direct purposes as provided in this *chapter*."

Section 7. Section 67-10-204, MCA, is amended to read:

"67-10-204. Joint exercise of powers. (1) For the purposes of 67-10-204 through 67-10-206, unless otherwise qualified, the term "public agency" includes municipality, as defined in this title; any agency of the state government and of the United States; and any municipality, political

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subdivision, and agency of another state; and the term "governing body" means the governing body of a county or municipality and the head of the agency if the public agency is other than a county or municipality.

(2) All powers, privileges, and authority granted to any municipality by this *chapter* may be exercised and enjoyed jointly with any public agency of this state and jointly with any public agency of any other state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment. If not otherwise authorized by law, any agency of the state government when acting jointly with any municipality may exercise and enjoy all of the powers, privileges, and authority conferred by this *chapter* upon a municipality.

(3) Any two or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of 67-10-204 through 67-10-206. Concurrent action by ordinance, resolution, or otherwise of the governing bodies of the participating public agencies *constitutes* joint action. Each such agreement shall specify its duration; the proportionate interest which each public agency *has* in the property, facilities, and privileges involved; the proportion to be borne by each public agency of preliminary costs and costs of acquisition, establishment, construction, enlargement, improvement, and equipment of the airport or air navigation facility; the proportion of the expenses of maintenance, operation, regulation, and protection thereof to be borne by each; and such other terms as are required by the provisions of 67-10-204 through 67-10-206. The agreement may also provide for amendments thereof and conditions and methods of termination of the agreement; the disposal of all or any of the property, facilities, and privileges jointly owned, prior to or upon said property, facilities, and privileges, or any part thereof, ceasing to be used for the purposes provided in this *chapter* or upon termination of the agreement; the distribution of the proceeds received upon any such disposal and of any funds or other property jointly owned and undisposed of; the assumption or payment of any indebtedness arising from the joint venture which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient."

Section 8. Section 67-10-207, MCA, is amended to read:

"67-10-207. Supplementary powers. In addition to the general and special powers conferred by this *chapter*, every municipality is authorized to exercise powers necessarily incidental to the exercise of such general and special powers."

Section 9. Section 67-10-221, MCA, is amended to read:

"67-10-221. Airport property — acquisition by eminent domain. In the acquisition of property by eminent domain proceedings authorized by this *chapter*, the municipality shall proceed in the manner provided by the laws governing eminent domain of the state of Montana. The municipality *is* not precluded from abandoning such proceedings in any case where possession of the property has not been taken."

Section 10. Section 67-10-222, MCA, is amended to read:

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"67-10-222. Airport property — disposal. Except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to 67-10-405, every municipality may by sale, lease, or otherwise dispose of any airport, air navigation facility, or other property or portion thereof or interest therein acquired pursuant to this *chapter*. Such disposal by sale, lease, or otherwise shall be in accordance with the laws of this state or provisions of the charter of the municipality governing the disposition of other property of the municipality or agency of the state or federal government for aeronautical purposes incident thereto. The sale, lease, or other disposal may be effected in such manner and upon such terms as the governing body of the municipality may *consider* in the best interest of the municipality."

Section 11. Section 67-10-231, MCA, is amended to read:

"67-10-231. No limitation on airport hazard zoning. Nothing contained in this *chapter* shall be construed to limit any right, power, or authority of a municipality to regulate airport hazards by zoning."

Section 12. Section 67-10-303, MCA, is amended to read:

"67-10-303. Delegation of authority. Any authority vested by this *chapter* in a municipality or in the governing body thereof for the planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection, and policing of airports or other air navigation facilities established, owned, or controlled or to be established, owned, or controlled by the municipality may be vested by resolution of the governing body of the municipality in an officer or board or other municipal agency whose powers and duties *must* be prescribed in the resolution. *However*, the expense of such planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection, and policing *is* a responsibility of the municipality."

Section 13. Section 67-10-401, MCA, is amended to read:

"67-10-401. Appropriations — taxation. The governing body of any municipality having power to appropriate and raise money is authorized to appropriate, and to raise by taxation or otherwise, sufficient *money* to carry out the provisions and purposes of this *chapter*, within the limitations prescribed by law."

Section 14. Section 67-10-402, MCA, is amended to read:

"67-10-402. Tax levy. *(1)* For the purpose of establishing, constructing, equipping, maintaining, and operating airports and landing fields under the provisions of this *chapter*, the county commissioners or the city or town council may each year assess and levy, in addition to the annual levy for general administrative purposes or the all-purpose levy authorized by 7-6-4451 and 7-6-4452, a tax of not to exceed 2 mills on the dollar of taxable value of the property of said county, city, or town.

(2) In the event of a jointly established airport or landing field, the county commissioners and the council or councils involved shall determine in advance the levy necessary for such purposes and the proportion each political subdivision joining in the venture *must* pay.

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(3) No property within any political subdivision *may* be subject to a tax pursuant to this section at an annual rate in excess of 2 mills *unless* it *is* found that the levy *is* insufficient for the purposes enumerated. *In such a case* the commissioners and councils acting are authorized and empowered to contract an indebtedness on behalf of such county, city, or town, as the case may be, upon the credit thereof by borrowing money or issuing bonds for such purposes, provided that no money may be borrowed and no bonds may be issued for such purpose until the proposition has been submitted to the qualified electors and a majority vote cast therefor, except *as provided in subsection (4).*

(4) For the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways, and ramps, *the* governing bodies may set up annual reserve funds in their annual budget *if:*

(a) the reserve is approved by the governing bodies during the normal budgeting procedure;

(b) the necessity to resurface or improve said runways by overlays or similar methods every so many years is based upon competent engineering estimates; and

(c) the funds are expended at least within each 10-year period.

(5) The reserve fund *may* not exceed at any time a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways, and ramps of any one airport for each fund. The governing body of *the* airport, if in its judgment it *considers* it advantageous, may invest the fund in any interest-bearing deposits in a state or national bank insured by the FDIC or obligations of the United States of America, either short-term or long-term. Interest earned from such investments *must* be credited to the operations and maintenance budget of *the* airport governing body. The above provisions, notwithstanding other budget control measures and due to the uniqueness of the subject matter, are declared necessary in the interests of the public health and safety."

Section 15. Section 67-10-404, MCA, is amended to read:

"67-10-404. Airport revenues and sale proceeds. The revenues obtained by a municipality from the ownership, control, or operation of any airport or air navigation facility, including proceeds from the sale of any airport or portion thereof or air navigation facility property, *must* be deposited in a special fund to be designated the ".... airport fund", which revenues *must* be appropriated solely to, and used by the municipality for the purposes authorized by this *chapter.*"

Section 16. Section 67-10-405, MCA, is amended to read:

"67-10-405. Federal and state money. (1) A municipality may accept, receive, receipt for, disburse, and spend federal and state *money* and other *money,* public or private, made available by grant or loan or both to accomplish any of the purposes of this *chapter.* All federal *money* accepted under this section *must* be accepted and spent by the municipality upon terms and conditions prescribed by the United States and consistent with state law. All state *money* accepted under this section *must*

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be accepted and spent by the municipality upon terms and conditions prescribed by the state. Unless otherwise prescribed by the agency from which the *money is* received, the chief financial officer of the municipality shall on its behalf deposit and keep all *money* received pursuant to this section in separate funds, designated according to the purposes for which the *money is* made available, in trust for those purposes.

(2) No application may be made by a municipality for federal aid, as provided in this section, unless the "project application", as defined in the Federal Airport Act of 1946 and regulations of the administrator of civil aeronautics, is first approved by the department.

(3) A municipality may, with the approval and consent of the department, designate the department as its agent to accept, receive, receipt for, and disburse federal and state *money* and other *money*, public or private, made available by grant or loan or both to accomplish any of the purposes of *this chapter*. A municipality may, with the consent of the department, designate the department as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, or equipment of an airport or other air navigation facility. All contracts made, let, or awarded by the department acting as agent of a municipality under this section *must* be made, let, or awarded pursuant to the laws governing the making of contracts by or on behalf of the state. The municipality may enter into an agreement with the department providing for payment to the department for services rendered as agent and prescribing the terms and conditions of the agency, in accordance with terms and conditions prescribed by the United States, if federal money is involved and in accordance with applicable state law. All federal *money* accepted under this section by the department *must* be accepted and transferred or spent by the department upon terms and conditions prescribed by the United States. All *money* received by the department under this subsection *must* be deposited in the state treasury and, unless otherwise prescribed by the agency from which the *money is* received, *must* be kept in separate funds designated according to the purposes for which the *money is* made available and held by the state in trust for those purposes."

Section 17. Section 67-10-406, MCA, is amended to read:

"67-10-406. Tax exemption. Any property in this state acquired by a municipality for airport purposes pursuant to the provisions of this *chapter* and any income derived by such municipality from the ownership, operation, or control thereof *is* exempt from taxation to the same extent as other property used for public purposes. Any municipality is authorized to exempt from municipal taxation any property acquired within its boundaries by a public agency of another state for airport purposes and any income derived from such property to the extent that such other states authorize similar exemptions from taxation to municipalities of this state."

Section 18. Section 67-11-211, MCA, is amended to read:

"67-11-211. Granting of operation and use privileges. (1) In connection with the operation of an airport or air navigation facility owned or controlled by an authority, the authority may enter into contracts,

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leases, and other arrangements for terms not to exceed 30 years with any persons:

(a) granting the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;

(b) conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility; and

(c) making available services to be furnished by the authority or its agents at the airport or air navigation facility.

(2) In each case the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which *must* be reasonable and uniform for the same class of privilege or service and *must* be established with due regard to the property and improvements used and the expenses of operation to the authority; provided that in no case *may* the public be deprived of its rightful, equal, and uniform use of the airport, air navigation facility, or portion of facility thereof.

(3) Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by *67-11-305*, an authority may by contract, lease, or other *arrangement*, upon a consideration fixed by it, grant to any qualified person for a term not to exceed 30 years the privilege of operating, as agent of the authority or otherwise, any airport owned or controlled by the authority; provided that no person *may* be granted any authority to operate an airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the authority might not have undertaken under subsections (1) and (2) of this section."

Section 19. Section 67-11-303, MCA, is amended to read:

"67-11-303. Bonds and obligations. (1) An authority may borrow money for any of its corporate purposes and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the authority, including revenues derived from:

(a) an airport or air navigation facility or facilities;

(b) taxes levied pursuant to 67-11-301 or other law for airport purposes;

(c) grants or contributions from the federal government; or

(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that no such bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds and on any then outstanding bonds for which revenues from the same source or sources are pledged exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The authority shall

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take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenues from the pledged source in such year at least equal to the amount of such principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest at a rate not exceeding 10% a year. Except as otherwise provided herein, any bonds issued pursuant to this chapter by an authority may be payable as to principal and interest solely from revenues of the authority and shall state on their face the applicable limitations or restrictions regarding the source from which such principal and interest are payable.

(4) Bonds issued by an authority or municipality pursuant to the provisions of this chapter are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of any such bonds, the authority or municipality may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenues referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities.

(6) Subject to the conditions stated in this subsection (6), the governing body of any municipality having a population in excess of 10,000, with respect to bonds issued pursuant to this chapter by the municipality or by an authority in which the municipality is included, may by resolution covenant that in the event that at any time all revenues, including taxes, appropriated and collected for such bonds are insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the municipality for the payment of such deficiency; and may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on such bonds, it will levy a general tax upon all the taxable property in the municipality for the payment of such deficiency, and such taxes are not subject to any limitation of rate or amount applicable to other municipal taxes but *are* limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event more than one municipality having a population in excess of 10,000 is included in an authority issuing bonds pursuant to this chapter, the municipalities may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenues appropriated for such bonds in such manner as the municipalities may determine. The resolution shall state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. No such resolution becomes effective until the question of its approval has been submitted to the qualified electors of the municipality at a special election called for that purpose by the governing body of the municipality and a majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election *is* governed, to the extent applicable, by 7-7-4227 through *7-7-4234* for an election called by cities and towns, and

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7-7-2229 through *7-7-2236* for an election called by counties. If a majority of the electors voting thereon vote against approval of the resolution, the municipality has no authority to make the covenant or to levy a tax for the payment of deficiencies pursuant to this section, but such municipality or authority may nevertheless issue bonds under this chapter payable solely from the sources referred to in subsection (1) above."

Approved March 20, 1979.

CHAPTER NO. 141

AN ACT TO CONTINUE THE CAPITOL BUILDING AND PLANNING COMMITTEE AND REENACT THE LAW RELATING TO IT; REPEALING SECTIONS 1 THROUGH 4 OF CHAPTER 232, LAWS OF MONTANA, 1971, SECTION 25 OF CHAPTER 326, LAWS OF MONTANA, 1974, AND SECTION 54 OF CHAPTER 439, LAWS OF MONTANA, 1975.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Capitol building and planning committee — appointment, composition, and meetings.** (1) There is a capitol building and planning committee consisting of eight members as follows:

(a) two members of the house of representatives appointed by the speaker on a bipartisan basis;

(b) two members of the senate appointed by the committee on committees on a bipartisan basis;

(c) the director of the department of administration;

(d) the administrator of the architectural and engineering division of the department of administration;

(e) a representative of the governor's office designated by the governor; and

(f) the director of the Lewis and Clark areawide planning organization who shall serve as a nonvoting member.

(2) The committee shall select a chairman who may call meetings at his discretion for the conduct of committee business.

Section 2. **Function of committee — capitol area master plan.** (1) The function of the committee is to establish and maintain a master plan for the orderly development of state buildings in the immediate area of the capital city. The master plan shall be developed and maintained with consideration given to the following factors:

(a) the needs of the state relative to the location and design of buildings to be constructed, purchase of land, parking facilities, traffic management, and landscaping;

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(b) the ordinances, plans, requirements, and proposed improvements of the city of Helena and Lewis and Clark County based without limitation upon zoning regulations, population trends, and plans for rapid transit development;

(c) any other factors that bear upon the orderly, integrated, and cooperative development of the state, the city of Helena, Lewis and Clark County, and of state property in the immediate area of the capital city.

(2) The committee shall consult with and advise the department of administration concerning the assignment of space in the capitol complex and the actual placement of busts, statues, memorials, or art displays of a permanent nature within public areas of the capitol complex. No such item may be permanently displayed unless authorized by the legislature.

(3) The committee shall serve as a long-range building committee to recommend to the legislature and the department of administration construction and remodeling priorities for the capitol complex.

Section 3. **Report to legislature.** The committee shall prepare a written report of its activities and recommendations and present the report to the legislature at each regular session. To prepare its report and recommendations, the committee may receive assistance from the legislative council.

Section 4. **Compensation and expenses.** Legislative members are entitled to receive compensation and expenses as provided in 5-2-302 while engaged in committee business.

Section 5. **Repealer.** Sections 1 through 4 of Chapter 232, Laws of Montana, 1971, section 25 of Chapter 326, Laws of Montana, 1974, and section 54 of Chapter 439, Laws of Montana, 1975, are repealed.

Approved March 20, 1979.

CHAPTER NO. 142

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES; REPEALING SECTIONS 11-4301 THROUGH 11-4304, 77-605, AND 77-606, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-2-202, MCA, is amended to read:

"10-2-202. Definitions. For purposes of 10-2-201 through 10-2-206, the following definitions apply:

(1) The term "veterans" means persons:

(a) who served in the armed forces of the United States in time of war or declared national emergency and who have been separated from service upon conditions other than dishonorable; or

(b) who *after January 31, 1955:*

(i) served on active military duty for more than 180 days or were discharged or released because of a service-connected disability, including but not limited to those veterans serving because of the Vietnam conflict; *and*

(ii) were honorably discharged.

(2) The term "war or declared national emergency" includes:

(a) The Civil War;

(b) The *Spanish-American* War;

(c) The Philippine insurrection;

(d) World War I, between April 6, 1917, and November 11, 1918, both dates inclusive;

(e) World War II, between September 16, 1940, and December 31, 1946, both dates inclusive; and

(f) The Korean conflict, military expedition, or police action, between June 26, 1950, and January 31, 1955, both dates inclusive.

(3) The term "surviving spouse" means an unremarried surviving spouse of a veteran.

(4) The word "percent" means percent of the total aggregate points of the examination referred to."

Section 2. Section 10-2-211, MCA, is amended to read:

"10-2-211. Reemployment of veterans upon completion of service. (1) Any person inducted into the *armed* forces of the United States as a result of the operation of any selective training and service act or national guard and reserve officers mobilization act since 1948 who has satisfactorily completed his period of training *or* service as attested by a certificate to that effect shall be reemployed in the position he left in order to perform such training *or* service if:

(a) he is still qualified to perform the duties of *the* position;

(b) the position he formerly held was not a temporary one; and

(c) he makes application for reemployment within 40 days after he is retired from training *or* service.

(2) Should any person qualified for reemployment be a schoolteacher or instructor, the board of trustees or other employing agency of the school involved *is* not obligated to rehire *the* person until the beginning of the semester or quarter following the one in which the application for reemployment was made."

Section 3. Section 10-2-213, MCA, is amended to read:

"10-2-213. Restoration of benefits. Any person who is restored to a position in accordance with 10-2-211 or 10-2-212 shall be considered as having been on leave of absence during *the* period of training or service

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in the *armed* forces of the United States and at the expiration of *the* period shall be entitled to be restored to his employment without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer in accordance with established rules and practices relating to employees on leave of absence, and shall not be discharged from *the* position without cause within 1 year after restoration."

Section 4. Section 10-2-221, MCA, is amended to read:

"10-2-221. Reemployment of public employee upon completion of service. Any person inducted into the *armed* forces of the United States or any member of any reserve component of the *armed* forces *or* national guard or *any* retired personnel ordered into the active military service of the United States who, in order to perform such training, service, or active duty, leaves a position, other than a temporary position, in the employ of the state or any political subdivision thereof and who receives a certificate of completion of training or service from the proper authorities of the United States government and is still qualified to perform the duties of such position *shall be restored to*:

(1) *the position or to a position of like seniority, status, and pay* if *the* position was in the employ of the state or any political subdivision thereof, excluding elective positions, *and the* position or department has not been abolished or consolidated; *or*

(2) *the position, status, and pay at any time during the term for which he was elected* if *the* position was that of an elected, executive, or judicial officer of the state or any political subdivision thereof."

Section 5. Section 10-2-312, MCA, is amended to read:

"10-2-312. Fee waiver — children of prisoners of war and persons killed in action. (1) The board of regents of higher education may waive charges for the matriculation, tuition, and any educational fees at any of the units of the Montana university system for the children of members of the armed forces of the United States who:

(a) served on active duty during World War II or the Korean or Vietnam conflicts;

(b) had legal residence in this state at the time of entry into the service; and

(c) *were* killed in action or *died* as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States.

(2) The educational assistance to which an eligible person is entitled under *subsection (1)* may be afforded him during the period beginning on his 18th birthday or on the successful completion of his secondary schooling, whichever occurs *first*, and ending on his 23rd birthday.

(3) If he serves on duty with the armed forces as an eligible person *under subsection (1)* after his 18th birthday but before his 23rd birthday, then the period ends 5 years after his first discharge or release from duty

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with the armed forces. This period may not be extended beyond his 31st birthday by reason of this subsection.

(4) The board of regents of higher education may waive the charges for matriculation, tuition, and all educational fees for the spouse and children of any person who is a resident of Montana and who either, while serving in the armed forces of the United States, was declared by the secretary of defense of the United States to be a prisoner of war or missing in action in connection with the conflict in Southeast Asia after January 1, 1961, or, while serving the United States in a civilian capacity, was declared by the secretary of state of the United States to be missing or captured in connection with the conflict in Southeast Asia after the same date.

(5) Any person who is eligible for the waiver of tuition and fees *under subsection (4)*, upon being accepted for enrollment in any state-supported institution of higher education or state-supported technical or vocational school, shall continue to be eligible for *the* waiver until the completion of the bachelor of arts or equivalent degree or certification of completion, as long as he remains enrolled in good standing at the school or institution. *No* eligible person may be disqualified by either the return *or the reported death* of the prisoner of war or person missing in action."

Section 6. Section 10-3-602, MCA, is amended to read:

"10-3-602. Filling vacancy in governorship. Following an enemy attack, the line of succession to the office of governor shall be extended *as provided in Title 2, chapter 16, part 5.*"

Section 7. **Repealer.** Sections 11-4301 through 11-4304, 77-605, and 77-606, R.C.M. 1947, are repealed.

Approved March 20, 1979.

CHAPTER NO. 143

AN ACT TO CLARIFY THE POWERS OF THE MONTANA BOARD OF HOUSING TO PROVIDE STAFF AND FACILITIES TO CARRY OUT ITS PROGRAMS; AMENDING SECTIONS 2-15-1008, 90-6-112, AND 90-6-126, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-112, MCA, is amended to read:

"90-6-112. Provision of bond resolutions. A resolution authorizing any notes or bonds, or any issue thereof, may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenues or property of the board to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

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(2) pledging all or any part of the assets of the board, including mortgages and obligations securing them, to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(3) the use and disposition of the gross income from mortgages owned by the board and payment of principal of mortgages owned by the board;

(4) the setting aside of reserves of sinking funds in the hands of trustees, paying agents, and other depositories and the regulation and disposition thereof;

(5) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the notes or bonds or of any issue thereof;

(6) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;

(7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(8) *a commitment to employ adequate and competent personnel at such reasonable compensation, salaries, fees, and charges as may be determined by the board in conjunction with the department of administration and to maintain suitable facilities and services for the purpose of carrying out its programs*;

(9) vesting in a trustee property, rights, powers, and duties in trust as the board determines;

(10) defining the acts or omissions to act which shall constitute a default in the obligations and duties of the board to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver. Rights and remedies shall not be inconsistent with the laws of the state and the other provisions of this part; and

(11) any other matters of like or different character which in any way affect the security or protection of the holders of the notes or bonds."

Section 2. Section 90-6-126, MCA, is amended to read:

"90-6-126. Pledge of the state. In accordance with the constitutions of the United States and the state of Montana the state pledges that it will not in any way impair the obligations of any agreement between the board and the holders of notes and bonds issued by the board, *including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose.*"

Section 3. Section 2-15-1008, MCA, is amended to read:

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"2-15-1008. Board of housing — allocation — composition — quasi-judicial. (1) There is a board of housing.

(2) The board consists of seven members appointed by the governor as provided in 2-15-124. The members shall be informed and experienced in housing, economics, or finance.

(3) The board shall elect a chairman and other necessary officers.

(4) The board is designated a quasi-judicial board for purposes of 2-15-124.

(5) The board is allocated to the department of administration for administrative purposes only as provided in 2-15-121.

(6) *In compliance with the state pay plan, the* department shall provide all staff and services to the board *as are determined by the board in conjunction with the department to be necessary for the purposes of carrying out the board's programs. The department* shall assess the board for reasonable costs.

(7) A member of the board shall not be deemed to have a conflict of interest under the provisions of 2-2-201 merely because the member is a stockholder, officer, or employee of a lending institution who may participate in the board's programs."

Section 4. **Prior transactions not impaired.** Nothing herein shall affect or impair any provision of resolutions, indentures, loans, contracts, bonds, or notes adopted, entered into, or issued before the effective date of this act.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 20, 1979.

CHAPTER NO. 144

AN ACT TO REQUIRE THE BOARD OF LAND COMMISSIONERS TO MAINTAIN A CENTRAL INDEX OF ALL REAL PROPERTY AND INTERESTS IN REAL PROPERTY HELD, ACQUIRED, ADMINISTERED, LEASED BY, OR DISPOSED OF BY STATE AGENCIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** In order that the members of the public and the public officers and agencies may obtain information concerning the nature, location, and extent of the real property or interests therein acquired by the state and the manner and method of the disposal of real property or interests therein by the state, a central filing system and index is necessary. Therefore, it is the intent of the legislature to provide that the board of land commissioners shall maintain a central filing system and central

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index of all real property held, acquired, leased, administered, or disposed of by state agencies and that all state agencies shall provide the board of land commissioners with the information necessary to establish and maintain such a central filing system and index.

Section 2. **Definitions.** When used in [this act], unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Holding real property" means possessing real property by virtue of title, lease, or administering real property.

(2) "Person" means a natural person or a firm, association, partnership, cooperative, corporation, or other business entity; any agency of the state; any government subdivision; or any other entity whatever.

(3) "Real property" means land surface or subsurface and property attached or affixed to land.

(4) "State agency" means any agency, department, board, or commission of the state.

Section 3. **Duty of state agencies to furnish information on land holdings, leases, administered lands, and acquisitions.** Except as provided in [section 5], every state agency holding, leasing, or administering any real property shall, immediately after such real property is acquired or within 180 days after [the effective date of this act] for real property now used or held, furnish to the board of land commissioners the following information, when applicable:

(1) legal description of the real property;

(2) when the real property was acquired or leased;

(3) where the abstracts, deeds, or other indicia of ownership to the real property may be found;

(4) name of the state agency holding the real property;

(5) name of the grantor or lessor;

(6) nature of interest held by the state or term of lease.

Section 4. **Duty of state agencies to furnish information concerning land disposal.** Except as provided in [section 5], every state agency disposing of any real property to any person shall, immediately after disposal, furnish to the board of land commissioners the following information:

(1) legal description of the real property;

(2) when the disposition of the real property was made;

(3) where the deeds or other indicia of disposal may be found;

(4) name of the state agency disposing of the real property;

(5) name of the grantee;

(6) nature of the interest disposed of by the state.

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Section 5. **Exception from reporting — treatment of highway lands.** (1) A state agency is not required to file information under [sections 3 and 4] with respect to easements, rights-of-way, and interests of a temporary nature such as licenses or permits.

(2) The department of highways is not required to file information under [sections 3 and 4] for land held by the department in connection with highway or road construction, but the department shall file with respect to land held by the department for administrative purposes on a permanent basis.

Section 6. **Establishment and maintenance of central filing system.** The board of land commissioners shall establish and maintain a central filing system and central index of the information which is required to be filed by [sections 3 through 5]. The filing system and index shall be open to the public during regular office hours at the offices of the department of state lands.

Approved March 20, 1979.

CHAPTER NO. 145

AN ACT TO PROVIDE FOR THE RELEASE OF INFORMATION IN THE POSSESSION OF INSURERS RELATING TO FIRE LOSSES; REQUIRING INSURERS TO NOTIFY APPROPRIATE AGENCIES OF SUSPICIOUS FIRE LOSSES; EXEMPTING INSURERS FROM CIVIL LIABILITY FOR FURNISHING SUCH INFORMATION OR NOTIFYING AN AGENCY; PROVIDING FOR CONFIDENTIALITY OF RELEASED INFORMATION; PROVIDING FOR TESTIMONY BY AGENCY PERSONNEL IN CIVIL ACTIONS; AND AMENDING SECTION 50-3-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Insurer to provide information regarding fire loss to certain agencies upon request.** Each insurer engaged in issuing fire insurance policies in the state of Montana shall upon written request of any appropriate law enforcement or fire protection agency release to the requesting agency all information in its possession relating to a fire loss of real or personal property. The information may include but is not limited to:

(1) any insurance policy relevant to the fire loss under investigation and any application for such a policy;

(2) premium payment records;

(3) the history of previous claims made by the insured for fire loss;

(4) material relating to the investigation of the loss, including statements of any person, proof of loss, and other relevant evidence.

Section 2. **Insurer to report suspicious fires.** Whenever an insurer has reason to believe that a fire loss in which it has an interest

may be of other than accidental cause, it shall notify an appropriate law enforcement or fire protection agency and provide such agency with all material developed from its inquiry into the fire loss.

Section 3. **Agencies to keep information confidential.** The insured's right of individual privacy requires agencies and agency personnel receiving information furnished pursuant to [sections 1 and 2] to hold the information in confidence unless:

(1) the insured waives his right of individual privacy; or

(2) release of the information is required pursuant to a criminal or civil proceeding.

Section 4. **Testimony of agency personnel in action to recover under insurance policy.** Law enforcement and fire protection agency personnel may be required to testify as to any information in their possession regarding the fire loss of real or personal property in any civil action in which a person seeks recovery from an insurer under a policy for the fire loss.

Section 5. **Exemption of insurer from liability.** In the absence of fraud or bad faith the insurer or person who furnished information on its behalf is not subject to liability in any civil action for:

(1) furnishing information as required by [section 1]; or

(2) notifying an appropriate agency of a fire loss as required by [section 2].

Section 6. Section 50-3-102, MCA, is amended to read:

"50-3-102. Powers and duties of state fire marshal. (1) For the purpose of reducing the state's fire loss, the state fire marshal shall:

(a) make at least one inspection a year of each state institution and submit a copy of the report to the department of institutions with recommendations in regard to fire prevention, fire protection, and public safety;

(b) make at least one inspection a year of each unit of the Montana university system and submit a copy of the report to the commissioner of higher education with recommendations in regard to fire prevention, fire protection, and public safety;

(c) inspect public, business, or industrial buildings and require conformance to law and rules promulgated under the provisions of this chapter;

(d) assist local fire and law enforcement authorities in arson investigations and supervise such investigations when, in his judgment, supervision is necessary;

(e) review all training programs on investigation of accidental and incendiary fires;

(f) provide fire prevention and fire protection information to public officials and the general public;

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(g) encourage and assist local fire authorities in fire prevention programs and adopt standards and implement a program to encourage fire departments to meet such standards;

(h) be the state entity primarily responsible for promoting fire safety at the state level and to represent the state in structural fire matters;

(i) encourage coordination of all services and agencies in structural fire matters to reduce duplication and fill voids in services;

(j) establish rules concerning responsibilities and procedures to be followed when there is a threat of explosive material in a building housing state offices;

(k) keep in his office a record of all fires occurring in the state, the origin of the fires, and all facts, statistics, and circumstances relating thereto which have been determined by investigations under the provisions of chapter 63 of this title; and, except for *statements of witnesses* given during an investigation *and information that may be held in confidence under [section 3]*, the record shall be open at all times to public inspection; and

(l) make an annual report to the attorney general containing a detailed statement of his official action and the transactions of his department, and the attorney general shall, in turn, submit the report to the governor with such recommendations and comments thereon as he considers necessary.

(2) The state fire marshal may:

(a) adopt rules necessary for safeguarding life and property from the hazards of fire and explosion and carrying into effect the fire prevention laws of this state; and

(b) if necessary to safeguard life and property under rules promulgated pursuant to this section, maintain an action to enjoin the use of all or a portion of a building or restrain a specific activity until there is compliance with the rules."

Approved March 20, 1979.

CHAPTER NO. 146

AN ACT TO REVISE AND CLARIFY SECTIONS 44-1-301, 44-1-302, 44-1-303, 44-1-402, 44-1-601, 44-1-602, AND 44-1-705, MCA, TRANSFERRING TO THE HIGHWAY PATROL CHIEF CERTAIN DUTIES AND POWERS OF THE DIVISION OF MOTOR VEHICLES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-1-301, MCA, is amended to read:

"44-1-301. General supervisory powers. The *chief* shall have direct control and supervision of all patrolmen, subject to the approval of the attorney general."

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Section 2. Section 44-1-302, MCA, is amended to read:

"**44-1-302. Powers relating to supervisory personnel.** The duties and jurisdiction of the supervisory personnel shall be outlined and defined by and under the control of the *chief*."

Section 3. Section 44-1-303, MCA, is amended to read:

"**44-1-303. Duties.** The *chief*, with the approval of the attorney general and within the limits of any appropriation made available for such purposes, shall:

(1) designate the authority and responsibility in each rank, grade, and position;

(2) formulate standards, policies, and qualifications in the selection of recruit patrolmen;

(3) prescribe the official uniform of the Montana highway patrol;

(4) station employees in such localities as *he* shall deem advisable for the enforcement of the traffic laws of this state;

(5) charge against each employee the value of property of the state lost or destroyed through the carelessness or neglect of such employee;

(6) discharge, demote, or temporarily suspend after hearing, as provided in parts 7 and 8 of this chapter, any patrolman of the department;

(7) have purchased or otherwise acquired by the purchasing department of the state motor equipment and all other equipment and commodities deemed by *him* essential to the efficient operation of the Montana highway patrol."

Section 4. Section 44-1-402, MCA, is amended to read:

"**44-1-402. Appointment of supervisory personnel.** Supervisory personnel shall be selected from the patrolmen by the *chief*. The *chief* shall designate supervisory personnel, including but not limited to captains, lieutenants, sergeants, and patrolmen, in such numbers as necessary but within the limits of the legislative appropriation made available for such purposes."

Section 5. Section 44-1-601, MCA, is amended to read:

"**44-1-601. Probationary training and service — patrolmen.** All new patrolmen shall be placed under probationary training and service for a period of 6 months to 1 year, during which time the *chief* must recommend permanent appointments; otherwise the probationary patrolmen will automatically be discharged."

Section 6. Section 44-1-602, MCA, is amended to read:

"**44-1-602. Probationary training and service — supervisory personnel.** All newly appointed supervisory personnel shall be placed under probationary training and service for a period of 6 months to 1 year, during which time the *chief* must recommend permanent appointments;

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otherwise the supervisory personnel will automatically revert to their previous ranks without prejudice."

Section 7. Section 44-1-705, MCA, is amended to read:

"44-1-705. Suspension pending hearing and decision. If the division orders a hearing, *the chief* may suspend such patrolman pending the rendition of the decision made in such case."

Approved March 20, 1979.

CHAPTER NO. 147

AN ACT TO PROVIDE FOR IMMUNIZATION OF PUPILS IN PUBLIC AND PRIVATE SCHOOLS; REPEALING SECTION 20-5-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For the purposes of [this act], the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Governing authority" means the board of trustees of a school district or the administrator of a private school.

(3) "Immunization" means induction of a state of resistance to a disease through administration of an immunizing agent.

(4) "Local health officer or department" means a city, city-county, county, or district health officer or department.

(5) "School" means an institution for the teaching of individuals, the curriculum of which is comprised of the work of any combination of kindergarten through grade 12.

Section 2. **Immunization required.** (1) A governing authority may not enroll any person as a pupil in any school unless, prior to enrollment, the person:

(a) has been immunized against diphtheria, pertussis, tetanus, poliomyelitis, rubella, and measles (rubeola) in the manner and with immunizing agents approved by the department, except that pertussis vaccination is not required for a person 7 years of age or older;

(b) qualifies for conditional enrollment; or

(c) files for an exemption.

(2) Failure to act as provided in subsection (1) in a reasonable period of time, as determined by the board of trustees, is an exemption on the grounds provided in [subsection (1) of section 4].

Section 3. **Conditional enrollment.** A person who has not been immunized against each disease listed in [section 2] may be enrolled by

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the governing authority on condition that he has received one or more doses of polio, measles (rubeola), rubella, diphtheria, pertussis, and tetanus vaccine, except that pertussis vaccine is not required for a person 7 years of age or older.

Section 4. **Personal, religious, or medical exemption.** (1) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking enrollment, or the person seeking enrollment, if an adult, signs and files with the governing authority a written statement on a form prescribed by the department stating that immunization is contrary to the personal or religious beliefs of the signer, immunization of the person seeking enrollment may not be required prior to enrollment in any school. The statement must be maintained as part of the person's immunization records.

(2) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking enrollment, or the person seeking enrollment, if an adult, files with the governing authority a written statement signed by a physician licensed to practice medicine in any jurisdiction of the United States or Canada stating that the physical condition of the person seeking enrollment or medical circumstances relating to him indicate that some or all of the required immunizations are not considered safe and indicating the specific nature and probable duration of the medical condition or circumstances which contraindicate immunization, he is exempt from the requirements of [this act] to the extent indicated by the physician's statement. The statement must be maintained as part of the person's immunization records.

(3) Whenever there is good cause to believe that a person for whom an exemption has been filed under this section has a disease or has been exposed to a disease listed in [section 2] or will as the result of school attendance be exposed to such disease, the person may be excluded from the school by the local health officer or the department until the excluding authority is satisfied that the person no longer risks contracting or transmitting that disease. The exclusion period may not exceed 30 calendar days.

Section 5. **Immunization record.** The governing authority of each school shall require written evidence of each pupil's immunization against the diseases listed in [section 2] and shall record the immunization of each pupil as part of his permanent school record on a form prescribed by the department.

Section 6. **Rulemaking.** The department may adopt rules necessary to implement the provisions of [this act].

Section 7. **Enforcement.** (1) The governing authority of any school shall prohibit from further attendance any pupil enrolled conditionally who has failed to obtain the immunizations required by [section 2(1)] within time periods established by the department until that pupil has been immunized as required by the department or unless that pupil has been exempted under [section 4].

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(2) Each governing authority shall file a written report on the immunization status of all pupils under its jurisdiction with the department and the local health department at times and on forms prescribed by the department.

(3) The local and state health departments shall have access to all information relating to immunization of any pupil in any school.

Section 8. **Failure to immunize or claim exemption — injunction.** (1) A parent, guardian, or adult having the responsibility for the care and custody of a minor required by law to attend school shall elect to do one of the following:

(a) present evidence to the school that the minor has been immunized against the diseases specified in [section 2];

(b) take action to fully immunize the minor against the diseases listed in [section 2], in the manner and with immunizing agents approved by the department;

(c) file for an exemption pursuant to [section 4].

(2) If, as a result of the parent, guardian, or responsible adult's failure to make the election referred to in subsection (1), the minor is excluded from school, the department or the local health department may seek an injunction requiring the parent, guardian, or responsible adult to elect and perform one of the alternatives listed in subsection (1).

(3) Injunction is the exclusive remedy for failure to take any of the actions referred to in subsection (1).

Section 9. **Civil penalty.** (1) Any person who violates any provision of [this act], any rule promulgated under [this act], or any order made pursuant to [this act], with the exception of [section 8] and any rule adopted or order issued pursuant to [section 8], is subject to a civil penalty not to exceed $500. The department or the local health department may institute and maintain any enforcement proceedings hereunder.

(2) Action under subsection (1) is not a bar to enforcement of [this act] or of rules or orders made under it by injunction or other appropriate civil remedies.

(3) An action for a civil remedy to enforce [this act] or rules or orders made under it may be brought in the district court of any county where a violation occurs or is threatened.

Section 10. **Severability.** If part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. **Codification.** The code commissioner shall codify this act as an integral part of Title 20, and the provisions of Title 20 apply to this act.

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Section 12. **Applicability.** Sections 1 through 5 and sections 7 through 9 apply after August 1, 1980.

Section 13. **Repealer.** Section 20-5-401, MCA, is repealed effective August 1, 1980.

Approved March 20, 1979.

CHAPTER NO. 148

AN ACT TO ALLOW LICENSED FOSTER PARENTS OF MINOR CHILDREN TO ADMINISTER CERTAIN TYPES OF MEDICATIONS; AMENDING SECTION 37-8-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-8-103, MCA, is amended to read:

"37-8-103. Exemptions — limitations on authority conferred. (1) No provisions of this law may be construed as prohibiting:

(a) gratuitous nursing by friends or members of the family;

(b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

(c) nursing assistance in the case of an emergency;

(d) the practice of nursing by students enrolled in approved schools of nursing or approved courses or by the graduates of such schools or courses pending the results of the first licensing examination scheduled by the board following their graduation;

(e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed 6 months in length, provided that person does not represent or hold herself or himself out to be a nurse licensed to practice in this state;

(f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of that nurse's official duties;

(g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents thereof;

(h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent such care may be provided by a parent or guardian.

(2) This chapter may not be construed as conferring any authority to practice medicine, surgery, or any combination thereof; to confer any

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authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or to permit any person to undertake the treatment of disease by any of the methods employed in those arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana."

Approved March 20, 1979.

CHAPTER NO. 149

AN ACT TO REVISE THE EXCLUSIONS FROM MEMBERSHIP IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM BY EXCLUDING STUDENTS IN PUBLIC EDUCATIONAL INSTITUTIONS, CERTAIN CITY AND COUNTY ADMINISTRATORS AND THOSE CETA-FUNDED EMPLOYEES WHO ELECT TO BE EXCLUDED; AND TO ALLOW PERSONS SO EXCLUDED WHO LATER BECOME MEMBERS TO QUALIFY THE EXCLUDED SERVICE; AMENDING SECTION 19-3-403, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-403, MCA, is amended to read:

"19-3-403. Exclusions. The following persons may not become members of the retirement system:

(1) elective officers who have not filed with the board written requests to become members, except that a person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election to office, and if he affirmatively exercises the option, the contributions of the employer because of his membership shall be the same as they would have been had he not been so excluded;

(2) inmates of state institutions who are allowed compensation for such service as they are able to perform;

(3) persons in state institutions principally for the purpose of training, but who receive compensation;

(4) independent contractors, unless there is a written contract which specifies the creation of an employer-employee relationship for purposes of retirement coverage under The Public Employees' Retirement System Act;

(5) employees serving in employment which does not exceed the equivalent of 60 working days in any fiscal year;

(6) employees in service on July 1, 1945, or prior thereto who filed with the board elections not to become members, except that a person so excluded from membership may become a member and be eligible thereafter to receive the same benefits that he would have received if he had

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never filed an election not to be a member by meeting the requirements prescribed in 19-3-505 and 19-3-506;

(7) persons directly appointed by the governor who do not file with the board an election in writing to become members;

(8) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision thereof and who are receiving credit in the other system for service, it being the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, except when the service qualifies, is applied for, and purchased pursuant to 19-3-503. A member of the retirement system who, because of his employment by the state, is required to become a member of any other system described in this subsection shall be considered, solely for the purposes of making normal contributions, as permanently separated from service. Exclusion under this subsection is subject to the following exceptions:

(a) When an employer has entered into a collective bargaining agreement which includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for membership in the retirement system, and the payments or contributions in lieu of wages may not be considered a part of the employees' compensation for purposes of computing the employer or employee contributions to the retirement system.

(b) For the purpose of this subsection (8), persons receiving pensions, retirement allowances, or other payments from any source on account of employment other than as an employee as defined in this chapter are not considered, because of such receipt, members of any other retirement or pension system.

(9) court commissioners or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(10) persons who become employees after they have reached their 60th birthday and have no creditable service in this system and who do not file with the board an election to become members;

(11) employees of county hospitals or county rest homes in the sixth and seventh class counties, unless they elect to file with the board an election in writing to become members;

(12) persons employed by the legislature during the legislative session who do not file with the board an election in writing to become members;

(13) students of any public elementary school, high school, vocational-technical center, or community college or any unit of the state university system, except that a person so excluded from membership as a student of a public community college or a unit of the state university system who later becomes a member by otherwise becoming an employee may affirmatively exercise the option of qualifying the service excluded by

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this subsection by applying to the board in writing within 1 year after becoming a member and become eligible to receive credit for the excluded service under the provisions of 19-3-505;

(14) effective October 1, 1978, employees whose positions are funded under the federal Comprehensive Employment and Training Act (CETA) and who file with the board elections not to become members. An employee who exercises his election is considered terminated and is eligible for a refund under 19-3-703, and any employer contributions made on his behalf after October 1, 1978, must be returned to the funding agency. If he is subsequently transferred to non-CETA employment and consequently becomes a member, he may revoke his election within 1 year after the transfer date by filing a written revocation with the board and he will then be eligible to qualify the service previously excluded by this subsection under the provisions of 19-3-505.

(15) The chief administrative officer of any city or county where the chief administrative officer has filed an election in writing with the board to be excluded from membership, this election to be filed no later than July 1, 1979 or 30 days after initial employment by a county or city whichever is later."

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved March 20, 1979.

CHAPTER NO. 150

AN ACT TO AMEND SECTION 20-25-312, MCA, RELATING TO TRAFFIC FINES ON UNIVERSITY SYSTEM CAMPUSES, TO PERMIT THE PRESIDENT TO SET FINES OF NO MORE THAN $10 BASED ON A PUBLISHED SCHEDULE AND TO REMOVE THE RESTRICTION ON USE OF PARKING METERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-25-312, MCA, is amended to read:

"20-25-312. Motor vehicle regulation — enforcement of regulations — appeals. (1) The regents may authorize the president of each unit to:

(a) assess fees not to exceed $10 per quarter for parking on campus;

(b) assess fines *in accordance with a published schedule* for violations of motor vehicle or parking regulations of each unit in an amount not to exceed *$10* per offense;

(c) order the removal of vehicles parked in violation of motor vehicle regulations of each unit at the expense of the violator;

(d) establish a system of appeals at each unit concerning parking violations;

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(e) withhold the amount of any unpaid parking fine from any amount owing any student, employee, or faculty member, subject to the concurrence of the state auditor under the provisions of 17-4-105;

(f) prohibit a student from registering if said student has unpaid parking assessments or fines outstanding resulting from on-campus motor vehicle or parking violations within the previous year.

(2) The proceeds from fines and fees collected shall be remitted to the unit at which collections are made to be used for appropriate maintenance and construction of parking facilities and for traffic control."

Approved March 20, 1979.

CHAPTER NO. 151

AN ACT TO AMEND SECTION 46-15-401, MCA, TO AUTHORIZE THE USE OF VIDEOTAPE EQUIPMENT TO RECORD THE TESTIMONY OF THE VICTIM IN A CASE ARISING UNDER SECTION 45-5-502(3), MCA, FELONY SEXUAL ASSAULT; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-15-401, MCA, is amended to read:

"46-15-401. When videotaped testimony admissible. For any prosecution commenced under *45-5-502(3) or* 45-5-503, the testimony of the victim, at the request of such victim and with the concurrence of the prosecuting attorney, may be recorded by means of videotape for presentation at trial. The testimony so recorded may be presented at trial and shall be received into evidence. The victim need not be physically present in the courtroom when the videotape is admitted into evidence."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 20, 1979.

CHAPTER NO. 152

AN ACT TO AUTHORIZE THE REPRODUCTION OF RECORDS KEPT BY THE SECRETARY OF STATE PURSUANT TO 2-6-111, MCA; TO PROVIDE FOR THE DISPOSAL OF THE ORIGINAL RECORDS; TO PROVIDE FOR IDENTIFICATION, INDEXING, AND SAFEKEEPING OF REPRODUCED RECORDS; TO PROVIDE FOR THE ADMISSABILITY AS EVIDENCE OF THE REPRODUCED COPIES; AMENDING SECTION 2-6-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-6-111, MCA, is amended to read:

"2-6-111. Custody and reproduction of records by secretary of state. *(1)* The secretary of state is charged with the custody of:

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(a) the enrolled copy of the constitution;

(b) all the acts and resolutions passed by the legislature;

(c) the journals of the legislature;

(d) the great seal;

(e) all books, records, deeds, parchments, maps, and papers kept or deposited in his office pursuant to law.

(2) All records included in subsection (1), may be kept and recorded by photostatic or microphotographic means, microfilm, or any other mechanical process that produces a clear, accurate, and permanent duplicate of the original record in accordance with standards not less than those approved for permanent records by the American national standards institute.

(3) The state records committee created by 2-15-1013, may approve the disposal of original records once those records are reproduced as provided for in subsection (2), unless disposal takes the form of transfer of records; in that case, reproduction will not be necessary. The reproduction, or certified copy thereof, may be used in place of the original for all purposes, including as evidence in any court or proceeding, and shall have the same force and effect as the original record.

(4) The secretary of state shall prepare enlarged typed or photographic copies of the records whenever their production is required by law.

(5) At least two copies shall be made of all records reproduced as provided for in subsection (2). The secretary of state shall place one copy in a fireproof storage place and shall retain the other copy in his office with suitable equipment for displaying such record by projection to not less than its original size and for preparing, for persons entitled thereto, copies of the record.

(6) All duplicates of all records shall be identified and indexed."

Approved March 20, 1979.

CHAPTER NO. 153

AN ACT AMENDING SECTION 60-2-210, MCA, TO DELETE THE REQUIREMENT THAT A MUNICIPALITY MUST PAY ONE-HALF OF THE STATE'S SHARE OF THE COST OF SIDEWALKS, CURBS, AND GUTTERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-2-210, MCA, is amended to read:

"60-2-210. Payment of construction and maintenance costs within municipalities. *The* department of highways shall pay the entire

costs of construction *of streets, curbs, gutters, and sidewalks* and maintenance of streets, highways, *curbs, and gutters* which:

(a) are state highway routes; and

(b) are within *incorporated* municipalities."

Approved March 20, 1979.

CHAPTER NO. 154

AN ACT TO CLARIFY THE LIMITATIONS ON INVESTMENTS BY BUILDING AND LOAN AND SAVINGS AND LOAN ASSOCIATIONS AND TO DELETE THE PROVISION THAT ONLY THOSE ASSOCIATIONS INSURED BY THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION MAY MAKE REAL ESTATE LOANS ON CERTAIN TERMS AND CONDITIONS; AMENDING SECTIONS 32-2-406 AND 32-2-407, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-2-406, MCA, is amended to read:

"32-2-406. Investments. (1) A building and loan association may invest the money of the association in:

(a) the bonds and securities of the United States, bonds and other obligations guaranteed as to interest and principal by the United States, and the stocks, bonds, debentures, and other securities and obligations of any federal home loan bank created under the laws of the United States;

(b) the bonds and warrants of any state and of any county, city, or school district of the state of Montana;

(c) the obligations of the federal savings and loan insurance corporation lawfully issued pursuant to Title IV of the National Housing Act;

(d) improved real estate which has been sold under contract, including suburban homes but not including farm lands or mining property. However, the total amount remaining so invested, excluding real estate otherwise acquired, shall at no time exceed 15% of its assets. The amount so invested may not exceed 85% of the price stipulated in the contract of sale or 85% of the value of the property so purchased, whichever is the lesser;

(e) other bonds, securities, *and investments,* not to exceed 10% of the association assets.

(2) Not over 10% of the assets of an association may be invested in home office buildings, furniture, and fixtures. Other real property acquired in any manner or for any purpose may not be held for more than 5 years, except by permission of the department.

(3) Notwithstanding other provisions of the law, it shall be lawful for any building and loan association and other financial institution operating

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under the laws of this state to invest the funds or moneys in their custody or possession, eligible for investment, in bonds of the Home Owners' Loan Corporation, in debentures issued by the federal housing administrator, and in obligations of National Mortgage Associations."

Section 2. Section 32-2-407, MCA, is amended to read:

"32-2-407. Real estate loans limited by congress. Building and loan associations and savings and loan associations, organized and operating under the laws of the state of Montana, may, in addition to any loan or investment permitted prior to July 1, 1963, make any real estate loan upon terms and conditions set by the department but not to exceed the authority to make real estate loans granted to savings and loan associations chartered by the United States and domiciled in Montana, the provisions of any laws of this state to the contrary notwithstanding. The additional real estate loans hereby authorized may be made on the same terms and conditions and subject to the same limitations as shall from time to time be permitted by acts of congress of the United States or of the federal home loan bank board to federally chartered savings and loan associations domiciled in this state."

Approved March 20, 1979.

CHAPTER NO. 155

AN ACT TO PROVIDE PUBLIC CORPORATIONS AN OPTION FOR PLAN COVERAGE UNDER THE WORKERS' COMPENSATION ACT; PROVIDING FOR PAYMENT; AND AMENDING SECTION 39-71-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-403, MCA, is amended to read:

"39-71-403. Plan three exclusive, compulsory, and obligatory for state agencies. Where a *state agency* is the employer, the terms, conditions, and provisions of compensation plan No. 3 shall be exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by any *state agency* shall be considered to be ordinary and necessary expense of *the agency*, and the *agency* shall make appropriation of and pay such sums into the accident or administration fund, as the case may be, at the time and in the manner provided for in this chapter, notwithstanding that *the state agency* may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise."

Section 2. **Election of coverage by public corporations.** A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, employer; plan No. 2, insurer; or plan No. 3, state insurance fund; separately or jointly with any other public corporation, other than a state agency. A public corporation electing compensation plan No.

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1 may purchase reinsurance. A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(2) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in Title 39, chapters 71 and 72, and to discharge all liabilities that reasonably incur during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by Title 39, chapters 71 and 72, and for actual and necessary expenses required for the efficient administration of the fund.

(3) All money in the fund established under this section not needed to meet immediate expenditures must be invested by the governing body of the public corporation, and all proceeds of the investment shall be credited to the fund.

Approved March 20, 1979.

CHAPTER NO. 156

AN ACT TO AMEND SECTION 39-5-102, MCA, TO EXCLUDE MUSICAL BOOKING SERVICES FROM THE EMPLOYMENT AGENCY ACT AND TO DEFINE THE TERM MUSICAL BOOKING SERVICE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-5-102, MCA, is amended to read:

"39-5-102. Definitions. Unless a different meaning is clearly required by the context, the following words and phrases, as hereinafter used in this chapter, shall have the following meanings:

(1) (a) "Employment agency" is synonymous with "agency" and shall mean any business in which any part of the business's gross or net income is derived from a fee received from applicants and in which any of the following activities are engaged in:

(i) the offering, promising, procuring, or attempting to procure employment for applicants; or

(ii) the giving of information regarding where and from whom employment may be obtained.

(b) In addition, the term "employment agency" shall mean and include any person, bureau, organization, or school which for profit, by advertisement or otherwise, offers as one of its main objects or purposes to procure employment for any person who pays for its services or which collects tuition or charges for service of any nature where the main object of the person paying the same is to secure employment.

(c) The term "employment agency" shall not include labor union organizations, temporary service contractors, proprietary schools, *musical booking services,* or the Montana state employment agency.

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(2) "Temporary service contractors" shall mean any person, firm, association, or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary basis to others.

(3) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(4) "Applicant", except when used to describe an applicant for an employment agency license, means any person, whether employed or unemployed, seeking or entering into any arrangement for his employment or change of his employment through the medium or service of an employment agency.

(5) "Person" includes an individual, a firm, a corporation, a partnership, or an association.

(6) "Director" shall mean the commissioner of the department of labor and industry.

(7) "Musical booking service" means any person, firm, association, or corporation conducting a business which consists solely of obtaining, obtaining offers of, and negotiating employment for individuals or groups of individuals for musical entertainment purposes."

Approved March 20, 1979.

CHAPTER NO. 157

AN ACT TO AMEND SECTION 16-2-101, MCA, BY DELETING THE CLASSIFICATION SYSTEM OF STATE LIQUOR STORES BY VOLUME.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-2-101, MCA, is amended to read:

"16-2-101. Establishment of state liquor stores — kinds and prices of liquor. (1) The department shall establish and maintain one or more stores, to be known as "state liquor stores", as the department finds feasible for the sale of liquor in accordance with the provisions of this code and the rules made thereunder.

(2) The department shall enter into an agency agreement or employ the necessary help to operate said stores and shall designate the duties to be performed by the agent or employees.

(3) The department may from time to time fix the prices at which the various classes, varieties, and brands of liquor may be sold, and prices shall be the same at all state stores."

Approved March 20, 1979.

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CHAPTER NO. 158

AN ACT TO REVISE THE REQUIREMENTS FOR SECURITY FOR DEPOSITS OF PUBLIC FUNDS; AMENDING SECTIONS 7-6-207, 17-6-102, 17-6-103, AND 17-6-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-207, MCA, is amended to read:

"7-6-207. Deposit security. (1) Said local governing body may require security only for any such portion of deposits as is not guaranteed or insured according to law *and, as to such unguaranteed or uninsured portion, only to the extent of 50% of such deposits.* Such security shall consist of those enumerated in 17-6-103.

(2) When negotiable securities are furnished, such securities may be placed in trust. The trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer or town clerk, his successors, and the state of Montana and the form of receipt and the trustee have been approved by the department of community affairs. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It shall be the duty of the appropriate governing body, upon the acceptance and approval of any of the above-mentioned bonds or securities, to make a complete minute entry of such acceptance and approval upon the record of their proceedings, and such bonds and securities shall be reapproved at least quarter-annually thereafter.

(3) (a) It shall be lawful for county, city, or town officials charged by law with the duty of requiring security from depositories of their several public funds to accept from such depository bank as security for such deposits or any part thereof, cashier's checks issued to such depository bank by any federal reserve bank.

(b) Subsection (3)(a) shall be deemed to be supplementary to the provisions of subsections (1) and (2), and shall not in any manner limit or affect the right of the several officers enumerated in said subsection to accept security of the character specified therein."

Section 2. Section 17-6-102, MCA, is amended to read:

"17-6-102. Insurance on deposits. (1) No such deposits in excess of the amount insured by the federal deposit insurance corporation or federal savings and loan insurance corporation shall be made unless the bank, building and loan association, and savings and loan association first delivers to the state treasurer or deposits in trust with some solvent bank, as hereinafter provided, as security therefor, bonds or other obligations of the kinds listed in 17-6-103, having a market value equal to *at least 50% of* the amount of such deposits in excess of the amount so insured. The board of investments may require security of a greater value. When negotiable securities are placed in trust, the trustee's receipt may be accepted instead of the actual securities if the receipt is in favor of the state treasurer, his successors in office, and the state of Montana and the form of receipt and the trustee have been approved by the board of investments.

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(2) Any bank, building and loan association, and savings and loan association pledging securities as provided in this section may at any time substitute securities for any part of the securities pledged. The collateral so substituted shall conform to 17-6-103 and have a market value at least sufficient for compliance with subsection (1) above. If the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the state treasurer and to the depository bank a receipt specifically describing and identifying both the securities substituted and those released and returned to the depository bank."

Section 3. Section 17-6-103, MCA, is amended to read:

"17-6-103. Security for deposits of public funds. The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:

(1) direct obligations of the United States;

(2) securities as to which the payment of principal and interest is guaranteed by the United States;

(3) securities issued or fully guaranteed by the following agencies of the United States, whether or not guaranteed by the United States:

(a) commodity credit corporation;

(b) federal intermediate credit banks;

(c) federal land bank;

(d) bank for cooperatives;

(e) federal home loan banks;

(f) federal national mortgage association;

(g) government national mortgage association;

(h) small business administration; and

(i) federal housing administration (not including insured mortgages);

(4) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;

(5) revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faith and credit of such subdivision;

(6) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state issued in evidence of claims in an amount which, with all other claims on the same fund, do not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;

(7) obligations of housing authorities of the state secured by a pledge of annual contributions or by a loan agreement made by the United States or any agency thereof providing for contributions or a loan sufficient with other funds pledged to pay the principal of and interest on the obligations

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when due. Subject to rules prescribed by the department of community affairs, the bonds and other obligations made eligible for investment in 32-1-424(3) and 7-15-4505 may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required or may by law be deposited as security.

(8) general obligation bonds of other states and of municipalities and counties of other states;

(9) undertaking or guarantees issued by a surety company authorized to do business in the state; *and*

(10) advance refunded bonds secured by direct obligations of the United States treasury held in irrevocable escrow."

Section 4. Section 17-6-105, MCA, is amended to read:

"17-6-105. State treasurer as treasurer of state agencies — deposits of moneys. (1) The state treasurer is designated the treasurer of every state agency and institution.

(2) All state agencies and institutions shall deposit all moneys, credits, evidences of indebtedness, and securities either:

(a) in banks, building and loan associations, or savings and loan associations located in the city or town in which the agencies and institutions are situated, if there is a qualified bank, building and loan association, or savings and loan association in the city or town as designated by the state treasurer with the approval of the board of investments; or

(b) with the state treasurer.

(3) Such bank, building and loan association, or savings and loan association shall pledge securities sufficient to cover *50% of* the deposits at all times.

(4) The deposits shall be made in the name of the state treasurer, shall be subject to withdrawal at his option, and shall draw interest as other state moneys, in accordance with the provisions of this part.

(5) Nothing in this chapter shall impair or otherwise affect any covenant entered into pursuant to law by any agency or institution respecting the segregation, deposit, and investment of any revenues or funds pledged for the payment and security of bonds or other obligations authorized to be issued by such agency, and all such funds shall be deposited and invested in accordance with such covenants notwithstanding any provision of this chapter.

(6) All moneys, credits, evidences of indebtedness, and securities received by a state agency or institution shall be deposited either with the state treasurer or in a depository approved by the state treasurer each day when the accumulated amount of coin and currency requiring deposit exceeds $100 or total collections exceed $500. All moneys, credits, evidences of indebtedness, and securities collected shall be deposited at least weekly.

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(7) Notwithstanding any other provision of state law, when it is determined to be in the best financial interest of the state, the department may require any moneys received or collected by any agency of the state to be immediately deposited to the credit of the state treasurer."

Approved March 20, 1979.

CHAPTER NO. 159

AN ACT TO AMEND SECTIONS 1-11-201 AND 2-15-401, MCA, TO DELETE REFERENCES TO DIVISIONS WITHIN THE LEGISLATIVE COUNCIL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-11-201, MCA, is amended to read:

"1-11-201. Office of code commissioner created. There is created within the legislative council the office of code commissioner."

Section 2. Section 2-15-401, MCA, is amended to read:

"2-15-401. Duties of secretary of state. In addition to the duties prescribed by the constitution, it is the duty of the secretary of state to:

(1) attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform such other duties as may be devolved upon him by resolution of the two houses or either of them;

(2) keep a register of and attest the official acts of the governor;

(3) affix the great seal, with his attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

(4) record in proper books all conveyances made to the state and all articles of incorporation filed in his office;

(5) receive and record in proper books the official bonds of all the state officers and then deliver the originals to the state treasurer;

(6) take and file in his office receipts for all books distributed by him and direct the county clerk of each county to do the same;

(7) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

(8) furnish, on demand, to any person paying the fees, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in his office;

(9) notify in writing the county attorney of the proper county of the failure of any officer in his county to file in his office the sworn statement of fees received by such officer;

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(10) present to the legislature, at the commencement of each session, a full account of all purchases made and expenses incurred in furnishing fuel, lights, and stationery;

(11) keep a fee book in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein;

(12) file in his office descriptions of seals in use by the different state officers and furnish such officers with new seals whenever required;

(13) discharge the duties of member of the board of examiners and of the board of land commissioners and all other duties required of him by law;

(14) report to the governor, at the time prescribed in 2-7-102, a detailed account of all official actions since his previous reports, accompanying the report with a detailed statement, under oath, of the manner in which all appropriations for his office have been expended;

(15) receive, designate, and record trademarks as provided in 30-13-103;

(16) distribute the bound volumes of the decisions of the supreme court in the manner provided by 3-2-604;

(17) report annually to the legislative council all changes of names received pursuant to 27-31-205 for publication in the *Laws of Montana*;

(18) report annually to the legislative council all watercourse name changes received pursuant to 85-2-134 for publication in the *Laws of Montana.*"

Approved March 20, 1979.

CHAPTER NO. 160

AN ACT TO SET THE MAXIMUM FINANCE CHARGE FOR RETAIL INSTALLMENT SALES OF ANY MANUFACTURED STRUCTURE OR RECREATIONAL VEHICLE AT $9 PER $100 PER YEAR; DEFINING MANUFACTURED STRUCTURE AND RECREATIONAL VEHICLE; AMENDING SECTIONS 31-1-202 AND 31-1-241, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-202, MCA, is amended to read:

"31-1-202. Definitions. (1) Unless the context requires otherwise, in this part the following definitions apply:

(a) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller

to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services which are the subject matter of the retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees and cash sale prices for services, if any, and for accessories and their installation and for delivering, servicing, repairing, or improving the goods.

(b) "Department" means the department of business regulation provided for in Title 2, chapter 15, part 18.

(c) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(d) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal but not including money or things in action. The term includes goods which, at the time of the sale or subsequently, are to be so affixed to realty as to become a part thereof, whether or not severable from it.

(e) "Holder" means the retail seller of the goods or services under the retail installment contract or retail charge account agreement or a person who establishes and administers retail charge account agreements with retail buyers; the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred; or any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

(f) "Manufactured structure" means any structure, transportable in one or more sections, designed to be used as a single-family dwelling or commercial building with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

(g) "Motor vehicle" means any new or used automobile, motorcycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway, excepting, however, any vehicle which runs only on rails or tracks or in the air.

(h) "Official fees" means the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(i) "Person" means an individual, partnership, corporation, association, and any other group, however organized.

(j) "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is

made therefor and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's down payment in money or goods.

(k) "Recreational vehicle" means a vehicular type unit that either has its own motor power or is mounted on or drawn by another vehicle, primarily designed as temporary living quarters for recreational, camping, or travel use.

(l) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(m) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions which may be made under it from time to time under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller and under the terms of which a finance charge as defined in this section may be computed in relation to the buyer's balance in the account from time to time.

(n) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state under which a buyer promises to pay in one or more deferred installments the time sale price of goods or services, or both. The term includes a chattel mortgage, conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(o) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

(p) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

(q) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, or savings and loan association, if so engaged. The term does not include a person who makes only isolated purchases of retail installment contracts, which purchases are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(r) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

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(s) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits, if a separate identified charge is made therefor, and the amounts of the official fees and the finance charge.

(2) This part does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending institutions. However, this part pertains to the extension of credit by those banks or other lending institutions under retail installment contracts or credit cards issued by those banks or other lending institutions."

Section 2. Section 31-1-241, MCA, is amended to read:

"31-1-241. Finance charge limitation. (1) Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract shall not exceed the following schedule:

(a) as to motor vehicles:

(i) class 1—any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made, $7 per $100 per year;

(ii) class 2—any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than 2 years prior to the year in which the sale is made, $9 per $100 per year;

(iii) class 3—any used motor vehicle not in class 2 and designated by the manufacturer by a year model more than 2 years prior to the year in which the sale is made, $11 per $100 per year.

(b) as to any industrial or construction equipment primarily designed for or used in construction, logging, mining, or other industrial business, the price of which is over $5,000, $9 per $100 per year. This subsection shall not apply to agricultural equipment.

(c) as to any manufactured structure or recreational vehicle, $9 per $100 per year.

(d) as to services and goods other than as provided under subsections (1)(a), (1)(b), *and (1)(c)* above:

(i) on so much of the principal balance as does not exceed $300, $11 per $100 per year;

(ii) if the principal balance exceeds $300 but is less than $1,000, $9 per $100 per year on that portion over $300;

(iii) if the principal balance exceeds $1,000, $7 per $100 per year on that portion over $1,000.

(2) Such finance charge shall be computed on the principal balance as determined under 31-1-231(5) on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total time

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balance thereof is required to be paid in installments. A minimum finance charge of $20 may be charged on any retail installment contract.

(3) When a retail installment contract provides for payment other than in equal successive monthly installments, the finance charge may be a rate which will provide the same yield as is permitted on monthly payment contracts under subsections (1) and (2) hereof, having due regard for the schedule of payments in the contract.

(4) Notwithstanding the provisions of any other law, a retail charge account agreement may provide for and the seller or holder may charge, collect, and receive a finance charge as specified herein for the privilege of paying in installments thereunder. The finance charge may be computed from month to month (which need not be a calendar month) or other regular billing cycle period by applying a rate not to exceed 1 ½% for each such monthly period to an amount (not including any unpaid finance charge) not in excess of the greatest of:

(a) the average daily balance in the account in the billing cycle period;

(b) the ending balance of the account as of the last day of the billing cycle less the amount of purchases charged to the account during that billing cycle; or

(c) the median amount within a $10 range within which such average daily balance or beginning balance falls, provided the seller applies the same rate of finance charge to all such balances within such range.

(5) If the finance charge so determined pursuant to (4) above for such monthly period is less than 50 cents, a maximum finance charge not in excess of 50 cents may be charged, received, and collected for such period."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 20, 1979.

CHAPTER NO. 161

AN ACT TO REPEAL SECTION 7-21-2216, MCA, TO REPEAL THE LICENSE FEE REQUIRED OF AN ARCHITECT, BUILDER, CONTRACTOR, OR MANUFACTURER DOING MORE THAN $15,000 BUSINESS PER YEAR.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 7-21-2216, MCA, is repealed.

Approved March 20, 1979.

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CHAPTER NO. 162

AN ACT REQUIRING SELLERS OF LIVESTOCK EXEMPTED FROM CHANGE-OF-OWNERSHIP BRAND INSPECTION, WHEN THE SALE IS OF FIVE HEAD OR LESS, TO NOTIFY THE DEPARTMENT OF LIVESTOCK OF SUCH SALE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Notification of department of sales of five head or less.** (1) A person selling five or less head of livestock at a place other than a licensed livestock market shall notify the department of the number, type, class, and marks and brands on the livestock within 10 days of the sale. He shall also notify the department of the name and address of the buyer. Livestock inspected pursuant to 81-3-211(1) and 81-3-213 are exempt from this section.

(2) The department shall prescribe the manner and form of the notification and shall receive a fee not to exceed 50 cents from the person making notification. All fees received under [this act] shall be paid to the department for deposit in the state treasury to the credit of the earmarked revenue account of the department.

Section 2. **Codification.** Section 1 is intended to be codified as an integral part of Title 81, chapter 3, part 2, and the provisions contained in Title 81, chapter 3, part 2, apply to this section.

Approved March 20, 1979.

CHAPTER NO. 163

AN ACT TO PROVIDE FOR A SENIOR CITIZEN REPRESENTATIVE ON THE BOARD OF NURSING HOME ADMINISTRATORS; AMENDING SECTION 2-15-1611.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1611, MCA, is amended to read:

"2-15-1611. Board of nursing home administrators. (1) There is a board of nursing home administrators.

(2) The board consists of five voting members appointed by the governor. No more than two members shall be nursing home administrators. *One member shall represent the public at large and must be 55 years of age or older at the time of appointment.* The other *two* members shall be representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients *and may not* be from the same profession *or* have a financial interest in a nursing home.

(3) The director of the department of health and environmental sciences or his designee and the director of the department of social and

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rehabilitation services or his designee are ex officio, nonvoting members of the board.

(4) *The appointee representing the public at large shall be selected by the governor.* The *remaining* appointees shall be selected from a list of three nominees submitted for each appointee by the board of directors of the Montana nursing home association, inc.

(5) Each appointed member shall serve for a term of 5 years. Any vacancy occurring in the position of an appointive member shall be filled by the governor for the unexpired term *in the same manner provided for in subsection (4).*

(6) Appointive members may be removed by the governor only for cause.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Approved March 20, 1976.

CHAPTER NO. 164

AN ACT TO REPEAL SECTION 85-16-105, MCA, TO REMOVE DOCKS AND WHARVES FROM THE JURISDICTION OF THE PUBLIC SERVICE COMMISSION.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 85-16-105, MCA, is repealed.

Approved March 20, 1979.

CHAPTER NO. 165

AN ACT TO PROVIDE FOR A SEMIANNUAL DUE DATE FOR SPECIAL IMPROVEMENT DISTRICT ASSESSMENTS AND INSTALLMENTS; AMENDING SECTIONS 7-12-4188, 7-12-4202, 7-12-4203, AND 15-16-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-4188, MCA, is amended to read:

"7-12-4188. Due date for district assessments. (1) All special assessments or installments of special assessments in cities and towns, duly and regularly levied by resolution according to law, shall be payable on or before 6 p.m. on November 30 of each year *except as provided in subsection (2).*

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(2) The governing body of a municipality may provide by resolution that one-half of the payment on special assessments, or installments of special assessments may be deferred to no later than 5 p.m. on May 31 of the following year.

(3) In the event the same are not paid on or before said date, the same shall be subject to the same interest and penalties for nonpayment as are or may hereafter be provided by the laws of Montana for other delinquent taxes."

Section 2. Section 15-16-102, MCA, is amended to read:

"15-16-102. Time for payment — penalty for delinquency. All taxes levied and assessed in the state of Montana, *except on municipal special improvement district bonds sold on or before July 1, 1979,* shall be payable as follows:

(1) One-half of the amount of such taxes shall be payable on or before 5 p.m. on November 30 of each year and one-half on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of such taxes are paid on or before 5 p.m. on November 30 of each year, then such amount so payable shall become delinquent and shall draw interest at the rate of ⅔ of 1% per month from and after such delinquency until paid, and 2% shall be added to the amount thereof as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year shall be delinquent and shall draw interest at the rate of ⅔ of 1% per month from and after such delinquency until paid, and 2% shall be added to the amount thereof as a penalty."

Section 3. Section 7-12-4202, MCA, is amended to read:

"7-12-4202. Form of bond or warrant. Such bonds or warrants shall be drawn in substantially the following form:

District No. ....
United States of America
State of Montana

Warrant or (Bond No. ....) — Dollars $.....

Interest at the rate of ....% per annum, payable *semiannually.*
Special Improvement District Coupon Warrant or Bond

...., Montana
Issued by the city of ...., Montana

The treasurer of the city of ...., Montana, will pay to bearer the sum of .... dollars as authorized by resolution No. .... as passed on the .... day of ...., 19.., creating special improvement district No. .... for the construction of the improvements and the work performed as authorized by said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the city treasurer of ...., Montana.

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This warrant (or bond) bears interest at the rate of ....% per annum from the day of registration of this warrant (or bond), as expressed herein, until the date called for redemption by the city treasurer. The interest on this warrant (or bond) is payable *semiannually* on the first day of .... in each year *and on the first day of .... in each year*, unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement district, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the city at any time there are funds to the credit of said special improvement district fund for the redemption thereof and in the manner provided for the redemption of the same.

It is hereby certified and recited that all things required to be done precedent to the issuance of this warrant (or bond) have been properly done, happened and been performed in the manner prescribed by the laws of the state of Montana and the resolutions and ordinances of the city of ...., Montana, relating to the issuance thereof.

(seal)

Dated at ...., Montana, this .... day of...., 19...
City of ...., Montana

By: ...., Mayor
...., City clerk

Registered at the office of the city treasurer of ...., Montana, this .... day of ...., 19...

.... City treasurer"

Section 4. Section 7-12-4203, MCA, is amended to read:

"7-12-4203. Details relating to special improvement district bonds and warrants. (1) The bonds and warrants shall be drawn against the special improvement district fund created for the district and shall bear interest from the date of registration until called for redemption or paid in full. The interest shall be payable *semiannually* on January 1 *and on the first day of July* of each year unless the council prescribes *other dates*. Such warrants (or bonds) shall bear the signatures of the mayor and clerk and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signatures of the mayor and clerk.

(2) Said bonds shall be in denominations of $100 or fractions or multiples thereof, may be issued in installments, and may extend over a period not to exceed 20 years."

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 20, 1979.

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CHAPTER NO. 166

AN ACT TO CHANGE THE MANNER OF PAYMENT OF ESTATE TAX RELATING TO DUE DATE AND INTEREST TO CONFORM WITH THE MANNER OF PAYMENT OF INHERITANCE TAX; AMENDING SECTION 72-16-909, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-16-909, MCA, is amended to read:

"72-16-909. When and where tax payable — interest. The estate tax shall be payable to the county treasurer of the county in which such estate is being probated *in the same manner provided for the payment of inheritance taxes in 72-16-441.*"

Approved March 20, 1979.

CHAPTER NO. 167

AN ACT TO MODIFY THE PROCEDURE FOR EXECUTING WARRANTS ISSUED BY THE DEPARTMENT OF REVENUE FOR THE COLLECTION OF UNPAID INDIVIDUAL INCOME TAX; PROVIDING THAT THE DEPARTMENT OF REVENUE'S DESIGNATED AGENT MAY MAKE NOTICE OF LEVY BY CERTIFIED MAIL; AMENDING SECTION 15-30-311, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-311, MCA, is amended to read:

"15-30-311. Levy upon and sale of property. (1) If any tax imposed by this chapter, except 15-30-221 through 15-30-228, or any portion of such tax is not paid within 60 days after the same becomes due, the department shall issue a warrant under its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person owing the same found within his county for the payment of the amount thereof, with the added penalties, interest, and the cost of executing the warrant, and to return such warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified, not more than 60 days from the date of the warrant.

(2) The sheriff shall, within 5 days after the receipt of the warrant, file with the clerk of the district court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant and, in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien

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upon the title to and interest in real property or chattels real of the person against whom it is levied in the same manner as a judgment docketed in the office of such clerk.

(3) The sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the department, a warrant of like terms, force, and effect may be issued and directed to any agent authorized to collect income taxes and, in the execution thereof, such agent shall have the powers conferred by law upon sheriffs but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. *In the execution of such warrants, a notice of levy issued by the department's authorized agent may be served by certified mail.*

(4) If a warrant be returned not satisfied in full, the department shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 20, 1979.

CHAPTER NO. 168

AN ACT TO PERMIT NONRESIDENT BOATERS 90 DAYS' RECIPROCITY; AMENDING SECTION 23-2-514, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-514, MCA, is amended to read:

"23-2-514. Exemption from numbering provisions. A motorboat shall not be required to be numbered under this part if it is:

(1) already covered by a number in full force and effect which has been awarded to it pursuant to federal law or a federally approved numbering system of another state, provided that such vessel shall not have been within this state for a period in excess of *90* consecutive days. After *90* consecutive days within this state, this state becomes the motorboat's state of principal use and the owner must apply for a Montana number, certificate of number, and license decal.

(2) a motorboat from a country other than the United States temporarily using the waters of this state;

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(3) a motorboat whose owner is the United States, a state or subdivision thereof;

(4) a ship's lifeboat."

Approved March 20, 1979.

CHAPTER NO. 169

AN ACT TO PROHIBIT EXCLUSIONS FROM INSURANCE POLICIES AND MEMBERSHIP CONTRACTS WHICH REDUCE OR DENY BENEFITS TO PERSONS ELIGIBLE TO RECEIVE PUBLIC MEDICAL ASSISTANCE; AMENDING SECTIONS 33-22-112 AND 33-30-1002, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-112, MCA, is amended to read:

"33-22-112. Disability insurance coverage of services of state institutions — provision void — rate of payment. (1) From and after February 14, 1973, it shall be unlawful for any insurance company issuing disability insurance policies in Montana to exclude from coverage in a disability insurance policy services rendered the insured while a resident in a Montana state institution, provided *the* services to *the* insured would be covered by *the* disability insurance policy if rendered to him outside *a* Montana state institution.

(2) A disability insurance policy *is considered* issued in Montana if the insured purchasing *the* disability insurance policy is, at the time of *the* purchase, residing in the state of Montana.

(3) If the exclusion prohibited by this section should appear in a disability insurance policy issued in Montana after February 14, 1973, *the* provision *is* void and *the* disability insurance policy will be *considered* to cover services rendered the insured in a Montana state institution if *the* services would have been covered if rendered to an insured outside of a Montana state institution.

(4) Payment for services rendered in a Montana state institution shall be to the same extent and at the same rates, according to the provisions of *the* disability policy, which would be paid for *the* services if rendered outside a Montana state institution."

Section 2. **Disability insurance coverage of persons eligible for public medical assistance.** No disability insurance policy providing hospital, medical, or surgical expense benefits delivered or issued for delivery in this state on or after July 1, 1979, may contain any provision denying or reducing such benefits for the reason that the person insured is eligible for or receiving public medical assistance provided under Title 53, chapter 2.

Section 3. Section 33-30-1002, MCA, is amended to read:

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"33-30-1002. Disability coverage of services received in state institutions from public medical assistance — provision void — rate of payment. (1) From and after February 14, 1973, it shall be unlawful for any health service corporation issuing *membership contracts* in Montana to exclude from coverage in a *membership contract* services rendered the insured while a resident in a Montana state institution, provided *the* services to *the* insured would be covered by *the membership contract* if rendered to him outside *a* Montana state institution.

(2) A *membership contract is considered* issued in Montana if the insured purchasing *the membership contract* is, at the time of such purchase, residing in the state of Montana.

(3) If the exclusion prohibited by this section should appear in a *membership contract* issued in Montana after February 14, 1973, *the* provision *is* void and *the membership contract* will be *considered* to cover services rendered the insured in a Montana state institution if *the* services would have been covered if rendered to an insured outside of a Montana state institution.

(4) Payment for services rendered in a Montana state institution shall be to the same extent and at the same rates, according to the provisions of *the membership contract*, which would be paid for *the* services if rendered outside a Montana state institution.

(5) No membership contract issued by a health service corporation on or after July 1, 1979, may deny or reduce benefits to any member on the ground that the person insured is eligible for or receiving public medical assistance provided under Title 53, chapter 2."

Section 4. **Codification.** It is intended that section 2 be codified as an integral part of Title 33, chapter 22, part 1, and the definitions and provisions of Title 33, chapter 22, apply to section 2.

Approved March 20, 1979.

CHAPTER NO. 170

AN ACT TO CHANGE THE DEFINITION OF "BENEFIT YEAR" FOR UNEMPLOYMENT COMPENSATION; AMENDING SECTION 39-51-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) The word "administrator" refers to a person appointed by the commissioner of labor and industry to direct and administer the unemployment compensation laws and federal laws falling within the administrator's jurisdiction.

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(2) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(3) "Annual total payroll" means the total of the 4 quarters of total payrolls of an employer preceding the computation date as fixed herein.

(4) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state.

(5) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(6) "Benefit year", with respect to any individual, means the 52 consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim *for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year.* However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state.

(7) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(8) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(9) "Contributions" means the money payments to the state unemployment compensation fund required by this chapter.

(10) "Division" means the employment security division of the department of labor and industry provided for in Title 2, chapter 15, part 17.

(11) "Employing unit" means any individual or type of organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203, and all individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid

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directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(12) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the division may approve.

(13) "Fund" means the unemployment compensation fund established by this chapter to which all contributions and payments in lieu of contributions are required and from which all benefits provided under this chapter shall be paid.

(14) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or his employer.

(15) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(16) (a) "Institution of higher education", for the purposes of this part, means an education institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(17) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(18) "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(19) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of

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remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the division.

(b) The term "wages" shall not include:

(i) the amount of any payment made to or on behalf of an employee by an employer on account of:

(A) retirement;

(B) sickness or accident disability;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from welfare assistance funds for services performed at the direction and request of such county welfare office.

(20) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(21) An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for 1 week of total unemployment.

(22) The word "division" throughout the unemployment statutes refers to a unit of the Montana state department of labor and industry.

(23) The words "board of labor appeals" used in this chapter mean three persons appointed by the governor who are not public employees but who are attached to the Montana state department of labor and industry. The function of said board is to act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws."

Approved March 20, 1979.

CHAPTER NO. 171

AN ACT TO REQUIRE THE POLLS TO BE OPEN FROM NOON UNTIL 8 P.M. FOR DRAINAGE DISTRICT ELECTIONS; AMENDING SECTION 85-8-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-8-304, MCA, is amended to read:

"**85-8-304. Conduction of election.** Any judge of election may administer any oath required to be administered during the progress of an election. Before the opening of the polls the judges of election must take and subscribe an oath to faithfully perform the duties imposed upon them by law, and such oath may be administered by any elector. The polls shall open at 12 noon and be kept open until *8* p.m., when the same shall be

closed. Such elections shall be conducted, except as herein otherwise provided, as nearly as practicable in accordance with the provisions of the general election laws of the state, except that no registration shall be required. As soon as the polls are closed the judges shall count and tabulate the votes cast and make out a certificate, to be signed by them, showing the total number of votes cast at the election and the total number cast for each candidate for commissioner and shall deliver such certificate, with a list of the electors voting at such election, to the board of commissioners. Such board of commissioners shall meet on the first Monday following such election and canvass such returns. The board shall declare elected the person or persons receiving the highest number of votes. The clerk of the board of directors shall enter the result of such canvass in the minutes of the board and file with the clerk of the district court creating the district a statement showing the names of the persons elected as commissioners, the names of the commissioners whose term will expire on the first Tuesday in May following, and the names of all of the persons who will compose the board of directors for the year next following the first Tuesday in May."

Approved March 20, 1979.

CHAPTER NO. 172

AN ACT TO ALLOW USE OF INTRODUCED SPECIES IN REVEGETATION OF AREAS DISTURBED BY COAL OR URANIUM MINING; AMENDING SECTIONS 82-4-232 AND 82-4-233, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-232, MCA, is amended to read:

"82-4-232. Area mining required — bond — alternative plan. (1) Area strip mining, a method of operation which does not produce a bench or fill bench, is required where strip mining is proposed. All highwalls must be reduced and the steepest slope of the reduced highwall shall be no greater than 20 degrees from the horizontal. Highwall reduction shall be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading shall eliminate all highwalls and spoil peaks. The area of land affected shall be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading such diversion ditches, depressions, or terraces as will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure whatsoever to accomplish the purpose of this part.

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(3) All available topsoil shall be removed in a separate layer, guarded from erosion and pollution, kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, and returned as the top layer after the operation has been backfilled and graded, provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil.

(4) As determined by rules of the board, time limits shall be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling shall be completed before necessary equipment is moved from the operation.

(5) When the backfilling, grading, subsidence stabilization, water controls, and topsoiling have been completed and approved by the department, the commissioner may release so much of the bond which was filed for that portion of the operation as the commissioner may determine, provided that no less than $200 per acre shall be retained by the department until such time as the planting and revegetation is done according to law and approved by the department, at which time the commissioner shall release the bond in the remaining amount.

(6) An operator may propose alternative plans other than backfilling, grading, highwall reduction, topsoiling, *or seeding to a permanent diverse vegetative cover* if the restoration will be consistent with the purpose of this part. These plans shall be submitted to the department, and after consultation with the landowner, if the plans are approved by the board and complied with within the time limits as may be determined by the board as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, topsoiling, *or revegetation* requirements of this part may be modified by the board. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of 82-4-222(1)(k).

(7) If alternate revegetation is proposed, a management plan must be submitted showing how the area will be utilized and any data necessary to show that the alternate postmining land use can be achieved. Any plan must require the operation as a minimum to:

(a) restore the land affected to a condition capable of supporting the use which it was capable of supporting prior to any mining operation or to a higher or better use of which there is a reasonable likelihood, if the use or uses do not present any actual or probable threat of water diminution or pollution, and if the permit applicant's proposed land use following reclamation is not deemed to be impractical, unreasonable, or inconsistent with applicable land use policies and plans, would not involve unreasonable delay in implementation, and would not violate federal, state, or local law; and

(b) prevent soil erosion to the extent achieved prior to mining."

Section 2. Section 82-4-233, MCA, is amended to read:

"82-4-233. Planting of vegetation following grading of disturbed area. (1) After the operation has been backfilled, graded, topsoiled, and approved by the department, the operator shall *prepare the soil and plant such legumes, grasses, shrubs, and trees as are necessary to establish on the regraded areas and all other lands affected a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. The vegetative cover must be capable of:*

(a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation;

(b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and

(c) preventing soil erosion to the extent achieved prior to the operation.

(2) The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse vegetative cover shall be defined by rules of the board.

(3) All underground shafts, tunnels, or other excavations are excluded from the provisions of subsection (1) of this section."

Approved March 20, 1979.

CHAPTER NO. 173

AN ACT TO AMEND SECTION 61-5-106, MCA, TO ALLOW STUDENTS WHO HAVE COMPLETED DRIVER EDUCATION TO OBTAIN AN INSTRUCTION PERMIT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-106, MCA, is amended to read:

"61-5-106. Instruction and traffic education permits and temporary licenses. (1) Any person satisfying the age requirements specified in 61-5-105(1) may apply to the division for an instruction permit. The division may in its discretion, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the public highways for a period of 6 months when accompanied by a licensed operator or chauffeur who is occupying a seat beside the

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driver. In addition, the division may issue such an instruction permit to any person who is at least 14 ½ years of age and who *has successfully completed or* is successfully participating in a traffic education course approved by the division and the superintendent of public instruction. Any instruction permit so issued shall be restricted to the operation of a motor vehicle only when accompanied by an approved instructor or licensed parent or guardian and may be further restricted to specific times and/or areas.

(2) The division upon receiving proper application may in its discretion issue a traffic education permit effective for a school year or more restricted period to an applicant who is enrolled in a traffic education program approved by the division even though the applicant has not reached the legal age to be eligible for an operator's license. Such permit shall entitle the permittee when he has such a permit in his immediate possession to operate only on a designated highway or within a designated area a motor vehicle only when an approved instructor is occupying a seat beside the permittee or a motorcycle only when under the immediate and proximate supervision of an approved instructor.

(3) The division may in its discretion issue a temporary driver's permit to an applicant for an operator's license permitting him to operate a motor vehicle while the division is completing its investigation and determination of all facts relative to such applicant's right to receive an operator's license. Such permit must be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused."

Approved March 21, 1979.

CHAPTER NO. 174

AN ACT AMENDING SECTION 82-4-351, MCA, TO CLARIFY WATER AND AIR QUALITY REQUIREMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-351, MCA, is amended to read:

"82-4-351. Reasons for denial of permit. (1) A permit may be denied for any of the following reasons:

(a) the plan of development, mining, or reclamation conflicts with *Title 75, chapter 2, MCA, as amended, Title 75, chapter 5, MCA, as amended, Title 75, chapter 6, MCA, as amended, or rules adopted pursuant to these laws*;

(b) the reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this part.

(2) A denial of a permit shall be in writing and state the reasons therefor."

Approved March 21, 1979.

CHAPTER NO. 175

AN ACT VESTING IN THE BUDGET DIRECTOR RESPONSIBILITY FOR STATE DATA PROCESSING NEEDS; AND REPEALING SECTION 18-4-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Responsibilities of budget director for data processing.** The budget director shall:

(1) establish guidelines for the operation and development of data processing services by or for state government;

(2) set priorities for the development and acquisition of data processing systems;

(3) approve the procurement of data processing equipment before such equipment is acquired for state government by the department of administration;

(4) approve the addition of data processing staff; and

(5) review and approve all contracts for private sector data processing services.

Section 2. **Repealer.** Section 18-4-103, MCA, is repealed.

Approved March 21, 1979.

CHAPTER NO. 176

AN ACT TO REMOVE CERTAIN RESPONSIBILITIES CONCERNING FEDERAL ASSISTANCE MANAGEMENT FROM THE BUDGET DIRECTOR; REPEALING SECTION 17-3-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 17-3-103, MCA, is repealed.

Approved March 21, 1979.

CHAPTER NO. 177

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO HUMAN RIGHTS; AND REPEALING SECTION 64-104, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-1-101, MCA, is amended to read:

"49-1-101. Right of protection from personal injury. Besides the personal rights mentioned or recognized in *other statutes* and subject

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to the qualifications and restrictions provided by law, every person has the right of protection from bodily restraint or harm, personal insult, defamation, and injury to his personal relations."

Section 2. Section 49-2-101, MCA, is amended to read:

"49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor. *It includes without limitation* the right to incur and defer debt which is secured by residential real property.

(4) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(5) "Creditor" means a person who, regularly or as a part of his business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(6) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(7) "Employee" means any individual employed by an employer.

(8) "Employer" means an employer of one or more persons but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide *accommodations* or services that are available on a nonmembership basis.

(9) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(10) "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, *investment company,* or insurance company.

(11) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, which is or will be used as the sleeping quarters of its occupants.

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(12) "Labor organization" means an organization or an agent of *an* organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid *and* protection of employees.

(13) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence.

(14) "National origin" means ancestry.

(15) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated *employees' associations*, employers, employment agencies, or labor organizations.

(16) "Physical handicap" means a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy. It *includes* without limitation any degree of paralysis; amputation; lack of physical coordination; blindness or visual impediment; deafness or hearing impediment; muteness or speech impediment; or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or device.

(17) "Public accommodation" means a place which caters or offers its services, goods, or facilities to the general public *subject only to the conditions and limitations established by law and applicable to all persons alike. It includes without limitation* a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, *nightclub*, trailer park, resort, campground, *barbershop*, beauty parlor, bathroom, *resthouse*, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, *or* hospital and all other public amusement and business establishments.

(18) "Staff" or "commission staff" means the staff of the commission for human rights."

Section 3. Section 49-2-202, MCA, is amended to read:

"49-2-202. Authority to require posted notice. The commission may require any employer, employment agency, labor union, educational institution, *or* financial institution or the owner, lessee, manager, agent, or employee of any public accommodation or housing accommodation subject to this chapter to post, in a conspicuous place on his premises or in the accommodation, a notice to be prepared or approved by the commission containing relevant information that the commission *considers* necessary to explain this chapter. Any person *or institution* subject to this section *who refuses* to comply with an order of the commission respecting the posting of *a* notice is guilty of a misdemeanor *and* punishable by a fine of not more than $50."

Section 4. Section 49-2-301, MCA, is amended to read:

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"**49-2-301. Retaliation prohibited.** It is an unlawful discriminatory practice for a person, *educational institution, financial institution, or governmental entity or agency* to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter."

Section 5. Section 49-2-302, MCA, is amended to read:

"**49-2-302. Aiding, coercing, or attempting.** It is unlawful for a person, *educational institution, financial institution, or governmental entity or agency* to aid, abet, incite, compel, or coerce the doing of an act forbidden under this chapter or to attempt to do so."

Section 6. Section 49-2-305, MCA, is amended to read:

"**49-2-305. Discrimination in housing.** (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, creed, religion, color, age, physical or mental handicap, or national origin;

(b) to discriminate against a person because of sex, race, creed, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of *the* housing accommodation or property; or

(c) to make a written or oral inquiry or record of the sex, race, creed, religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent *the* housing accommodation or property.

(2) A private residence designed for single-family occupancy in which sleeping space is rented to guests and in which the landlord also resides is excluded from the provisions of this section."

Section 7. Section 49-2-401, MCA, is amended to read:

"**49-2-401. Procedure for claiming exemption.** A person, *educational institution, financial institution, or governmental entity or agency* who *or which* seeks to be exempted from the requirements of part 3 of this chapter may petition the commission for a declaratory ruling as provided in 2-4-501 of the Montana Administrative Procedure Act. If the commission finds that reasonable grounds for granting an exemption exist, it may issue a ruling exempting the petitioner from the particular provision. This section, however, shall be strictly construed, and the burden *is* on the petitioner to demonstrate that an exemption should be granted."

Section 8. Section 49-2-501, MCA, is amended to read:

"**49-2-501. Filing complaints.** (1) A complaint may be filed by or on behalf of any person claiming to be aggrieved by any discriminatory

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practice prohibited by this chapter. The complaint *must* be in the form of a written, verified complaint stating the name and address of the person, *educational institution, financial institution, or governmental entity or agency* alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.

(2) A complaint under this chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory practice occurred or was discovered. Any complaint not filed within the time set forth herein may not be considered by the commission."

Section 9. Section 49-2-505, MCA, is amended to read:

"49-2-505. Contested case hearing. (1) If the informal efforts to eliminate the alleged discrimination are unsuccessful, the staff shall inform the commission of the failure and the commission shall cause written notice to be served, together with a copy of the complaint, requiring the person, *educational institution, financial institution,* or *governmental entity or* agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission.

(2) The hearing *must* be held by the commission in the county where the unlawful conduct is alleged to have occurred unless the person, *institution, entity, or* agency *charged in the complaint* or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the staff, the complainant, or an attorney representing the complainant. The hearing and any subsequent proceedings under this chapter *must* be held in accordance with the Montana Administrative Procedure Act *except as provided in 49-2-508.*

(3) The commission may make *provisions* for defraying the expenses of *an* indigent party in a contested *case* hearing held pursuant to this chapter."

Section 10. Section 49-2-506, MCA, is amended to read:

"49-2-506. Procedure upon a finding of discrimination. (1) If the commission finds that a person, *institution, entity, or agency* against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, *the commission* shall order him *or it* to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) The order may not require the payment of any punitive damages.

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(3) Whenever a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with that order or agreement, the period of time *may not* be more than 3 years."

Section 11. Section 49-2-507, MCA, is amended to read:

"49-2-507. Procedure upon failure to find discrimination. If the commission finds that a person, *institution, entity, or agency* against whom *or which* a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and cause to be served on the complainant an order dismissing the complaint."

Section 12. Section 49-2-601, MCA, is amended to read:

"49-2-601. Criminal penalty. A person, *educational institution, or financial institution, either* public *or* private, *or a governmental entity or agency* who or which willfully engages in an unlawful discriminatory practice prohibited by this chapter or willfully resists, prevents, impedes, or interferes with the commission, the department, or any of its authorized representatives in the performance of *a* duty under this chapter or who or which willfully violates an order of the commission or *willfully* violates this chapter in any other manner is guilty of a misdemeanor and is punishable by a fine of not more than $500 or by imprisonment for not more than 6 months, or both."

Section 13. Section 49-3-101, MCA, is amended to read:

"49-3-101. Definitions. As used in this chapter, the following definitions apply:

(1) "State and local governmental agencies" means:

(a) all branches, departments, offices, boards, bureaus, commissions, agencies, university units, colleges, *and* other *instrumentalities* of state government; and

(b) counties, cities, towns, school districts, *and other units of local government and all instrumentalities* of local government.

(2) "Qualifications" means such qualifications as are genuinely related to competent performance of the particular occupational task."

Section 14. Section 49-3-201, MCA, is amended to read:

"49-3-201. Employment of state and local government personnel. (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state *and local* government;

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(b) regularly review their personnel practices to assure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall insure that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to insure utilization of minority group persons."

Section 15. Section 49-3-203, MCA, is amended to read:

"49-3-203. Educational, counseling, and training programs. All *educational*, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state *and* local *governmental* agencies or in which state *and* local *governmental* agencies participate *must* be open to all persons, who *must* be accepted on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. Such programs *must* be conducted to encourage the full development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of culturally deprived, educationally handicapped, or economically disadvantaged persons. Expansion of training opportunities under these programs *must* be encouraged to involve larger numbers of participants from those segments of the labor force *in which* the need for upgrading levels of skill is greatest."

Section 16. Section 49-3-204, MCA, is amended to read:

"49-3-204. Licensing. No state or local *governmental* agency may grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. Each state *or* local *governmental* agency shall take such appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chapter."

Section 17. Section 49-3-205, MCA, is amended to read:

"49-3-205. Governmental services. (1) All services of every state *or* local governmental agency *must* be performed without discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

(2) No state or local facility may be used in the furtherance of any discriminatory practice, nor may a state or local *governmental* agency become a party to an agreement, arrangement, or plan which has the effect of sanctioning discriminatory practices.

(3) Each state *or* local *governmental* agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this chapter and shall initiate comprehensive programs to remedy any defect found to exist."

Section 18. Section 49-3-207, MCA, is amended to read:

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"49-3-207. Nondiscrimination provision in all public contracts. Every state or local contract or subcontract for construction of public buildings or for other public work or for goods *or* services shall contain a provision that all hiring *must* be on the basis of merit and qualifications and a provision that there may be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin by the persons performing the contract."

Section 19. Section 49-3-208, MCA, is amended to read:

"49-3-208. Public accommodations laws. No state or local *governmental* agency *may* permit any violation of the public accommodations provisions of 49-2-304."

Section 20. Section 49-3-301, MCA, is amended to read:

"49-3-301. Cooperation with commission for human rights. All state and local *governmental* agencies shall cooperate with the commission for human rights in the commission's enforcement and educational programs. They shall comply with the commission's *requests* for information concerning practices inconsistent with the state policy against discrimination and shall consider its recommendations for effectuating and implementing that policy. The commission shall continue to augment its enforcement and *educational* programs which seek to eliminate all discrimination."

Section 21. Section 49-3-302, MCA, is amended to read:

"49-3-302. Annual reports to governor. All state *governmental agencies* which report to the governor shall include in their annual reports to the governor activities undertaken in the past year to effectuate this chapter. Such reports shall cover both internal activities and external relations with the public or with other state agencies and shall contain other information as specifically requested by the governor."

Section 22. Section 49-4-211, MCA, is amended to read:

"49-4-211. Right to use public places and accommodations. (1) The blind and the visually handicapped have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) The blind and the visually handicapped are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, *as defined in 69-11-101, and all* public *accommodations, as defined in 49-2-101*, subject only to the conditions and limitations established by law and applicable alike to all persons."

Section 23. Section 49-4-214, MCA, is amended to read:

"49-4-214. Right to be accompanied by a guide dog. (1) Every totally or partially blind person *has* the right to be accompanied by a guide dog, especially trained for the purpose, in any of the places *mentioned in 49-4-211(2)* without being charged extra for the guide dog. He *is* liable for any damage done to the premises or facilities by such dog.

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(2) Every totally or partially blind person who has a guide dog or who obtains a guide dog *is* entitled to full and equal access to all housing accommodations as provided in 49-2-305 and 49-4-212. He *may* not be required to pay extra compensation for *the* guide dog but *is* liable for any damage done to the premises by *the* guide dog."

Section 24. Section 49-4-216, MCA, is amended to read:

"49-4-216. Duty and civil liability of pedestrian or driver approaching blind person. (1) *A* pedestrian who is not *totally* or partially blind or *a* driver of a vehicle who approaches or comes in contact with a person *who is totally* or partially blind *and is* carrying a cane or walking stick predominately white or metallic in color or white tipped with red or *is* being led by a trained guide dog wearing a harness and walking on either side of or slightly in front of *such* blind person shall immediately come to a full stop and take such precautions before proceeding as may be necessary to avoid accident or injury to *such blind* person.

(2) *A* driver or pedestrian who fails to take such precautions *is* liable in damages for any injury caused *the totally or partially blind person.* A totally or partially blind pedestrian *who is* not carrying such a cane or using a guide dog in any of the places listed in 49-4-211 *has* all of the rights and privileges conferred by law upon other persons, and the failure of *such* a pedestrian to carry such a cane or to use a guide dog in any such *place may* not be held to constitute or be evidence of contributory negligence."

Section 25. **Repealer.** Section 64-104, R.C.M. 1947, is repealed.

Approved March 21, 1979.

CHAPTER NO. 178

AN ACT TO PERMIT THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, LICENSED ADOPTION AGENCIES, A NATURAL PARENT, OR AN ADOPTED PERSON TO HAVE ACCESS TO NECESSARY BIRTH RECORDS IN CERTAIN SITUATIONS; AMENDING SECTIONS 50-15-112 AND 50-15-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-15-112, MCA, is amended to read:

"50-15-112. Inspection of records and issuance of copies limited. *(1)* The department may not permit inspection of the records or issue copies of a certificate unless it is satisfied that the applicant has a direct and tangible interest in the data recorded and that the information is necessary for the determination of personal or property rights.

(2) "Tangible interest" includes but is not limited to the interests of the persons described in 50-15-206 for the purposes of custody actions,

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social security eligibility determinations, or Indian tribal enrollment determinations."

Section 2. Section 50-15-206, MCA, is amended to read:

"50-15-206. Permissible disclosure of illegitimate birth. *(1)* Disclosure of illegitimacy of birth or information from which illegitimacy can be ascertained may be made only:

(a) upon an order of a court to determine personal or property rights. An adopted person of legal age may apply to the court for such an order.

(b) upon request of the department of social and rehabilitation services or a licensed adoption agency for purposes of custody action, social security eligibility determinations, or Indian tribal enrollment determinations;

(c) upon request of the natural parent during the child's minority unless the child has been placed for adoption.

(2) Except when an order of the court is sought, prior to disclosure, the requesting party must submit in writing to the department:

(a) proof of identity when appropriate;

(b) the need for the information; and

(c) the specific purpose for which the information is to be used. The information may be used only for that purpose."

Approved March 21, 1979.

CHAPTER NO. 179

AN ACT TO AMEND SECTION 33-20-109, MCA, RELATING TO LIFE INSURANCE POLICY LOANS TO PROVIDE FOR A MAXIMUM RATE OF INTEREST OF 8% A YEAR ON SUCH LOANS UNDER CERTAIN CONDITIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-20-109, MCA, is amended to read:

"33-20-109. Policy loan. (1) There shall be a provision that after *3* full years' premiums have been paid and after the policy has a cash surrender value and while no premium is in default beyond the grace period for payment, the insurer will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest not exceeding 6% *a year*, an amount equal to or, at the option of the party entitled thereto, less than the loan value of the policy. *The commissioner may authorize a rate of interest in excess of 6%, but not in excess of 8% a year (or 7.4% if payable annually in advance), for policies issued on or after January 1, 1980, if the insurer provides adequate written certification that the holders of such policies will benefit fully from the*

increased earnings of the insurer resulting from the use of an interest rate in excess of the 6% per annum, such as from higher interest income to the company on policy loans, higher investment yield resulting from a reduction in policy loans because of the higher policy loan interest rate, and any additional income to the company resulting from the use of such higher interest rate in any manner whatsoever. These benefits to the policyholder shall be reflected through higher dividends or lower premiums, or both. The loan value of the policy shall be at least equal to the cash surrender value at the end of the then current policy year, provided that the insurer may deduct, either from such loan value or from the proceeds of the loan, any existing indebtedness not already deducted in determining such cash surrender value including any interest then accrued but not due, any unpaid balance of the premium for the current policy year, and interest on the loan to the end of the current policy year *unless the policyowner by written notice to the insurer elects to defer payment of interest until it has accrued.* The policy may also provide that if interest on any indebtedness is not paid when due it shall then be added to the existing indebtedness and shall bear interest at the same rate, and that if and when the total indebtedness on the policy, including interest due or accrued, equals or exceeds the amount of the loan value thereof, then the policy shall terminate and become void. The policy shall reserve to the insurer the right to defer the granting of a loan, other than for the payment of any premium to the insurer, for 6 months after application therefor. The policy, at the insurer's option, may provide for automatic premium loan, subject to an election of the party entitled to elect.

(2) This section shall not apply to term policies or to term insurance benefits provided by rider or supplemental policy provisions or to industrial life insurance policies."

Approved March 21, 1979.

CHAPTER NO. 180

AN ACT TO AMEND SECTION 17-6-211, MCA, TO AUTHORIZE INVESTMENT OF PUBLIC FUNDS IN OBLIGATIONS OF A CORPORATION IN WHICH THE UNITED STATES GOVERNMENT IS A VOTING SHAREHOLDER BY ACT OF CONGRESS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-211, MCA, is amended to read:

"17-6-211. Permissible investments. (1) The following securities are permissible investments for all investment funds referred to in 17-6-203, except as indicated:

(a) any securities authorized to be pledged to secure deposits of public funds under 17-6-103;

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(b) bonds, notes, debentures, equipment obligations, or any other kind of absolute obligation of any corporation organized and operating in any state of the United States or in Canada, if the obligations purchased are payable in United States dollars, *or of any corporation in which the United States government is a voting shareholder by act of congress;* provided that all investments under this subsection (b) must be rated by one nationally recognized rating agency among the top third of their quality categories, not applicable to defaulted bonds;

(c) commercial paper of prime quality, as defined by one nationally recognized rating agency, issued by any corporation organized and operating in any state of the United States, provided that:

(i) such securities mature in 270 days or less;

(ii) the issuing corporation or the parent company of a finance subsidiary issuing commercial paper, at the time of the last financial reporting period, had a ratio of current assets to current liabilities, including among current liabilities long-term debt maturing within 1 year, of at least 1 ½ to 1 and had received net income averaging $1 million or more annually for the preceding 5 years; and

(iii) no investment may be made at any time under this subsection (c) which would cause the book value of such investments in any investment fund to exceed 10% of the book value of such fund or would cause the commercial paper of any one corporation to exceed 2% of the book value of such fund;

(d) bankers' acceptances guaranteed by any bank having its principal office in any state of the United States and having deposits in excess of $500 million;

(e) interest-bearing deposits in banks, building and loan associations, and savings and loan associations located in Montana, provided, however, that the board of investments shall require pledged securities as specified in 17-6-102 (interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds);

(f) unencumbered real property, first mortgages, and participations in first mortgages on unencumbered real property, provided that:

(i) no such mortgage or mortgage participation may be purchased unless:

(A) the principal amount of the loan secured by the mortgage or mortgage participation is 80% or less of the appraised value of the property;

(B) the principal amount of the loan secured by the mortgage or mortgage participation exceeds 80% of the appraised value of the property but the amount of the loan in excess of 80%, determined at the time the loan was made, is guaranteed or insured by a mortgage insurance company which the board of investments has determined to be a qualified private insurer;

(C) 25% or more of the loan or participation therein secured is guaranteed or insured in the event of default by the United States of America or an agency thereof; or

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(D) the mortgagor has leased the mortgaged property to a person, firm, or corporation whose rental payments under the lease are guaranteed for the full term of the loan or participation therein by an agency of the United States; and

(ii) no investment shall be made at any time under subsection (1)(f) which would cause the book value of such investments in any investment fund to exceed 50% of the book value of such fund.

(2) Investments from the pooled investment fund shall be restricted to fixed income securities described in subsections (1)(a) to (1)(e) above.

(3) Retirement funds, only, may be invested in preferred and common stocks of any corporation organized and operating in any state of the United States provided that:

(a) the corporation has assets of a value not less than $10 million;

(b) if the investment is preferred stock, the corporation's aggregate earnings available for payment of interest and preferred dividends, for a period of 5 consecutive years immediately before the date of investment, have been at least 1 ½ times the aggregate of interest and preferred dividends required to be paid during this period; and

(c) if the investment is common stock:

(i) the stock has paid cash dividends in each of at least 5 years immediately before it is purchased;

(ii) the aggregate earnings of the corporation during this period which were available for payment of dividends on common stock were at least equal to the aggregate of the cash dividends paid thereon; and

(iii) not more than 2% of the assets of any retirement fund may be invested in common stocks or in fixed income securities convertible into common stock not conforming to the dividend and earnings standards stated in subsections (3)(c)(i) and (3)(c)(ii) above, so long as the corporation maintains the asset value required in subsection (3)(a) and evidences appropriate growth potential and probable earnings gain; and

(d) no investment may be made at any time under subsection (3) which would cause the book value of such investments in any retirement fund to exceed 20% of the book value of such fund or would cause the stock of one corporation to exceed 1% of the book value of such retirement fund.

(4) The board of investments shall endeavor to direct the state's investment business to those investment firms and/or banks which maintain offices in the state and thereby make contributions to the state economy. Further, due consideration shall be given to investments which will benefit the smaller communities in the state. The state's investment business will be directed to out-of-state firms only when there is a distinct economic advantage to the state of Montana."

Approved March 21, 1979.

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CHAPTER NO. 181

AN ACT AUTHORIZING THE SALE AND ISSUANCE OF NOTES IN ANTICIPATION OF FEDERAL AND STATE GRANTS AND LOANS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Bonds" means bonds, notes, warrants, debentures, certificates of indebtedness, and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(2) "Political subdivision" means a county, city, town, school district, irrigation district, special improvement district, or any other political subdivision of the state, but does not include the state or any board, agency, or commission of the state.

(3) "Governing body" means the board, council, commission, or other body charged with the general control of the issuance of bonds of a political subdivision.

Section 2. **Notes.** (1) When all conditions exist precedent to the offering for sale of bonds of a political subdivision in any amount and for any purpose authorized by law, and the political subdivision has applied for a grant or loan of state or federal funds to aid in payment of costs incurred or to be incurred for the authorized purpose, its governing body may by resolution issue and sell notes in anticipation of the receipt of the grant or loan, in an amount not exceeding the total amount of bonds authorized and maturing within not more than 3 years from the date such notes are issued.

(2) The proceeds of the grant or loan, when received, shall be credited to the debt service fund for the notes as may be needed for their payment, with interest, when due.

(3) Any amount of the notes which cannot be paid at maturity, from the proceeds of the grant or loan or from any other funds appropriated by the governing body for the purpose, shall be paid from the proceeds of bonds to be issued and sold before the maturity date; or if sufficient funds are not available for payment in full of the notes at maturity, those bondholders may require the issuance, in exchange, of bonds bearing interest at the maximum rate permitted by law. The bonds so issued are secured and subject to the terms and conditions provided by the law authorizing their issuance. Notes and bonds may be issued as provided in this section regardless of the amount authorized if the amount which may legally be issued is less than the commitment for which the grant or loan is made. Before the notes or bonds are issued the political subdivision must receive

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a written commitment for a grant or loan in an amount equal to the remaining estimated costs, and must by resolution provide for the fulfillment of the conditions of the commitment.

Approved March 21, 1979.

CHAPTER NO. 182

AN ACT TO CLARIFY THE LAW RELATING TO THE AUTHORITY OF A COUNTY SUPERINTENDENT TO REQUEST, ACCEPT, AND DISBURSE MONEY TO SCHOOL DISTRICTS; AMENDING SECTION 20-3-208, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-208, MCA, is amended to read:

"20-3-208. Authority to request, accept, and disburse money. (1) A county superintendent may, with the advice and consent of the appropriate school boards, request and accept *money* made available from federal, state, or private sources for purposes of public education.

(2) Subject to applicable federal and state guidelines and, in the case of *money* received from private sources, subject to any guidelines fixed by the donor, a county superintendent may, in his discretion, disburse *money* received under this section to one or more public elementary *or* high school districts according to their needs. The county superintendent shall supervise the utilization of such *money* with the approval of the appropriate school boards.

(3) The county superintendent may establish a fund, for which the county treasurer shall maintain a separate accounting, for the deposit of *money* received under this section."

Approved March 21, 1979.

CHAPTER NO. 183

AN ACT TO AMEND THE UNIFORM MARRIAGE AND DIVORCE ACT TO REQUIRE PREMARITAL COUNSELING FOR MINORS; AMENDING SECTION 40-1-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-1-213, MCA, is amended to read:

"40-1-213. Judicial approval. (1) The district court may order the clerk of the district court to issue a marriage license and a marriage certificate form to a party aged 16 or 17 years who has no parent capable of consenting to his marriage or has the consent of both parents or of the parent

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having the actual care, custody, and control to his marriage, if capable of giving consent, or of his guardian. The court *must* require both parties to participate in a period of marriage counseling *involving at least two separate counseling sessions not less than 10 days apart* with a designated counselor as a condition of the order for issuance of a marriage license and a marriage certificate form under this section.

(2) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served.

(3) The district court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization."

Approved March 21, 1979.

CHAPTER NO. 184

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO GOVERNMENT STRUCTURE AND ADMINISTRATION; REPEALING SECTIONS 2-1-103 AND 2-15-202, MCA, AND SECTIONS 25-506, 25-509, 32-2504, 41-1604, 59-517, 59-537, 59-706 THROUGH 59-708, 80-2001, 82-1306 THROUGH 82-1308, AND 82-4324, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-1-204, MCA, is amended to read:

"2-1-204. Military reservations — service of process. (1) Authority is granted to and acknowledged in the United States to exercise exclusive legislation as provided by the constitution of the United States over the military *reservation* of Fort Missoula as established by law to the same extent and with the same effect as if *the reservation* had been purchased by the United States by consent of the legislative assembly of the state of Montana so long as *it remains a* military *reservation.*

(2) All legal process of the state, both civil and criminal, may be served upon persons and property found within *the reservation* in all cases where the United States *does not have* exclusive jurisdiction."

Section 2. Section 2-1-302, MCA, is amended to read:

"2-1-302. Resolution of Indian tribes requesting state jurisdiction — governor's proclamation — consent of county commissioners. (1) Whenever the governor of this state *receives* from the tribal council or other governing body of the Confederated Salish and Kootenai Indian tribes *or any other* community, band, or group of Indians in this state, a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction, *or both,* of the state to the extent

authorized by federal law and regulation, he shall issue within 60 days a proclamation to the effect that such jurisdiction *applies* to those Indians and their territory or reservation in accordance with the provisions of this part.

(2) *The governor may* not issue *the* proclamation until *the* resolution has been approved in the manner provided for by the charter, constitution, or other fundamental law of the tribe or tribes, if said document provides for such approval, and there has been first obtained the consent of the board of county commissioners of each county which encompasses any portion of the reservation of such tribe or tribes."

Section 3. Section 2-3-113, MCA, is amended to read:

"2-3-113. Declaratory rulings to be published. The declaratory rulings of any board, bureau, commission, department, authority, agency, or officer of the state which is not subject to the Montana Administrative Procedure Act shall be published and be subject to judicial review as provided under 2-4-623(6) and 2-4-501, *respectively*."

Section 4. Section 2-4-102, MCA, is amended to read:

"2-4-102. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter *14*.

(2) "Agency" means any agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(a) the state board of pardons, except that the board shall be subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules shall be published in the administrative rules of Montana and Montana administrative register;

(b) the supervision and administration of any penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(c) the board of regents and the Montana university system;

(d) the financing, construction, and maintenance of public works.

(3) "ARM" means the administrative rules of Montana.

(4) "Contested case" means any proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to *ratemaking*, price fixing, and licensing.

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

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(7) "Party" means any person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(8) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public organization of any character other than an agency.

(9) "Register" means the Montana administrative register.

(10) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of such rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of such rules and rules adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with 2-4-306 and shall be published in the administrative rules of Montana.

(11) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this part and under express or implied authority to codify an interpretation of a statute although such interpretation lacks the force of law."

Section 5. Section 2-6-103, MCA, is amended to read:

"2-6-103. Filing and copying fees. (1) The secretary of state, for services performed in his office, *shall* charge and collect the following fees:

(a) for each copy of any law, resolution, record, or other document or paper on file in his office, except corporate papers, 40 cents per folio or, if the copy is made by any process of reproduction by photographic, photostatic, or similar process, the fee shall be 50 cents per page or fraction thereof;

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(b) for affixing certificate and seal, $2;

(c) for receiving and recording each official bond, $10;

(d) for each commission or other document signed by the governor and attested by the secretary of state (pardon, military commissions, and extraditions excepted), $5;

(e) for filing each trademark, $5;

(f) for filing and recording each assignment of a trademark, $5;

(g) for issuing each certificate of record, $5;

(h) for filing and recording miscellaneous papers, records, or other documents, $5;

(i) for filing and recording any other paper not otherwise herein provided for, $5;

(j) for filing and recording any paper, record, or other document or other than a standard form when recommended by the secretary of state, $5;

(k) when a copy of any law, resolution, record, or other document or paper on file in the office of the secretary of state is presented for comparison and certification, 10 cents per folio must be charged and collected for proofreading the same.

(2) No member of the legislature or state or county officer *may* be charged for any search relative to matters appertaining to the duties of his office or for a certified copy of any law or resolution passed by the legislature relative to his official duties.

(3) Fees *shall* be collected in advance and when collected by the secretary of state *shall* be *deposited pursuant to 17-6-105*."

Section 6. Section 2-6-302, MCA, is amended to read:

"2-6-302. Official records management — powers and duties. In order to insure the proper management and safeguarding of official records, the Montana historical society shall:

(1) establish and operate the state archives as authorized by appropriation for the purpose of storing and servicing official records transferred to the custody of the state archives;

(2) in cooperation with the department of administration and *the state records committee provided for in 2-15-1013* establish guidelines for the inventorying, cataloging, retention, and transfer of all official records;

(3) maintain and enforce restrictions on access to official records in the custody of the state archives in accordance with the provisions of this part;

(4) provide adequate housing and care of official records in the custody of the state archives to insure their proper preservation and use by the public;

(5) in accordance with the guidelines established pursuant to subsection (2), remove and destroy duplicate official records and official records

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of insignificant historical value from the records deposited in the state archives."

Section 7. Section 2-9-103, MCA, is amended to read:

"2-9-103. Actions under invalid law or rule — same as if valid — when. (1) If an officer, agent, or employee of *a governmental entity* acts in good faith, without malice or corruption, and under the authority of law and that law is subsequently declared invalid as in conflict with the constitution of Montana or the constitution of the United States, neither he nor any other officer or employee of the governmental entity he represents nor the governmental entity he represents is civilly liable in any action in which he, such other officer, or such governmental entity would not have been liable had the law been valid.

(2) If an officer, agent, or employee of *a governmental entity* acts in good faith, without malice or corruption, and under the authority of a duly promulgated rule or ordinance and that rule or ordinance is subsequently declared invalid, neither he nor any other officer, agent, or employee of the governmental *entity* he represents nor the governmental entity he represents is civilly liable in any action in which no liability would attach had the rule or ordinance been valid."

Section 8. Section 2-9-306, MCA, is amended to read:

"2-9-306. Construction of policy conditions — customary exclusions. Any insurance policy, rider, or endorsement issued and purchased after July 1, 1973, to insure against any risk which may arise as a result of the application of *parts 1 through 3 of this chapter* which contains any condition or provision not in compliance with the requirements of *parts 1 through 3* shall not be rendered invalid thereby but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with *parts 1 through 3*, provided the policy is otherwise valid. This section *may* not be construed to prohibit any such insurance policy, rider, or endorsements from containing standard and customary exclusions of coverages *that* the department of administration *considers* reasonable and prudent upon considering the availability and the cost of such insurance coverages."

Section 9. Section 2-9-514, MCA, is amended to read:

"2-9-514. Additional security. (1) The additional bond *given pursuant to 2-9-513(2)* must be in such penalty as directed by the court, judge, board, officer, or other person and in all other respects similar to the original bond and approved by and filed with the same officer as required in case of the approval and filing of the original bond.

(2) Every such additional bond so filed and approved is of like force and obligation upon the principal and sureties therein, from the time of its execution, and subjects the officer and his sureties to the same liabilities, suits, and actions as are prescribed respecting the original bonds of officers.

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(3) In no case is the original bond discharged or affected when an additional bond has been given, but the same remains of like force and obligation as if such additional bond had not been given."

Section 10. Section 2-15-201, MCA, is amended to read:

"2-15-201. Powers and duties of governor. In addition to *the duties* prescribed by the constitution, the governor *shall* perform the following duties:

(1) He *shall* supervise the official conduct of all executive and ministerial officers.

(2) He *shall* see that all offices are filled and the duties thereof performed or, in default thereof, apply such remedy as the law allows. If the remedy is imperfect, he *shall* acquaint the legislature therewith at its next session.

(3) He *shall* make the appointments and supply the vacancies as required by law.

(4) He is the sole official organ of communication between the government of this state and the government of any other state or of the United States.

(5) Whenever any suit or legal proceeding is pending against this state or which may affect the title of this state to any property or which may result in any claim against the state, he may direct the attorney general to appear on behalf of the state and may employ such additional counsel as he may judge expedient.

(6) He may require the attorney general or county attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

(7) He may require the attorney general to aid the county attorney in the discharge of his duties.

(8) He may offer rewards not exceeding $1,000 each, payable out of the general fund, for the apprehension of any convict who has escaped from the state prison or any person who has committed or is charged with an offense punishable by death.

(9) He *shall* perform such duties respecting fugitives from justice as are prescribed by Title 46, chapter 30.

(10) He *shall* issue and transmit election proclamations, as prescribed by 13-11-101.

(11) He *shall* issue land warrants and patents, as prescribed in 77-2-342.

(12) He *shall prepare a* biennial *report pursuant to 2-7-102.*

(13) He may require any officer or board to make special reports to him, upon demand, in writing.

(14) He *shall* discharge the duties of member of the board of examiners, of nonvoting ex officio member of the state board of education, and of member of the board of land commissioners.

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(15) He has *the* other powers and must perform *the* other duties as are devolved upon him by this code or any other law of this state."

Section 11. Section 2-15-401, MCA, is amended to read:

"2-15-401. Duties of secretary of state. In addition to the duties prescribed by the constitution, it is the duty of the secretary of state to:

(1) attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform such other duties as may be devolved upon him by resolution of the two houses or either of them;

(2) keep a register of and attest the official acts of the governor, *including all appointments made by him, with date of commission and names of appointees and predecessors*;

(3) affix the great seal, with his attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

(4) record in proper books all conveyances made to the state and all articles of incorporation filed in his office;

(5) take and file in his office receipts for all books distributed by him and direct the county clerk of each county to do the same;

(6) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

(7) furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in his office;

(8) keep a fee book in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein;

(9) file in his office descriptions of seals in use by the different state officers;

(10) discharge the duties of member of the board of examiners and of the board of land commissioners and all other duties required of him by law;

(11) report to the governor *as* prescribed in 2-7-102;

(12) receive, designate, and record trademarks as provided in 30-13-103;

(13) distribute the bound volumes of the decisions of the supreme court in the manner provided by 3-2-604;

(14) report annually to the legislative services division of the legislative council all changes of names received pursuant to 27-31-205 for publication in the session laws;

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(15) report annually to the legislative services division of the legislative council all watercourse name changes received pursuant to 85-2-134 for publication in the session laws.

(16) keep a register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application."

Section 12. Section 2-15-412, MCA, is amended to read:

"2-15-412. Board of state canvassers. The board of state canvassers created in 13-15-502 is *allocated* to the office of the secretary of state *for administrative purposes only as prescribed in 2-15-121."*

Section 13. Section 2-15-413, MCA, is amended to read:

"2-15-413. Board of election devices. There is a board of election devices as provided in *13-18-105. The board is allocated to the office of the secretary of state for administrative purposes only as prescribed in 2-15-121."*

Section 14. Section 2-15-1111, MCA, is amended to read:

"2-15-1111. Office of state coordinator of Indian affairs. (1) *There is an* office of state coordinator of Indian affairs. *The office is allocated to the department of community affairs for administrative purposes only as prescribed in 2-15-121.*

(2) The coordinator shall be appointed by the governor from a list of five qualified Indian applicants agreed upon by the tribal councils of the respective Indian tribes of the state and shall serve at the pleasure of the governor."

Section 15. Section 2-15-1605, MCA, is amended to read:

"2-15-1605. Board of medical examiners. (1) There is a Montana state board of medical examiners.

(2) The board consists of seven members appointed by the governor with the consent of the senate. Appointments made when the *legislature* is not in session may be confirmed at the next session.

(3) The members are:

(a) six members having the degree of doctor of medicine; and

(b) one member having the degree of doctor of osteopathy.

(4) The members having the degree of doctor of medicine may not be from the same county. Each member shall be a citizen of the United States. Each member shall have been licensed and shall have practiced medicine in this state for at least 5 years and shall have been a resident of this state for at least 5 years; however, the 5-year requirement of practice and residency shall be waived for the initial term *of* appointment of the member having the degree and license of doctor of osteopathy.

(5) Each member shall serve for a term of 7 years. A term commences on September 1 of each year of appointment. A member may, upon notice

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and hearing, be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 16. Section 2-15-1614, MCA, is amended to read:

"2-15-1614. Board of radiologic technologists. (1) There is a board of radiologic technologists.

(2) The board consists of seven members appointed by the governor:

(a) two members shall be radiologists licensed to practice medicine in Montana;

(b) one member shall be a physician licensed to practice medicine in Montana;

(c) one member shall be a chiropractor licensed to practice in Montana; and

(d) three members shall be radiologic technologists registered with the American registry of radiologic technologists (ARRT) who, with the exception of the first appointed members, are licensed radiologic technologists.

(3) Vacancies in unexpired terms shall be filled for the remainder of the term.

(4) Each member shall serve for a term of 3 years.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 17. Section 2-15-1615, MCA, is amended to read:

"2-15-1615. Board of speech pathologists and audiologists. (1) There is a board of speech pathologists and audiologists.

(2) The board consists of five members, four of whom shall:

(a) be appointed by the governor from names submitted to him by the *Montana speech and hearing* association;

(b) have been residents of this state for at least 1 year immediately preceding their appointment; and

(c) have been engaged in rendering services to the public, teaching, or performing research in the field of speech pathology or audiology for at least 5 years immediately preceding their appointment.

(3) At least two members of the board shall be speech pathologists and at least two shall be audiologists, with the remaining member to be a public member who is a consumer of speech pathology or audiology services and who is not a licentiate of the board or of any other board within the department. All board members, *except the public member,* shall at all times be validly licensed in speech pathology or audiology.

(4) Not less than 60 days before the end of each calendar year, the association shall recommend at least three and not more than five persons

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for each vacancy occurring at the end of the calendar year. In the event of a vacancy for an unexpired term, the association shall expeditiously recommend at least two and not more than three persons to fill the vacancy and the governor shall appoint one of those persons to fill the unexpired term.

(5) Appointments shall be for 3-year terms with no person eligible to serve more than two full consecutive terms. Terms begin on the first day of the calendar year and end on the last day of the calendar year.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 18. Section 2-15-1631, MCA, is amended to read:

"**2-15-1631. Board of sanitarians.** (1) There is a board of sanitarians.

(2) The board shall consist of three members appointed by the governor. Each member shall be a resident of this state and a registered sanitarian. Each member shall have a minimum of 3 years of experience practicing as a sanitarian in the state of Montana.

(3) Members shall serve for 3-year terms. One term shall expire on July 1 of each year.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 19. Section 2-15-1656, MCA, is amended to read:

"**2-15-1656. Board of warm air heating, ventilation, and air conditioning.** (1) There is a state board of warm air heating, ventilation, and air conditioning.

(2) The board consists of seven members appointed by the governor. The members are:

(a) two master and two journeyman mechanics, who shall be *18 years of age or older* and residents of Montana for at least 1 year. Each mechanic shall have been licensed pursuant to Title 37, chapter 70, at least 2 years immediately preceding his appointment.

(b) one representative of the department of administration responsible for the administration of parts 1 through 4 of Title 50, chapter 60, who shall act as secretary;

(c) one attorney from the department; and

(d) one representative of the fire marshal bureau.

(3) Each member shall serve for a period of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 20. Section 2-15-1701, MCA, is amended to read:

"**2-15-1701. Department of labor and industry — head.** (1) There is a department of labor and industry. As prescribed in Article XII,

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section 2, of the Montana constitution, the department head is the commissioner of labor and industry.

(2) He shall be appointed by the governor, subject to the confirmation of the senate. The term of office of the commissioner shall be 4 years and until his successor is appointed and qualified.

(3) The commissioner shall receive an annual salary in such amount as may be specified by the legislature in the appropriation to the department of labor and industry.

(4) Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by the Montana constitution."

Section 21. Section 2-15-2004, MCA, is amended to read:

"2-15-2004. Division of forensic science — head. (1) There is a division of forensic science in the department of justice.

(2) The division head is an administrator whose title is state medical examiner and who shall be appointed by the *director of the department.* He shall be a forensic pathologist qualified or certified by the American board of pathology."

Section 22. Section 2-15-2006, MCA, is amended to read:

"2-15-2006. Board of crime control — composition — allocation. (1) *There is a* board of crime control.

(2) The board is *allocated* to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(3) The board is composed of 18 members appointed by the governor in accordance with 2-15-124 *and* any special requirements of Title I of the Omnibus Crime Control and Safe Streets Act, as amended. The board shall be representative of state and local law enforcement and criminal justice agencies, including agencies directly related to the prevention and control of juvenile delinquency, units of general local government, and public agencies maintaining programs to reduce and control crime and shall include representatives of citizens and professional and community organizations, including organizations directly related to delinquency prevention."

Section 23. Section 2-15-3003, MCA, is amended to read:

"2-15-3003. Board of hail insurance. (1) There is a board of hail insurance of five members consisting of the state auditor, the director of agriculture, who is secretary of the board, and three other members to be appointed by the governor from names submitted by farmer organizations having a general membership throughout the state.

(2) The governor shall designate one of the appointive members to act as chairman of the board.

(3) Whenever the term of any member expires, either by death, resignation, removal for cause, or expiration of his term of office, the governor

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shall appoint his successor and shall also appoint one of the board for chairman in case of a vacancy in that office.

(4) Each appointive member of the board shall be appointed for 3 years, except *when* such appointment is made to fill a vacancy on the board, in which event such appointee shall fill out the unexpired term of the member whose place he fills.

(5) All members of the board shall be subject to removal for cause by the governor.

(6) The board is *allocated* to the department of agriculture for administrative purposes only *as prescribed in 2-15-121.*"

Section 24. Section 2-15-3305, MCA, is amended to read:

"2-15-3305. Rangeland resources committee. (1) The governor may select a committee in accordance with subsection (2) which is composed as follows:

(a) a chairman who is a rancher;

(b) a vice-chairman who is a rancher;

(c) a rancher from the eastern area of the state;

(d) a rancher from the northern area of the state;

(e) a rancher from the area of the state west of the continental divide;

(f) a rancher from the southern area of the state;

(g) a representative from each of the following agencies:

(i) Soil conservation service;

(ii) United States forest service;

(iii) Montana state university;

(iv) Farmers home administration;

(v) Montana stockgrowers association;

(vi) Office of economic development division;

(vii) School of forestry of the university of Montana;

(viii) Department of fish and game;

(ix) Bureau of land management;

(x) Montana wool growers association;

(xi) Department of natural resources and conservation;

(xii) Bureau of Indian affairs;

(xiii) Montana cattlemen's association;

(xiv) Department of state lands;

(xv) Society for range management;

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(xvi) United States fish and wildlife service;

(xvii) United States agricultural and stabilization service.

(2) (a) The governor shall select the members described in subsections (1)(a) through (1)(f) from a list submitted by the executive committee of the association of conservation districts and the board of directors of the Montana association of state grazing districts.

(b) The governor shall select the members described in subsection (1)(g) from a list submitted by their respective agencies and/or organizations.

(3) The committee members shall serve without compensation.

(4) All persons appointed to the committee shall serve at the pleasure of the governor.

(5) The committee is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 25. Section 2-16-401, MCA, is amended to read:

"**2-16-401. Salary commission meetings.** (1) (a) There is created a Montana salary commission. The commission is composed of eight members, none of whom may be public officers, either elected or appointed. The commission shall be appointed in the following manner and in the following chronological order:

(i) First, the governor shall appoint one member from each of the two major political parties, equally divided between the United States congressional districts.

(ii) Next, the supreme court shall appoint one member from each of the two major political parties, equally divided between the United States congressional districts.

(iii) Next, the majority leader of the senate shall appoint one member from his political party. The minority leader of the senate shall then appoint one member from his political party not from the same United States congressional district as the member appointed by the *majority leader.*

(iv) Next, the presiding speaker of the house of representatives shall appoint one member from his political party. Lastly, the minority leader in the house of representatives shall appoint one member from his political party not from the same United States congressional district as the member appointed by the speaker.

(b) All appointments shall be made not later than the 60th legislative day.

(2) Commission members shall serve a term of 4 years.

(3) *If* a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

(4) The commission shall choose one of its members as chairman at its initial meeting, and the executive director of the legislative council or his

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delegate shall serve as secretary to the commission and shall record and transcribe all minutes of commission meetings and prepare all correspondence, notices, and formal recommendations as directed by the chairman.

(5) The salary commission shall hold at least two meetings before submitting a report to the legislature as provided in 2-16-402. The commission shall hold its meetings in the year prior to each first regular session of the biennium.

(6) All meetings shall be called by the chairman of the commission, and notice of the meeting dates shall be given by mail to each commission member at least 20 days before the day scheduled for the meeting.

(7) A majority of members present at any meeting is sufficient to transact any business to come before the meeting; however, a majority of all commission members is necessary to ratify the commission's recommendations to the legislature.

(8) Commission members shall be reimbursed from the appropriation to the office of the legislative council for their travel expenses incurred, as provided for in 2-18-501 through 2-18-503, as amended, and $25 per day while attending meetings of the commission."

Section 26. Section 2-16-501, MCA, is amended to read:

"2-16-501. Vacancies created. An office becomes vacant on the happening of *any one* of the following events before the expiration of the term of the incumbent:

(1) the death of the incumbent;

(2) *a determination pursuant to Title 53, chapter 21, part 1, that he is seriously mentally ill;*

(3) his resignation;

(4) his removal from office;

(5) his ceasing to be a resident of the state or, if the office be local, of the district, city, county, town, or township for which he was chosen or appointed or within which the duties of his office are required to be discharged;

(6) his absence from the state, without the permission of the legislature, beyond the period allowed by law;

(7) his ceasing to discharge the duty of his office for the period of 3 consecutive months, except when prevented by sickness or when absent from the state by permission of the legislature;

(8) his conviction of a felony or of any offense involving moral turpitude or a violation of his official duties;

(9) his refusal or neglect to file his official oath or bond within the time prescribed;

(10) the decision of a competent tribunal declaring void his election or appointment."

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Section 27. Section 2-16-503, MCA, is amended to read:

"2-16-503. Notice of removal. Whenever an officer is removed, declared *seriously mentally ill*, or convicted of a felony or offense involving moral turpitude or a violation of his official duty or whenever his election or appointment is declared void, the body, judge, or officer before whom the proceedings were had must give notice thereof to the officer authorized to fill the vacancy."

Section 28. Section 2-16-513, MCA, is amended to read:

"2-16-513. Succession in case of termination or incapacitation of primary successors. (1) If, because of an enemy attack upon the United States, the governor, lieutenant governor, president pro tempore of the senate, and speaker of the house are killed or rendered unable to serve as governor, *the senior member of the legislature shall act as governor.*

(2) *He shall call an emergency session of the legislature at a safe location within the state. The legislature meeting in joint session shall elect a governor.*

(3) For the purposes of this section, the member with seniority is the member who has served in the legislature for the longest continuous period of time up to and including his current term. If two or more members of the legislature have equal seniority, the line of succession among them is from eldest to youngest in age."

Section 29. Section 2-18-405, MCA, is amended to read:

"2-18-405. Payroll based on actual, end-of-period figures — pay date — change of payroll periods. (1) By January 1, 1979, all state payroll systems shall be based upon actual payroll figures submitted after the end of the payroll period and may not be based upon estimated payroll.

(2) All state payroll systems shall provide for the fixing of payroll periods and designated days on which salaried employees shall be paid for the preceding payroll period. *The* pay date shall be uniform for all employees of each state agency employed in the same geographic area and payroll warrants shall be distributed or mailed within 10 business days following the close of the payroll period.

(3) The payroll period of employees of a state agency *may* not be changed by inclusion of the agency into the state payroll system or by any revision or modification of the system unless notice of the proposed change has been given to each employee who will be affected by such change in the form and manner prescribed by the state auditor not less than 60 days prior to the effective date of the change."

Section 30. Section 2-18-601, MCA, is amended to read:

"2-18-601. Definitions. For the purpose of this part, the following definitions apply:

(1) "Agency" means any legally constituted department, board, or commission of state, county, or city government.

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(2) "Employee" means any person employed by the state, county, or city governments *except elected state, county, and city officials and school teachers.*

(3) "Permanent employee" means an employee who regularly works for more than 6 months in any 12-month period.

(4) "Part-time employee" means an employee who normally works less than 40 hours a week.

(5) "Full-time employee" means an employee who normally works 40 hours a week.

(6) "Temporary position" means a position created for a definite period of time but not to exceed 6 months and the position is not renewable.

(7) "Seasonal position" means a position which, although temporary in nature, regularly occurs from season to season or from year to year.

(8) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer.

(9) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or his immediate family.

(10) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service of more than 5 working days.

(11) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(12) "Break in service" means that period of time an employee takes to change employment from one agency to employment in another agency of the same jurisdiction."

Section 31. Section 2-18-702, MCA, is amended to read:

"2-18-702. Group insurance for public employees and officers. (1) All departments, bureaus, boards, commissions, and agencies of the state and all counties, cities, and towns shall upon approval by two-thirds vote of the officers and employees of each such department, bureau, board, commission, agency, county, city, and town enter into group hospitalization, medical, health, including long-term disability, accident, and/or group life insurance contracts or plans for the benefit of their officers *and* employees and their dependents.

(2) *For state officers and employees, the* premiums required from time to time to maintain *the* insurance in force shall be paid by the insured officers and employees, and the auditor shall deduct *the* premiums from the salary or wages of each officer or employee who elects to become insured, on the *officer's* or employee's written order, and issue his warrant therefor to the insurer.

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(3) For the purpose of *this section*, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health or the services of hospitals, clinics, or sanitariums or both professional and hospital services shall be construed as group insurance and the dues payable under such plans shall be construed as premiums therefor."

Section 32. **Repealer.** Sections 2-1-103 and 2-15-202, MCA, are repealed.

Section 33. **Repealer.** Sections 25-506, 25-509, 32-2504, 41-1604, 59-517, 59-537, 59-706 through 59-708, 80-2001, 82-1306 through 82-1308, and 82-4324, R.C.M. 1947, are repealed.

Approved March 21, 1979.

CHAPTER NO. 185

AN ACT AMENDING SECTION 17-6-103, MCA, TO AUTHORIZE SECURITIES THAT MAY BE PLEDGED TO SECURE DEPOSITS OF PUBLIC FUNDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-103, MCA, is amended to read:

"17-6-103. Security for deposits of public funds. The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:

(1) direct obligations of the United States;

(2) securities as to which the payment of principal and interest is guaranteed by the United States;

(3) securities issued or fully guaranteed by the following agencies of the United States, whether or not guaranteed by the United States:

(a) commodity credit corporation;

(b) federal intermediate credit banks;

(c) federal land bank;

(d) bank for cooperatives;

(e) federal home loan banks;

(f) federal national mortgage association;

(g) government national mortgage association;

(h) small business administration; and

(i) federal housing administration (not including insured mortgages);

(4) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;

(5) revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faith and credit of such subdivision *or when the revenues pledged to the payment of the bonds are derived from a water or sewer system and the issuer has covenanted to establish and maintain rates and charges for the system in an amount sufficient to produce revenues equal to at least 125% of the average annual principal and interest due on all bonds payable for such revenues during the outstanding term of such bonds;*

(6) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state issued in evidence of claims in an amount which, with all other claims on the same fund, do not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;

(7) obligations of housing authorities of the state secured by a pledge of annual contributions or by a loan agreement made by the United States or any agency thereof providing for contributions or a loan sufficient with other funds pledged to pay the principal of and interest on the obligations when due. Subject to rules prescribed by the department of community affairs, the bonds and other obligations made eligible for investment in 32-1-424(3) and 7-15-4505 may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required or may by law be deposited as security.

(8) general obligation bonds of other states and of municipalities, counties, *and school districts* of other states;

(9) undertaking or guarantees issued by a surety company authorized to do business in the state;

(10) bonds issued pursuant to Title 7, chapter 12, parts 21 and 41;

(11) bonds issued pursuant to Title 90, chapter 6, part 1; and

(12) revenue bonds issued by any unit of the university system of the state of Montana."

Approved March 21, 1979.

CHAPTER NO. 186

AN ACT TO CONFORM CERTAIN LIQUOR LAWS TO THE CONSTITUTIONAL AMENDMENT RAISING THE DRINKING AGE TO 19 YEARS; AMENDING SECTIONS 16-3-301, 16-4-401, 16-5-101, 16-6-305, AND 16-6-314, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-301, MCA, is amended to read:

"**16-3-301. Unlawful purchases, sales, or deliveries.** (1) It shall be unlawful for a licensed retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this code.

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(2) It shall be unlawful for any licensee, his or her employee or employees, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

(a) any person under *19 years of age*;

(b) any intoxicated person or any person actually, apparently, or obviously intoxicated.

(3) Any *person under 19 years of age* or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining an alcoholic beverage from such licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in 45-5-624; provided, however, that nothing herein contained shall be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

(4) It shall be further mandatory under the provisions of this code that all licensees display in a prominent place in their premises a placard as issued by the department stating fully the consequences for violations of the provisions of this code by persons under *19 years of age*."

Section 2. Section 16-4-401, MCA, is amended to read:

"16-4-401. License as privilege — criteria for decision on application. A license under this code is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled. The department must find in every case where it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(1) neither the applicant nor any member of his immediate family has an ownership interest in any other establishment licensed under this chapter for all-beverages sales;

(2) the applicant or any member of his immediate family is without financing from or any affiliation to a manufacturer, bottler, or distributor of beer, wine, or liquor;

(3) the applicant is a resident of the state and is qualified to vote in a state election;

(4) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments*; and*

(5) the applicant is not under the age of 19 years."

Section 3. Section 16-5-101, MCA, is amended to read:

"16-5-101. Proof of age — identification card. All persons attaining the age of *19* years may apply to the county clerk and recorder of the county in which the applicant resides for an identification card which shall prima facie establish that the applicant has reached the age of *19* years."

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Section 4. Section 16-6-305, MCA, is amended to read:

"16-6-305. Age limit for sale of alcoholic beverages. (1) Except in the case of an alcoholic beverage given to a person under *19 years of age* by his parent or guardian for beverage or medicinal purposes or administered to him by his physician or dentist for medicinal purposes or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply an alcoholic beverage to any person under *19 years of age* or permit any person under that age to consume an alcoholic beverage.

(2) Any person shall be guilty of a misdemeanor who:

(a) invites a person under the age of *19* years into a public place where an alcoholic beverage is sold and treats, gives, or purchases an alcoholic beverage for such person;

(b) permits such person in a public place where an alcoholic beverage is sold to treat, give, or purchase liquor for him; or

(c) holds out such person to be *19 years of age or older* to the owner of the establishment or his or her employee or employees."

Section 5. Section 16-6-314, MCA, is amended to read:

"16-6-314. Penalty for violating code — revocation of license. Any person violating any of the provisions of this code shall, upon conviction thereof, be deemed guilty of a misdemeanor and punishable by such fine or imprisonment, or both, as provided in 46-18-212, except as is herein otherwise provided. If any retail licensee is convicted of any offense under this code, his license shall be immediately revoked or in the discretion of the department such other sanction imposed as may be authorized under 16-4-406. Further, if any person under *19 years of age* is convicted of an offense under this code he shall be subject to a $100 fine or 30 days in confinement."

Approved March 21, 1979.

CHAPTER NO. 187

AN ACT TO AMEND SECTION 1, CHAPTER 299, LAWS OF 1973, TO RELEASE LIENS HELD BY THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1, Chapter 299, Laws of 1973, is amended to read:

"Section 1. All liens held by the department of social and rehabilitation services under authority granted by sections 71-241 through 71-250, R.C.M. 1947, are unenforceable and *are hereby* released."

Approved March 21, 1979.

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CHAPTER NO. 188

AN ACT TO SET STANDARDS FOR ADVERTISING BY A REAL ESTATE BROKER OPERATING UNDER A FRANCHISE AGREEMENT; CLARIFYING RESTRICTIONS ON THE BOARD OF REAL ESTATE'S AUTHORITY TO REGULATE ADVERTISING; AMENDING SECTIONS 37-51-102 AND 37-51-321, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of real estate provided for in 2-15-1642.

(2) "Broker" includes an individual who for another or for a fee, commission, or other valuable consideration or who with the intent or expectation of receiving the same negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements thereon or collects rents or attempts to collect rents or advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes an individual employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition thereof at a salary or for a fee, commission, or any other consideration. The term "broker" also includes an individual who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers, or both, and any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease.

(3) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(4) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(5) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

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(6) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(7) "Salesman" includes an individual who for a salary, commission, or compensation of any kind is employed, either directly, indirectly, regularly, or occasionally, by a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate."

Section 2. Section 37-51-321, MCA, is amended to read:

"37-51-321. Revocation or suspension of license — initiation of proceedings — grounds. The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesman, subject to 37-1-101 and 37-1-102, and may revoke or suspend a license issued under this chapter when the broker or salesman has been found guilty by a majority of the board of any of the following practices:

(1) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. *A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name he does not incorporate his own name in the franchise name or logotype or does not conspicuously display, on his letterhead and other printed materials available to the public, a statement that his office is independently owned and operated. The board may not adopt advertising standards more stringent than those set forth in this subsection.*

(2) making any false promises of a character likely to influence, persuade, or induce;

(3) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salesmen or any medium of advertising or otherwise;

(4) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(5) failing to account for or to remit money coming into his possession belonging to others;

(6) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(7) acting in a dual capacity of broker and undisclosed principal in a transaction;

(8) guaranteeing, authorizing, or permitting a person to guarantee future profits which may result from the resale of real property;

(9) offering real property for sale or lease without the knowledge and consent of the owner or his authorized agent or on terms other than those authorized by the owner or his authorized agent;

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(10) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(11) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which he has an undisclosed interest;

(12) negotiating a sale, exchange, or lease of real property directly with an owner or lessee if he knows that the owner has a written, outstanding contract in connection with the property granting an exclusive agency to another broker;

(13) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(15) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(16) paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesman under this chapter;

(17) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(18) failing, if a salesman, to place, as soon after receipt as is practicably possible, in the custody of his registered broker, deposit money or other money entrusted to him as salesman by a person;

(19) demonstrating his unworthiness or incompetency to act as a broker or salesman; or

(20) conviction of a felony."

Approved March 21, 1979.

CHAPTER NO. 189

AN ACT TO REPEAL THE STATUTORY AUTHORIZATION FOR FORECLOSURE OF A SECURITY INTEREST IN PERSONAL PROPERTY BY SHERIFF'S ATTACHMENT AND SALE WITHOUT NOTICE TO THE PARTY IN POSSESSION OR PRIOR HEARING; AMENDING SECTIONS 30-9-508 AND 61-3-103, MCA; REPEALING SECTIONS 30-9-509 AND 30-9-510, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-9-508, MCA, is amended to read:

"30-9-508. Foreclosure of security interests in personal property. An action for the foreclosure of a security interest in personal

property may be commenced and conducted in the same manner as provided by law for the foreclosure *by action* of mortgages upon real property, and the same may be joined in an action for the recovery of the possession of the property subject to the security interest, but the remedial scope of proceedings for the foreclosure of interests subject to this chapter is governed by this part."

Section 2. Section 61-3-103, MCA, is amended to read:

"61-3-103. Filing of liens, rights, procedure, fees. (1) No chattel mortgage, conditional sales contract, lease, or other lien on a motor vehicle shall be valid as against creditors, subsequent purchasers or encumbrancers unless and until such mortgage, conditional sales contract, lease, or other lien, or a true copy thereof certified by a notary public has been filed with the division as hereinafter provided. The division shall not file any mortgage, conditional sales contract, lease, or other lien unless such mortgage, conditional sales contract, lease, or other lien is accompanied by the certificate of ownership of such vehicle, except in the sale of a new motor vehicle by a duly licensed dealer, and when such mortgage, conditional sales contract, lease, or other lien or certified copy thereof is so presented for filing the division shall file the same entering upon its records the name and address of the mortgagee, conditional sales vendor, lessor, or other lienor together with the amount of the lien and shall at the same time endorse the same information upon the face of the certificate of ownership, mailing a statement certifying to the filing of such mortgage, conditional sales contract, lease, or other lien to the mortgagee, vendor, or other lienor, and mail the certificate of ownership to the owner at the address given on said certificate, the owner being the person entitled to operate and possess such motor vehicle.

(2) Satisfactions or statements of release filed with the division under this chapter shall be retained by it for a period of 8 years after receipt, after which they may be destroyed. Chattel mortgages, conditional sales contracts, leases, or other liens filed with the division, and all renewals and assignments thereof, shall be retained by it for a period of 8 years after the maturity date stated in such mortgage, conditional sales contract, lease, or other lien, or renewal, or if no maturity date is therein stated, for a period of 13 years after receipt, after which they may be destroyed.

(3) From and after the filing of any mortgage, conditional sales contract, lease, or other lien, or copy thereof on any motor vehicle, as herein provided, then and in that event such mortgage, conditional sales contract, lease, or other lien shall be constructive notice of the mortgage, conditional sales contract, lease, or other lien and its contents to subsequent purchasers and encumbrancers.

(4) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 shall be applicable except that deposits must be made with the division.

(5) In the event any conditional sales vendor or chattel mortgagee or assignee fails to file a satisfaction of a chattel mortgage, assignment, or

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conditional sales contract within 15 days after receiving final payment on such mortgage, assignment, or conditional sales contract he shall be required to pay the division the sum of $1 for each and every day thereafter that he fails to file such satisfaction.

(6) Upon receipt of any leins, or notice of liens dependent on possession, or attachments, etc., against the record of any motor vehicle registered in this state, the division shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any thereof a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and/or attaching creditor.

(7) It shall not be necessary to refile with the division any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(8) A fee of $2 shall be paid to the division upon and for filing any lien or lien instrument against any motor vehicle, and said fee of $2 shall further include and cover the cost of filing a satisfaction or release of the lien or lien instrument and also the cost of endorsing such satisfaction or release on the face of the certificate of ownership or on the records of the division or both. A fee of $2 shall be paid the division for issuing a certified copy of a chattel mortgage, conditional sales contract, or other lien or instrument of encumbrance on file in the office of the division, or for filing any assignment of any instrument on file with the division. All fees provided for in this section shall be deposited by the division in the earmarked revenue fund."

Section 3. **Repealer.** Sections 30-9-509 and 30-9-510, MCA, are repealed.

Approved March 21, 1979.

CHAPTER NO. 190

AN ACT TO AMEND SECTION 81-3-211, MCA, TO PROVIDE AN EXCEPTION TO BRAND INSPECTIONS FOR LIVESTOCK TRANSFERS WHERE THE TRANSFERS RESULT FROM A CHANGE IN THE FORM OF A FAMILY RANCHING ENTITY; ESTABLISHING THE CONDITIONS FOR THE EXCEPTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-3-211, MCA, is amended to read:

"81-3-211. Inspection of livestock before change of ownership or removal from county — transportation permits. *(1) For the purposes of this section:*

(a) "Members of the same family" means a group whose membership is determined by including an individual, his spouse, and his parents, children, grandchildren, and the spouses of each.

(b) "Family business entity" means:

(i) a corporation whose stock is owned solely by members of the same family;

(ii) a partnership in which the partners are all members of the same family;

(iii) an association whose members all are members of the same family; or

(iv) any other entity owned solely by members of the same family.

(2) Except as otherwise provided in this part, it is unlawful to remove or cause to be removed from a county in this state any livestock or to transfer ownership by sale or otherwise or for an intended purchaser or his agent to take possession of any such animal subject to title passing upon meeting or satisfaction of any conditions, unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate of the inspection has been issued in connection with and for the purpose of the transportation or removal or of such change of ownership as provided in this part. The inspection must be made in daylight. *However, the* change of ownership inspection requirements of this subsection *do* not apply when:

(a) such sale or change of ownership transaction involves five or *fewer* such animals; *or*

(b) the change of ownership transaction:

(i) is between:

(A) members of the same family;

(B) a member of one family and the same family's business entity; or

(C) the same family's business entities;

(ii) is accomplished without the livestock changing premises; and

(iii) involves part of a herd to which no livestock have been added other than by natural increase or after brand inspection.

(3) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained or transported under a market consignment permit until the livestock has been inspected for marks and brands by a state stock inspector, as provided in this part.

(4) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock has been released by a state stock inspector and a certificate of release for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market. The release obtained pursuant to this subsection will permit the movement of the livestock so released directly to the destination shown on the certificate.

(5) The person in charge of livestock being removed from a county in this state, where inspection thereof is required by this section or where

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change of ownership has occurred or when moved under a market consignment permit or a market release certificate, shall have in his possession the certificate of inspection, market consignment permit, transportation permit, or market release certificate issued in connection therewith and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector, or deputy state stock inspector upon request. Section 81-3-204 shall be extended to livestock transported or sold under the above-mentioned permits.

(6) The following transportation permits may be issued:

(a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for his personal use or business or where a purebred cow is being transported from county to county in this state by its owner for show purposes and where there is no change of ownership, the inspection certificate required by this section may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for a period not to exceed 1 year for the horse or cow described thereon. The permit becomes void upon any transfer of ownership or if the horse or cow is to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

(b) The owner of a saddle, work, or show horse may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the horse until there is a change of ownership. To obtain a permit a horse must have either a registered brand that has been legally cleared or a lip tattoo or the owner must present proof of ownership to a state stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector together with a $5 permit fee for each horse. The application shall contain a thorough physical description of the horse and list all brands and tattoos carried by the horse. Upon approval of the application by a state stock inspector, a permanent transportation permit shall be issued by the department to the owner for each horse and such permit shall be valid for the life of the horse. If there is a change of ownership in a horse the permit shall automatically become void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit shall be in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. Such a permit shall be automatically void upon a change of ownership.

(c) When livestock owned by and bearing the registered brand of a bona fide rodeo producer is being transported from county to county in this state by the owner for rodeo purposes and where there is no change of ownership, the inspection certificate required by this section may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for the livestock described thereon. The certificate is effective only between April 1 and October 31 of the year for which it is issued. The certificate shall be issued by a state stock inspector.

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(d) An owner of livestock or his agent may be issued a transportation permit allowing the movement of his livestock into an immediately adjoining county and return when the livestock is being moved for grazing purposes and when it is being moved to and from land owned or controlled by the owner of the livestock or his agent. The permit is valid for 6 months and must be issued by a state stock inspector. The fee for the permit is $5, which shall be paid to the state stock inspector at the time the permit is issued and remitted by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department. This permit may be used in lieu of the inspection and certificate required by this section for movement of livestock across a county line."

Approved March 21, 1979.

CHAPTER NO. 191

AN ACT PERMITTING A LICENSED WRECKING FACILITY TO MAKE THE REQUIRED SEARCH FOR THE OWNER OF AN ABANDONED VEHICLE; AMENDING SECTION 61-12-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-12-402, MCA, is amended to read:

"61-12-402. Notice to owner. (1) Within 72 hours after any vehicle is removed and held by or at the direction of the Montana highway patrol or the city police, they shall notify the sheriff of the county in which the vehicle was located at the time it was taken into custody and the place where the vehicle is being held. In addition the Montana highway patrol or the city police shall furnish the sheriff a complete description of the vehicle to include year, make, model, serial number, and license number if available, any costs incurred to that date in the removal, preservation, and custody of the vehicle, and any available information concerning its ownership.

(2) The sheriff shall make reasonable efforts to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle. If such name and address are ascertained, the sheriff shall notify such owner and lienholder or person of the location of the vehicle.

(3) If the vehicle is registered in the office of the division of motor vehicles of this state, notice shall be deemed given when a registered or certified letter addressed to the registered owner of the vehicle and lienholder, if any, at the latest address shown by the records in the office of the division, return receipt requested and postage prepaid thereon, is mailed at least 30 days before the vehicle is sold as hereinafter provided.

(4) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of

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all lienholders, notice by one publication in one newspaper of general circulation in the county where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this part. Such notice by publication can contain multiple listings of abandoned vehicles. Any such notice shall be within the time requirements prescribed for notice by certified or registered mail and shall have the same contents required for a notice by certified or registered mail.

(5) If the abandoned vehicle is in the possession of a motor vehicle wrecking facility licensed under 75-10-511, the wrecking facility may make the required search to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall give the notices required in subsections (2) through (4). The wrecking facility shall deliver to the sheriff a certificate describing the efforts made to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall deliver to the sheriff proof of the notice given.

(6) A vehicle found by law enforcement officials to be a "junk vehicle" as defined by 75-10-501 and certified as having an appraised value of $100 or less as determined by the county assessor in accordance with the rules of the department of revenue may be directly submitted for disposal in accordance with the provisions of part 5 of chapter 10, Title 75, upon a release given by the sheriff. In the release the sheriff shall include a description of the vehicle including year, make, model, serial number, and license number if available. A release provided by the sheriff under this section shall be transmitted to the motor vehicle wrecking facility and shall be considered by that facility to meet the requirements for records under 75-10-512 and 75-10-513. Vehicles described in this section may be submitted without notice and without a required holding period."

Approved March 21, 1979.

CHAPTER NO. 192

AN ACT TO MODIFY THE QUALIFICATIONS OF CERTAIN MEMBERS OF A CITY-COUNTY PLANNING BOARD; AMENDING SECTION 76-1-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-1-201, MCA, is amended to read:

"76-1-201. Membership of city-county planning board. A city-county planning board shall consist of not less than nine members to be appointed as follows:

(1) two official members who reside outside the city limits *but within the jurisdictional area of the city-county planning board* to be appointed by the board of county commissioners, who may in the discretion of the board of county commissioners be employed by or hold public office in the county;

(2) two official members *who reside within the city limits* to be appointed by the city council, who may in the discretion of the city council be employed by or hold public office in the city;

(3) two citizen members *who reside within the city limits* to be appointed by the mayor of the city;

(4) two citizen members *who reside within the jurisdictional area of the city-county planning board* to be appointed by the board of county commissioners;

(5) the ninth member to be selected by the eight officers and citizen members hereinabove provided for with the consent and approval of the board of county commissioners and the city council."

Approved March 21, 1979.

CHAPTER NO. 193

AN ACT TO CLARIFY THE RELATIONSHIP BETWEEN VOLUNTARY FIRE DISTRICTS AND FIRE DEPARTMENTS AND CITY-COUNTY CONSOLIDATED LOCAL GOVERNMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, confusion has arisen concerning the proper status of prior existing fire districts and fire companies following the formation of a city-county consolidated government with self-government powers; and

WHEREAS, the legislature wishes to clarify this situation with the clear understanding that the substance of the law is not changed; and

WHEREAS, Title 7, chapter 33, part 41, requires municipalities to provide fire services under that part; and

WHEREAS, and city-county consolidated government is neither a county government nor a municipality but under 7-3-1103 has the status of both; and

WHEREAS, this combined status allows the people of the local area to choose the most desirable means to provide local services, including fire services, within reasonable limits of interpreting applicable state law and so long as vested rights are not unreasonably abrogated; and

WHEREAS, the legislature finds that a local government charter that maintains rural fire services organizations as they were prior to consolidation is a reasonable interpretation of those laws; and

WHEREAS, to provide the desirable ratification of any existing charter interpretation to this effect and to clarify the application of such charters in the future,

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THEREFORE, it is the purpose of this act to clarify the law on this point without establishing a presumption that the law is in any way substantively altered.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Volunteer fire districts or companies — fire departments — not affected by city-county consolidation.** (1) Notwithstanding any other provision of law, the adoption of a city-county consolidated local government has no effect on the existence of a volunteer fire department, a volunteer fire company, or a fire district created and legally in existence pursuant to the provisions of parts 21 and 23 of chapter 33 unless otherwise specifically provided by charter.

(2) No right or benefit of any member of a volunteer fire district, company, or department created pursuant to the provisions of parts 21 and 23 of chapter 33 in a retirement or pension plan, or payments provided under 19-12-103 may be abrogated by the adoption of a city-county consolidated local government unless otherwise specifically provided by charter.

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved March 21, 1979.

CHAPTER NO. 194

AN ACT TO AMEND SECTION 7-14-2201, MCA, PROVIDING THAT COUNTIES ARE REQUIRED TO MAINTAIN ONLY PUBLIC BRIDGES LOCATED IN TOWNS OR CITIES OR ON MAINTAINED COUNTY ROADS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-2201, MCA, is amended to read:

"7-14-2201. Maintenance and control of bridges. (1) Each board of county commissioners shall maintain all public bridges other than those maintained by the department of highways.

(2) The board shall manage and control all bridges referred to in this part. It shall direct the method and time of making repairs, planking, replanking, paving, and repaving.

(3) (a) Whenever any bridge needs repair or becomes dangerous for the passage of vehicles or persons, the board, or the county surveyor if he is in charge, shall repair the bridge upon being notified thereof.

(b) Nothing in this subsection shall be construed as holding the board or any member responsible or liable for anything other than willful, intentional neglect or failure to act.

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(4) In this part "public bridges" means public bridges located in towns or cities and bridges located on county roads maintained by the county."

Approved March 21, 1979.

CHAPTER NO. 195

AN ACT TO PERMIT THE DEPARTMENT OF REVENUE TO COMPUTE THE CONSUMER COUNSEL FEE OWED BY A REGULATED COMPANY IF THE COMPANY FAILS TO FILE A GROSS REVENUE STATEMENT; PROVIDING FOR A PENALTY AND INTEREST FOR FAILURE TO FILE A STATEMENT OR FOR FAILURE TO PAY FEES; PROVIDING THAT UNPAID FEES, PENALTIES, AND INTEREST ARE A LIEN ON THE REAL PROPERTY OF THE REGULATED COMPANY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Computation and collection of fee in absence of statement — penalty and interest.** (1) If a regulated company or an officer or employee of a regulated company fails, neglects, or refuses to file the statement required by 69-1-223(2), the department of revenue may after the time for filing has expired proceed to inform itself, as best it may, regarding the regulated company's gross operating revenue from all activities regulated by the commission within the state for the calendar quarter, quarters, or portion thereof and may determine and fix the amount of the consumer counsel fee due.

(2) The department may add to the amount of the fee computed under subsection (1), in addition to any other penalty provided by law, a penalty of 10% thereof plus interest at the rate of 1% per month or fraction of month computed on the total amount of fee and penalty. Interest is computed from the date the fee is due to the date of payment.

(3) The department of revenue shall mail to the regulated company a letter setting forth the amount of the fee, penalty, and interest and notifying the company that payment of the full amount of the fee, penalty, and interest must be remitted within 15 days of the regulated company's receipt of the letter; otherwise a lien may be filed.

(4) The 10% penalty may be waived by the department of revenue if reasonable cause for failure and neglect to file the statement is provided to the department.

Section 2. **Failure to pay fee — penalty and interest — collection of fee.** (1) If a regulated company or an officer or employee of a regulated company files the statement required by 69-1-223(2) but fails, neglects, or refuses to pay the fee due within the time required, the department of revenue may after the time for payment has expired add to the fee due, in addition to any other penalty provided by law, a penalty of 10% thereof plus interest at the rate of 1% per month or fraction of

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month computed on the total amount of the fee and penalty. Interest is computed from the date the fee is due to the date of payment.

(2) The department of revenue shall mail to the regulated company a letter setting forth the amount of the fee, penalty, and interest and notifying the company that payment of the full amount of the fee, penalty, and interest must be remitted within 15 days of the regulated company's receipt of the letter; otherwise a lien may be filed.

(3) The 10% penalty may be waived by the department of revenue if reasonable cause for failure and neglect to make payment is provided to the department.

Section 3. **Fee, penalty, and interest as lien.** The fee, penalty, and interest due from a regulated company are a lien upon all real property of the regulated company within a county when the department of revenue files a certified copy of the amounts due in the office of the clerk of court of the county where the property is located. The lien has precedence over any claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

Section 4. **Codification.** Sections 1 through 3 are intended to be codified as an integral part of Title 69, chapter 1, part 2, and the provisions contained in Title 69, chapter 1, part 2 and Title 69, chapter 2, apply to sections 1 through 3.

Approved March 21, 1979.

CHAPTER NO. 196

AN ACT TO GENERALLY REVISE THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; AMENDING SECTIONS 82-4-222, 82-4-226, 82-4-234, 82-4-235, AND 82-4-237, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-222, MCA, is amended to read:

"**82-4-222. Permit application.** (1) An operator desiring a permit shall file an application which shall contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. Such plan shall reflect thorough advance investigation and study by the operator and shall include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of such use and shall state:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record of the surface of the area of land to be affected by the permit and the owners of record of all surface area within one-half mile of any part of the affected area;

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(c) the names and addresses of the present owners of record of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this part and an identification of those permits;

(g) whether the applicant is in compliance with 82-4-251 and, if known, whether every officer, partner, director, or any individual owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant is subject to any of the provisions of 82-4-251 and he shall so certify and whether any of the foregoing parties or persons have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond and, if so, a detailed explanation of the facts involved in each case must be attached;

(h) the names and addresses of any persons who are engaged in strip or underground mining activities on behalf of the applicant;

(i) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(j) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of such seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall depict subsurface conditions at *such* intervals *as the department requires* across the surface and shall run at a 90-degree angle to the other set. *The department may not require intervals of less than 500 feet.* Each cross section shall depict the thickness and geologic character of all known strata beginning with the topsoil. In addition, each application for an underground mining permit shall be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit *period.* These cross sections shall also include all existing shafts, entries, and haulageways.

(k) the name and date of a daily newspaper of general circulation within the county in which the applicant has prominently published an announcement of his application for a strip-mining or underground-mining

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permit and a detailed description of the area of land to be affected should a permit be granted;

(l) such other or further information as the department may require.

(2) The application for a permit shall be accompanied by two copies of all maps meeting the requirements of the subsections below. The maps shall:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining and the boundaries of surface properties and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of such area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan shall indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections which have been submitted;

(l) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs, and trees;

(m) be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification shall be signed and notarized. The department may reject a map as incomplete if its accuracy is not so attested.

(n) contain such other or further information as the department may require.

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(3) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, revegetating, and a reclamation plan for the area affected by the operation, which proposals shall meet the requirements of this part and rules adopted under this part."

Section 2. Section 82-4-226, MCA, is amended to read:

"82-4-226. Prospecting permit. (1) On and after March 16, 1973, prospecting by any person on land not included in a valid strip-mining or underground-mining permit shall be unlawful without possessing a valid prospecting permit issued by the department as provided in this section. No prospecting permit shall be issued until the *person* submits an application, the application is examined, amended if necessary, and approved by the department, and adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) An application for a prospecting permit shall be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by rules the precise nature of such required prospecting map and reclamation plan. Any *applicant* who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and such other information as may be required by the department. The applicant must state what types of prospecting and excavating techniques will be employed on the affected land. The application shall also include any other or further information the department may require.

(3) The application shall be accompanied by a fee of $100. This fee shall be used as a credit toward the strip-mining or underground-mining permit fee provided by this part if the area covered by the prospecting permit becomes covered by a valid surface-mining or underground-mining permit obtained before or at the time the prospecting permit expires.

(4) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

(5) In the event that the holder of a prospecting permit desires to strip mine or underground mine the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining or underground-mining permit. Any land actually affected by prospecting or

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excavating under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan shall be promptly reclaimed.

(6) The prospecting permit shall be valid for 1 year and shall be subject to renewal, suspension, and revocation in the same manner as strip-mining or underground-mining permits under this part.

(7) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under this part."

Section 3. Section 82-4-234, MCA, is amended to read:

"82-4-234. Commencement of reclamation. The operator shall commence the reclamation of the area of land affected by his operation as soon as possible after the beginning of strip mining or underground mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans shall be kept current with the operation as defined by rules of the board, and a permit or supplement to a permit may not be issued if, in the discretion of the department, these practices are not current. *A permittee may not, without department approval, disturb any area that has been seeded pursuant to 82-4-233.*"

Section 4. Section 82-4-235, MCA, is amended to read:

"82-4-235. Planting report. Inspection and evaluation for permanent diverse vegetative cover shall be made as soon as it is possible to determine if a satisfactory stand has been established. If the department determines that a satisfactory permanent diverse vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for a hearing. In no event shall such remaining bond be released prior to a period of 5 years from the initial planting provided for in 82-4-233."

Section 5. Section 82-4-237, MCA, is amended to read:

"82-4-237. Operator to file annual reports. (1) An operator shall file an annual report with the department within 30 days of the anniversary date of each permit. Included within this report shall be:

(a) the name and address of the operator and permit number;

(b) a report in such detail as the department shall require, supplemented with maps, cross sections, or other material indicating the extent to which mining operations have been carried out, the progress of all reclamation work, *including the type of planting or seeding, mixture and amount of seed, date of planting or seeding, and area of land planted,* the extent to which expectations and predictions made in the original application have been fulfilled and any deviation therefrom, and the number of acres affected; and

(c) a revised schedule or timetable of operations and reclamation and an estimate of the number of acres to be affected during the next 1-year period.

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(2) Upon receipt of the annual report, the department may make further inquiry and request further information and, if it does so, shall allow a reasonable opportunity for the operator to respond.

(3) When problem situations are revealed by review of new information or as a result of field inspections, the department may order such changes in the mining and reclamation plans as are necessary to insure compliance with this part."

Approved March 21, 1979.

CHAPTER NO. 197

AN ACT TO INSURE THE AVAILABILITY OF BASIC LEVELS OF BENEFITS UNDER HEALTH INSURANCE POLICIES AND CONTRACTS FOR THE CARE AND TREATMENT OF ALCOHOLISM AND DRUG ADDICTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purpose of [this act] is to encourage consumers to avail themselves of basic levels of benefits under health insurance policies and contracts for the care and treatment of alcoholism and drug addiction, and to preserve the rights of the consumer to select such coverage according to his medical and economic needs.

Section 2. **Definitions.** For purposes of [this act], the following definitions apply:

(1) "Inpatient hospital benefits" means benefits payable for charges made by a hospital, as defined in the policy or contract, for the necessary care and treatment of alcoholism or drug addiction furnished to a covered person while confined as a hospital inpatient; and with respect to major medical policies or contracts, also includes those benefits payable for charges made by a physician, as defined in the policy or contract, for the necessary care and treatment of alcoholism or drug addiction furnished to a covered person while confined as a hospital inpatient.

(2) "Outpatient benefits" means benefits payable for:

(a) reasonable charges made by a hospital for the necessary care and treatment of alcoholism or drug addiction furnished to a covered person while not confined as a hospital inpatient;

(b) reasonable charges for services rendered or prescribed by a physician for the necessary care and treatment for alcoholism or drug addiction furnished to a covered person while not confined as a hospital inpatient; and

(c) reasonable charges made by an alcoholism or drug addiction treatment center for the necessary care and treatment of a covered person provided in the treatment center.

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(3) "Alcoholism treatment center" and "drug addiction treatment center" mean a treatment facility which provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician, and which facility is also:

(a) affiliated with a hospital under a contractual agreement with an established system for patient referral; or

(b) licensed, certified, or approved as an alcoholism or drug addiction treatment center by the state.

Section 3. **Availability of coverage for alcoholism and drug addiction.** Insurers and health service corporations transacting health insurance in this state must make available under hospital and medical expenses incurred insurance policies and under hospital and medical service plan contracts the level of benefits specified in this section for the necessary care and treatment of alcoholism and drug addiction subject to the right of the applicant for a group or individual policy or contract to reject the coverage or to select any alternative level of benefits as may be offered by the insurer or service plan corporation.

(1) Under basic hospital expense policies or contracts, inpatient hospital benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that benefits may be limited to not less than 30 calendar days per year as defined in the policy or contract.

(2) Under major medical policies or contracts, inpatient hospital benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) Inpatient hospital benefits may be limited to 30 calendar days per year as defined in the policy or contract. If inpatient hospital benefits are provided beyond 30 calendar days per year, the durational limits, dollar limits, deductibles, and coinsurance factors applicable thereto need not be the same as applicable to physical illness generally.

(b) For outpatient benefits, the coinsurance factor may not exceed 50% or the coinsurance factor applicable for physical illness generally, whichever is greater, and the maximum benefit for alcoholism and drug addiction in the aggregate during any applicable benefit period may be limited to not less than $1,000.

(c) Maximum lifetime benefits may, for alcoholism and drug addiction in the aggregate, be no less than an amount equal to the lesser of $10,000 or 25% of the lifetime policy limit.

Section 4. **Applicability.** [This act] applies to policies or contracts delivered or issued for delivery in this state more than 120 days after [the effective date of this act] but does not apply to blanket, short term travel, accident only, limited or specified disease, individual conversion policies or

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contracts, or to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as medicare, or any other similar coverage under state or federal governmental plans.

Approved March 22, 1979.

CHAPTER NO. 198

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO INSURANCE AND INSURANCE COMPANIES; AND REPEALING SECTION 40-1723, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-201, MCA, is amended to read:

"33-1-201. Definitions — insurance in general. *For the purposes of this code, the following definitions apply unless the context requires otherwise:*

(1) An "alien insurer" is one formed under the laws of any country other than the United States, its states, districts, territories, and commonwealths.

(2) An "authorized insurer" is one duly authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state.

(3) A "domestic insurer" is one formed under the laws of this state.

(4) A "foreign insurer" is one formed under the laws of any jurisdiction other than this state. Except where distinguished by context, foreign insurer includes also an alien insurer.

(5) "Insurance" is a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

(6) "Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance.

(7) "State", when used as to jurisdiction, means a state, the District of Columbia, *or* a territory, commonwealth, or possession of the United States.

(8) "Transact", with respect to insurance, includes any of the following:

(a) solicitation and inducement;

(b) preliminary negotiations;

(c) effectuation of a contract of insurance;

(d) transaction of matters subsequent to effectuation of the contract of insurance and arising out of it.

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(9) An "unauthorized insurer" is one not authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state."

Section 2. Section 33-1-202, MCA, is amended to read:

"33-1-202. Definitions — entities. *For the purposes of this code, the following definitions apply unless the context requires otherwise:*

(1) "Commissioner" means *the* commissioner of insurance of the state of Montana.

(2) "Department" means the department of insurance of the state of Montana.

(3) "Person" includes an individual, insurer, company, association, organization, Lloyd's, society, reciprocal or interinsurance exchange, partnership, syndicate, business trust, corporation, *or* any other legal entity."

Section 3. Section 33-1-211, MCA, is amended to read:

"33-1-211. Surety insurance. Surety insurance includes:

(1) fidelity insurance which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(2) insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship;

(3) insurance indemnifying banks, bankers, brokers, *or* financial or moneyed corporations or associations:

(a) against check forgery or alteration or against loss resulting from any cause of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, or precious and semiprecious stones, including any loss while being transported in armored motor vehicles, by mail, or by messenger but not including any other risks of transportation or navigation;

(b) against loss or damage to *the* insured's premises or to his furnishings, fixtures, equipment, safes, and vaults therein caused by burglary, robbery, theft, or criminal mischief or any attempt thereat."

Section 4. Section 33-1-303, MCA, is amended to read:

"33-1-303. Deputies and assistants — employment, compensation, and termination. (1) The commissioner shall appoint a chief deputy insurance commissioner who shall be in charge of the insurance department under the direction and control of the commissioner.

(2) The commissioner may appoint additional deputy insurance commissioners for *the* purposes *that* he *designates.*

(3) The commissioner may employ a competent insurance actuary to perform actuarial duties, if any, of the department, to take charge of or

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assist in the examination of insurers, and to perform other duties assigned to him.

(4) The commissioner may appoint or employ examiners to conduct or assist in examinations of insurers and others provided for under the code. *Examiners must* be competent, because of experience or special education or training, to fulfill the responsibilities of an insurance examiner.

(5) The commissioner shall appoint and employ a field investigator whose primary duty it *is*, as directed by the commissioner, to make investigations in this state of violations or claimed violations of this code.

(6) The commissioner may appoint a chief clerk for the insurance department and employ such other assistants and clerks as may be necessary to assist him properly to discharge the duties imposed upon him under this code.

(7) The commissioner may at any time terminate the appointment, designation, or employment of any such deputy, actuary, chief clerk, or other employee.

(8) The commissioner may from time to time contract for and procure, on a fee or part-time basis, or both, such actuarial, technical, or other professional services as he may require for the discharge of his duties.

(9) The compensation of *the commissioner's personal staff, as defined in Title 2, chapter 18, part 1,* shall be as fixed by the commissioner but in the aggregate *may* not exceed current funds appropriated by the legislature to the insurance department or otherwise currently available for the purpose."

Section 5. Section 33-1-315, MCA, is amended to read:

"33-1-315. Witnesses — production of records — subpoena — failure to respond — perjury. (1) With respect to the subject of any examination, investigation, or hearing being conducted by him, the commissioner or his examiner, if general written authority has been given the examiner by the commissioner, may subpoena witnesses and administer oaths or affirmations and examine any individual under oath and may require and compel the production of records, books, papers, contracts, and other documents by attachments, if necessary. If in connection with any examination of an insurer the commissioner desires to examine any officer, director, or manager thereof who is then outside this state, the commissioner *may* conduct and enforce by all appropriate and available means any such examination under oath in any other state or territory of the United States in which such officer, director, or manager may then presently be, to the full extent permitted by the laws of such other state or territory, this special authorization considered.

(2) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a district court. Witness fees, mileage, and the actual expenses necessarily incurred in securing attendance of witnesses and their testimony shall be itemized and shall be paid by the person being examined if such person is found to have been in violation of the law as to the matter with respect to which such witness was subpoenaed or by the

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person, if other than the commissioner, at whose request the hearing is held.

(3) Subpoenas of witnesses shall be served in the same manner as if issued from a district court. If any individual fails to obey a subpoena lawfully served, the commissioner shall report such disobedience, together with a copy of the subpoena and proof of service thereof, to the district court for the county in which the individual was required to appear. Such court shall cause such individual to be produced and shall impose penalties as though he had disobeyed a subpoena issued out of such court.

(4) Any person *knowingly* failing to attend, answer, or produce records, documents, or other evidence requested by the commissioner or who *knowingly* fails to give the commissioner full and truthful information and answer in writing to any material written inquiry of the commissioner, relative to the subject of any such examination, investigation, or hearing, or *knowingly* fails to appear and testify under oath before the commissioner *is* guilty of a misdemeanor.

(5) Any person *knowingly* testifying falsely under oath as to any matter material to any such examination, investigation, or hearing *is guilty of perjury, and* upon conviction *shall* be punished *according to 45-7-201.*"

Section 6. Section 33-1-411, MCA, is amended to read:

"**33-1-411. Destruction of records — hindrance of examination — penalty.** Any director, officer, agent, or employee of any company who *for the purpose of hindering any examination conducted pursuant to this part* destroys any books, records, or documents required to be kept by law shall be punished by a fine of not more than $1,000. *After notice and* hearing *in accordance with Title 33, chapter 1, part 7,* the commissioner may revoke the certificate of authority of such company."

Section 7. Section 33-1-704, MCA, is amended to read:

"**33-1-704. Hearing procedure.** (1) *All hearings shall be open to the public unless closed pursuant to the provisions of 2-3-203.*

(2) The commissioner shall allow any party to the hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence and to examine witnesses, to present evidence in support of his interest, and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence in his behalf.

(3) The commissioner shall permit to become a party to the hearing by intervention, if timely, any person who was not an original party thereto and whose pecuniary interests *will* be directly and immediately affected by the commissioner's order made upon the hearing.

(4) Formal rules of pleading or evidence need not be observed at any hearing.

(5) Upon written request seasonably made by a party to the hearing and at *that* person's expense, the commissioner shall cause a full stenographic record of the proceedings to be made by a competent reporter. If

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transcribed, a copy of such stenographic record shall be furnished to the commissioner without cost to the commissioner or the state and shall be a part of the commissioner's record of the hearing. If so transcribed, a copy of such stenographic record shall be furnished to any other party to such hearing at the request and expense of such other party. If no stenographic record is made or transcribed, the commissioner shall prepare an adequate record of the evidence and of the proceedings."

Section 8. Section 33-2-105, MCA, is amended to read:

"33-2-105. Suits by unauthorized insurers prohibited. *Except as* to transactions permitted under 33-2-102, no unauthorized insurer shall institute or file or cause to be instituted or filed any suit, action, or proceeding in this state to enforce any right, claim, or demand arising out of any insurance transaction in this state until such insurer has obtained a certificate of authority to transact such insurance in this state."

Section 9. Section 33-2-524, MCA, is amended to read:

"33-2-524. Individual and group annuity and pure endowment contracts — valuation. (1) The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on the operative date of this section, as defined herein, and for all annuities and pure endowments purchased on or after that operative date, under group annuity and pure endowment contracts *is* the commissioner's reserve valuation method defined in 33-2-525 and the following tables and interest rates:

(a) for individual annuity and pure endowment contracts issued prior to January 1, 1986, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table or any modification of this table approved by the commissioner and 6% interest for single premium immediate annuity contracts and 4% interest for all other individual annuity and pure endowment contracts;

(b) for individual annuity and pure endowment contracts issued on or after January 1, 1986, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table or any modification of the table approved by the commissioner and 3 ½ % interest;

(c) for all annuities and pure endowments purchased prior to January 1, 1986, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table or any modification of the table approved by the commissioner and 6% interest;

(d) for all annuities and pure endowments purchased on or after January 1, 1986, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table or any modification of this table approved by the commissioner and 3 ½ % interest.

(2) After March 17, 1973, any insurer may file with the commissioner a written notice of its election to comply with the provisions of subsection

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(1) after a specified date before January 1, 1979, which shall be the operative date of subsection (1) for such insurer. An insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1979."

Section 10. Section 33-2-708, MCA, is amended to read:

"33-2-708. Fees and licenses. (1) The commissioner shall collect in advance and the persons so served shall pay to the commissioner the following fees and licenses:

(a) certificates of authority:

(i) for filing applications for original *certificates* of authority, articles of incorporation (except *original articles of incorporation of domestic insurers* as provided in subsection (b) below) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with such application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers ..... $ 30.00

(B) foreign insurers 300.00

(ii) annual continuation of certificate of authority 300.00

(iii) reinstatement of certificate of authority 25.00

(b) articles of incorporation:

(i) filing original articles of incorporation of domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 10.00

(c) filing bylaws or amendment thereto where required 5.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority 25.00

(e) agent's license *for* property, casualty, surety, *and* title insurance agents, including disability insurance without additional license or fee when written by property, casualty, or surety insurer otherwise represented by the agent:

(i) application for original license, including issuance of license, if issued 10.00

(ii) appointment of agent, each insurer 5.00

(iii) annual renewal or appointment of agent, each insurer 5.00

(iv) temporary license 10.00

(f) nonresident agent's license *for* property, casualty, *and* title insurance agents, *including* disability insurance without additional license or fee when written by property, casualty, or surety insurer otherwise represented by the agent:

(i) application for original license, including issuance of license, if issued 100.00

(ii) appointment of agent, each insurer 5.00

(iii) annual renewal or appointment of agent, each insurer 100.00

(g) solicitor's license:

(i) application for original license, including issuance of license, if issued 5.00

(ii) annual continuation of license 5.00

(h) agent's license, life, disability insurance:

(i) application for original license, each insurer 5.00

(ii) annual continuation or renewal of license, each insurer 5.00

(iii) temporary license, each insurer 5.00

(i) nonresident agent's license, life, disability insurance:

(i) application for original license, including issuance of license, if issued, each insurer 100.00

(ii) annual continuation or renewal of license, each insurer 100.00

(j) examination for license as agent or solicitor, each examination 10.00

(k) surplus line agent's license:

(i) application for original license and for issuance of license, if issued 25.00

(ii) annual renewal or continuation of license 25.00

(l) adjuster's license:

(i) application for original license and for issuance of license, if issued 10.00

(ii) annual continuation or renewal of license 10.00

(m) insurance vending machine license, each machine, each year 10.00

(n) commissioner's certificate under seal (except when on certificates of authority or licenses) 3.00

(o) copies of documents on file in the commissioner's office, per page ..... .50

(p) policy forms:

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(i) filing each policy form 25.00

(ii) filing each application, rider, endorsement, amendment, insert page, schedule *of* rates, and clarification of risks 10.00

(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days 50.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fees and licenses received by him under this section."

Section 11. Section 33-2-833, MCA, is amended to read:

"33-2-833. Obligations of federal housing administrator and national mortgage associations. Notwithstanding other provisions of the law, it *is* lawful for any insurance company operating under the laws of this state to invest the funds in *its* custody or possession, eligible for investment, in debentures issued by the federal housing administrator and in obligations of national mortgage associations."

Section 12. Section 33-2-1103, MCA, is amended to read:

"33-2-1103. Additional investment authority — exemption from other investment restrictions — determination of qualification — divestiture. (1) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections of parts 10 and 11 of this chapter, a domestic insurer may also:

(a) invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of 5% of such insurer's assets or 50% of such insurer's surplus as regards policyholders, provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, there shall be included total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation.

(b) if the insurer's total liabilities, as calculated for national association of insurance commissioners annual statement purposes, are less than 10% of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, provided that after such investment the insurer's surplus as regards policyholders, considering such investment as if it were a disallowed asset, will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

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(c) invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in this section. The total investment of the insurer shall include:

(i) any direct investment by the insurer in an asset;

(ii) the insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary.

(d) with the approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, provided that after such investment, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

(e) invest any amount in the common stock, preferred stock, debt obligations, or other securities of any subsidiary exclusively engaged in holding title to or holding title to and managing or developing real or personal property if, after considering as a disallowed asset so much of the investment as is represented by subsidiary assets which if held directly by the insurer would be considered as a disallowed asset, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs and if following such investment all voting securities of such subsidiary would be owned by the insurer.

(2) Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection (1) hereof *are* not subject to any of the otherwise applicable restrictions or prohibitions contained in parts 10 and 11 of this chapter applicable to such investments of insurers.

(3) Whether any investment pursuant to subsection (1) meets the applicable requirements thereof is to be determined immediately after such investment is made, taking into account the then outstanding principal balance on all previous investments in debt obligations and the value of all previous investments in equity securities as of the date they were made.

(4) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within 3 years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other section of parts 10 and 11 of this chapter and the insurer has notified the commissioner thereof."

Section 13. Section 33-3-215, MCA, is amended to read:

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"33-3-215. Mutualization of stock insurer. (1) A stock insurer other than a title insurer may become a mutual insurer under *a* plan and procedure approved by the commissioner after a hearing thereon.

(2) The commissioner shall not approve any plan, procedure, or mutualization unless:

(a) it is equitable to stockholders and policyholders;

(b) it is subject to approval by the holders of not less than three-fourths of the insurer's outstanding capital stock having voting rights and by not less than two-thirds of the insurer's policyholders who vote on such plan in person, by proxy, or by mail pursuant to such notice and procedure as may be approved by the commissioner;

(c) if a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies and whose policies have been in force for more than 1 year;

(d) mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

(e) the plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by *Title 35, chapter 1, part 8*, as to rights of nonconsenting stockholders, with respect to consolidation or merger of private corporations;

(f) the plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and

(g) the mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance and for the kinds of insurance included in its certificates of authority in such states.

(3) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under chapter 2, part 9."

Section 14. Section 33-3-217, MCA, is amended to read:

"33-3-217. Mergers and consolidations of stock insurers. (1) A domestic stock insurer may merge or consolidate with one or more domestic or foreign stock corporations authorized to transact business in this state by complying with the applicable provisions of the statutes of this state governing the merger or consolidation of stock corporations formed for profit but subject to subsections (2) and (3) below.

(2) No such merger or consolidation *may* be effectuated unless in advance thereof the plan and agreement therefor have been filed with the commissioner and approved in writing by him after a hearing thereon. The commissioner shall give such approval within a reasonable time after such filing unless he finds such plan or agreement:

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(a) is contrary to law;

(b) inequitable to the stockholders of any domestic insurer involved; or

(c) would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere.

(3) No director, officer, agent, or employee of any insurer party to such merger or consolidation *may* receive any fee, commission, compensation, or other valuable consideration whatsoever for in any manner aiding, promoting, or assisting therein except as set forth in such plan or ageement.

(4) If the commissioner does not approve any such plan or agreement he shall so notify the insurer in writing specifying his reasons therefor.

(5) If any domestic insurer involved in the proposed merger or consolidation is authorized to transact insurance also in other states, the commissioner may request the insurance commissioner, director of insurance, superintendent of insurance, or other similar public insurance supervisory official of the two other such states in which such insurer has in force the larger amounts of insurance to participate in the hearing provided for under subsection (2) above, with full right to examine all witnesses and evidence and to offer to the commissioner such pertinent information and suggestions as they may deem proper.

(6) Any plan or proposal through which a stock insurer proposes to acquire a controlling stock interest in another stock insurer through an exchange of stock of the first insurer, issued by the insurer for the purpose, for such controlling stock of the second insurer is deemed to be a plan or proposal of merger of the second insurer into the first insurer for the purposes of this section and is subject to the applicable provisions hereof.

(7) Upon merger or consolidation of a domestic insurer with another insurer under this chapter, the corporate charter of such merged or consolidated domestic insurer shall *thereby* automatically be extinguished and nullified."

Section 15. Section 33-5-201, MCA, is amended to read:

"33-5-201. Organization of reciprocal insurer. (1) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer and make application to the commissioner for a certificate of authority to transact insurance.

(2) The proposed attorney shall fulfill the requirements of and shall execute and file with the commissioner when applying for a certificate of authority a declaration setting forth:

(a) the name of the insurer;

(b) the location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this state;

(c) the kinds of insurance proposed to be transacted;

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(d) the names and addresses of the original subscribers;

(e) the designation and appointment of the proposed attorney and a copy of the power of attorney;

(f) the names and addresses of the officers and directors of the attorney, if a corporation, or its members, if a firm;

(g) the powers of the subscribers' advisory committee and the names and terms of office of the members thereof;

(h) that all moneys paid to the reciprocal insurer shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;

(i) a copy of the subscribers' agreement;

(j) a statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the commissioner;

(k) a statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by 33-5-401 is on hand; and

(l) a copy of each policy, endorsement, and application form it then proposes to issue or use.

(3) *The* declaration shall be acknowledged by the attorney in the manner required for the acknowledgment of deeds."

Section 16. Section 33-7-514, MCA, is amended to read:

"33-7-514. Standard provisions. (1) After January 1, 1962, no life benefit certificate *may* be delivered or issued for delivery in this state unless a copy of the form has been filed with the commissioner.

(2) The certificate *must* contain in substance the following standard provisions or, in lieu thereof, provisions which are more favorable to the member:

(a) title on the face and filing page of the certificate clearly and correctly describing its form;

(b) a provision stating the amount of rates, premiums, or other required contributions, by whatever name known, which are payable by the insured under the certificate;

(c) a provision that the member is entitled to a grace period of not less than a full month (or 30 days at the option of the society) in which the payment of any premium after the first may be made. During such grace period the certificate *must* continue in full force, but in case the certificate becomes a claim during the grace period before the overdue payment is made, the amount of such overdue payment or payments may be deducted in any settlement under the certificate.

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(d) a provision that the member *is* entitled to have the certificate reinstated at any time within 3 years from the due date of the premium in default, unless the certificate has been completely terminated through the application of a nonforfeiture benefit, cash surrender value, or certificate loan, upon the production of evidence of insurability satisfactory to the society and the payment of all overdue premiums and any other indebtedness to the society upon the certificate, together with interest on such premiums and such indebtedness, if any, at a rate not exceeding 6% per annum compounded annually;

(e) except in the case of pure endowment, annuity or reversionary annuity contracts, reducing term insurance contracts, or contracts of term insurance of uniform amount of 15 years or less expiring before age 66, a provision that, in the event of default in payment of any premium after 3 full years' premiums have been paid or after premiums for a lesser period have been paid if the contract so provides, the society will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on the plan stipulated in the certificate, effective as of such due date, of such value as specified in this chapter. The certificate may provide, if the society's laws so specify or if the member so *elects* prior to the expiration of the grace period of any overdue premium, that default *may* not occur so long as premiums can be paid under the provisions of an arrangement for automatic premium loan as may be set forth in the certificate.

(f) a provision that one paid-up nonforfeiture benefit as specified in the certificate *must* become effective automatically unless the member elects another available paid-up nonforfeiture benefit, not later than 60 days after the due date of the premium in default;

(g) a statement of the mortality table and rate of interest used in determining all paid-up nonforfeiture benefits and cash surrender options available under the certificate and a brief general statement of the method used in calculating such benefits;

(h) a table showing in figures the value of every paid-up nonforfeiture benefit and cash surrender option available under the certificate for each certificate anniversary either during the first 20 certificate years or during the term of the certificate, whichever is shorter;

(i) a provision that the certificate *is* incontestable after it has been in force during the lifetime of the member for a period of 2 years from its date of issue except for nonpayment of premiums, violation of the provisions of the certificate relating to military, aviation, or naval service, and violation of the provisions relating to suspension or expulsion as substantially set forth in the certificate. At the option of the society, supplemental provisions relating to benefits in the event of temporary or permanent disability or hospitalization and provisions which grant additional insurance specifically against death by accident or accidental means may also be excepted. The certificate *is* incontestable on the grounds of suicide after it has been in force during the lifetime of the member for a period of 2 years from date of issue. The certificate may provide, as to statements made to procure reinstatement, that the society *has* the right to contest

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a reinstated certificate within a period of 2 years from date of reinstatement with the same exceptions as herein provided.

(j) a provision that in case the age of the member or of any other person is considered in determining the premium and it is found at any time before final settlement under the certificate that the age has been misstated, and the discrepancy and premium involved have not been adjusted, the amount payable shall be such as the premium would have purchased at the correct age; but if the correct age was not an insurable age under the society's charter or laws, only the premiums paid to the society, less any payments previously made to the member, shall be returned or, at the option of the society, the amount payable under the certificate shall be such as the premium would have purchased at the correct age according to the society's promulgated rates and any extension thereof based on actuarial principles;

(k) a provision or provisions which recite fully or which set forth the substance of all sections of the charter, constitution, laws, or rules of the society in force at the time of issuance of the certificate, the violation of which will result in the termination of or in the reduction of the benefit or benefits payable under the certificate; and

(l) if the constitution or laws of the society provide for expulsion or suspension of a member, *a provision that* any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentations in such member's application for membership, shall have the privilege of maintaining his insurance in force by continuing payment of the required premium.

(3) Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance or because the certificate is an annuity certificate may, to the extent inapplicable, be omitted from the certificate."

Section 17. Section 33-10-217, MCA, is amended to read:

"33-10-217. Prevention of impairments. To aid in the detection and prevention of insurer impairments *the board of directors is given the following powers and duties*:

(1) The board shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations.

(2) The board may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be unable or potentially unable to fulfill its contractual obligations.

(3) The board may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(4) The board may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer impairments.

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(5) The board shall, at the conclusion of any insurer impairment in which the association carried out its duties under this part or exercised any of its powers under this part, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit such report to the commissioner."

Section 18. Section 33-10-229, MCA, is amended to read:

"33-10-229. Recovery of dividends. (1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order *has* a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the 5 years preceding the petition for liquidation or rehabilitation subject to the limitations of subsections (2) through (4).

(2) No such dividend *is* recoverable if the insurer shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who *was* an affiliate that controlled the insurer at the time the distributions were paid *is* liable up to the amount of distributions he received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared *is* liable up to the amount of distributions he would have received if they had been paid immediately. If two persons are liable with respect to the same distributions, they *are* jointly and severally liable.

(4) The maximum amount recoverable under this section *is* the amount needed in excess of all other available assets of the impaired insurer to pay the contractual obligations of the impaired insurer.

(5) If any person liable under subsection (3) is insolvent, all its affiliates that controlled it at the time the dividend was paid *are* jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate."

Section 19. Section 33-17-203, MCA, is amended to read:

"33-17-203. General qualification for license as life or disability insurance agent. For the protection of the people of this state the commissioner *may* not issue, continue, or permit to exist any agent license as to life or disability insurance except in compliance with this chapter. *In addition, the* individual *must qualify* as follows:

(1) be 18 years of age or more;

(2) be a resident in and of this state or of another state if by reciprocal arrangements made by the commissioner with such other state similar privileges therein are granted to residents of this state;

(3) have been appointed as such an agent by an authorized insurer, subject to issuance of the license;

(4) be competent, trustworthy, and of good reputation;

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(5) have had experience or training or be otherwise adequately qualified in the kind or kinds of insurance as to which he is to be licensed *and* be reasonably familiar with the provisions of this code governing his operations as such an agent and with the provisions of the policies and contracts he proposes to offer under the license;

(6) pass any written examination for the license required under this chapter;

(7) not use or intend to use the license principally for the writing of insurance on the lives or interests of himself or his relatives to the second degree;

(8) not be a funeral director, undertaker, or mortician or an officer, employee, or representative thereof."

Section 20. Section 33-17-211, MCA, is amended to read:

"33-17-211. Application for license. (1) Application for an agent or solicitor license *must* be made to the commissioner by the applicant and be signed and sworn to by the applicant before a notary public or other person authorized by law to take acknowledgments of deeds.

(2) The commissioner shall designate and prepare forms for application for license which *must* require full answers to such questions as may reasonably be necessary to determine the applicant's identity, residence, personal history, business record, experience and training in insurance, purpose for which the license is to be used, and other facts as required by the commissioner to determine whether the applicant meets the applicable qualifications for the license applied for.

(3) If for an agent's license, the application *must* state the kinds of insurance proposed to be transacted and be accompanied by written appointment of the applicant as agent by an authorized insurer, subject to issuance of the license.

(4) If for a solicitor's license, the application *must* be accompanied by written appointment of applicant as solicitor by a licensed agent, subject to issuance of the license.

(5) If the applicant for an agent license is a firm or corporation, the application shall show, in addition, the names of all members, officers, and directors and shall designate each individual who is to exercise the powers to be conferred by the license upon the firm or corporation. Each such individual so designated shall furnish information as to himself, as part of the application, as though for an individual license.

(6) If the applicant for an agent license is an agents' association pursuant to 33-17-205, the application *must* show the names and residence addresses of the association's officers and trustees.

(7) If for license as either agent or solicitor, the application *must* also show whether applicant was ever previously licensed to transact any kind of insurance in this state or elsewhere; whether any such license was ever refused, suspended, or revoked; whether any insurer, general agent, or agent, in the case of a solicitor application, claims applicant to be indebted

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to it and, if so, the details thereof and the defenses, if any, of the applicant thereto; whether applicant ever had an agency contract canceled and the facts thereof; and if applicant is married, like information with respect to the applicant's spouse.

(8) The commissioner shall require as part of the application for license the certificate of an officer or representative of the insurer proposed to be represented, in the case of applicants for license as agent, or of the proposed employing agent, in the case of applicants for license as solicitor, as to whether the applicant is known to such officer or representative, whether the insurer or agent has investigated the character and business record of the applicant and the uses to be made of the license, if granted, and his opinion, based on such investigation, as to applicant's trustworthiness and competence and whether the applicant will use the license principally for the purpose of insuring the applicant's own risks or interests and those of the applicant's relatives or employer.

(9) All such applications *must* be accompanied by the applicable license fee, appointment of agent fee where applicable, *and* examination fee where required under 33-17-212, all in the respective amounts stated in 33-2-708."

Section 21. Section 33-17-213, MCA, is amended to read:

"33-17-213. Conduct of examinations. (1) The commissioner shall make any examination required under 33-17-212 available to applicants with reasonable frequency and at *a* place in this state reasonably accessible to *the* applicants. The commissioner shall make any such examination available at his offices at Helena, Montana, at times within his discretion but at least once a month.

(2) All the kinds of insurance or *classes* thereof, as referred to in 33-17-212(3), which the applicant proposes to transact under the license applied for shall be included in the same examination.

(3) The commissioner shall give, conduct, and grade all examinations in a fair and impartial manner and without unfair discrimination as between individuals examined.

(4) The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same kind or kinds of insurance."

Section 22. Section 33-17-1004, MCA, is amended to read:

"33-17-1004. Acting as insurance agent, solicitor, or adjuster without license — penalty. Any person, firm, association, or corporation who or which, in this state, acts as an insurance agent, solicitor, or adjuster without having authority to do so by virtue of a license issued and in force pursuant to the provisions of this chapter *is* guilty of a misdemeanor and, *upon conviction, shall be* fined $500 or imprisoned in the county jail for 90 days or both."

Section 23. Section 33-18-301, MCA, is amended to read:

"33-18-301. Prohibited relations with mortuaries. (1) No life insurer *may* own, manage, supervise, operate, or maintain any mortuary,

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funeral, or undertaking establishment or permit its officers, employees, or representatives to own, operate, maintain, or be employed in any such business.

(2) No life insurer *may* contract or agree with any funeral director, mortuary, or undertaker to the effect that such funeral director, undertaker, or mortuary shall conduct the funeral of any person insured by such insurer.

(3) Each violation of this section *constitutes* a misdemeanor punishable by a fine of not more than $1,000 or by imprisonment for not more than 6 months or *by* both such fine and imprisonment."

Section 24. Section 33-20-213, MCA, is amended to read:

"33-20-213. Operative date. After July 1, 1945, any insurer could have filed with the state auditor a written notice of its election to comply with the provisions of this part, *except 33-20-206 and 33-20-207,* after a specified date before January 1, 1948, with respect to the policies specified in the notice. After the filing of such notice, then upon such specified date (which shall be the operative date for such insurer with respect to such policies), this part, *except 33-20-206 and 33-20-207,* shall have become operative with respect to the policies specified in such notice thereafter issued by such insurer. As to all of its policies and contracts with respect to which an insurer makes no such election, the operative date of this part, *except 33-20-206 and 33-20-207,* with respect to such policies and contracts for such insurer is January 1, 1948."

Section 25. Section 33-20-1111, MCA, is amended to read:

"33-20-1111. Dependents of employee and labor union groups — coverage. Any group life policy issued under 33-20-1101, 33-20-1102, or 33-20-1103, may be extended to insure the employees or members against loss due to the death of their spouses and minor children, or any class or classes thereof, subject to the following requirements:

(1) The premium for the insurance shall be paid by the policyholder, either from the employer's or union's funds or funds contributed by the employer or union or from funds contributed by the insured employees or members, or from both. If any part of the premium is to be derived from funds contributed by the insured employees or members, the insurance with respect to spouses and children may be placed in force only if at least 75% of the then eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by the employees or members, all eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, must be insured with respect to their spouses and children.

(2) The amounts of insurance must be based upon some plan precluding individual selection either by the employees or members or by the policyholder, employer, or union.

(3) Upon termination of the insurance with respect to the members of the family of any employee or member by reason of the employee's or

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member's termination of employment, termination of membership in the class or classes eligible for coverage under the policy, or death, the spouse *is* entitled to have issued by the insurer, without evidence of insurability, an individual policy of life insurance, without disability or other supplementary benefits, providing application for the individual policy shall be made, and the first premium paid to the insurer, within 31 days after such termination, subject to the requirements of subsections (1), (2), and (3) of *33-20-1209*. If the group policy terminates or is amended so as to terminate the insurance of any class of employees or members and the employee or member is entitled to have issued an individual policy under 33-20-1210, the spouse *is* also entitled to have issued by the insurer an individual policy, subject to the conditions and limitations provided above. If the spouse dies within the period during which he would have been entitled to have an individual policy issued in accordance with this provision, the amount of life insurance which he would have been entitled to have issued under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

(4) Notwithstanding 33-20-1208, only one certificate need be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in such certificate."

Section 26. Section 33-22-202, MCA, is amended to read:

"33-22-202. Required provisions — captions — omissions — substitutions — order. (1) Except as provided in subsection (2) below, each such policy delivered or issued for delivery to any person in this state *must* contain the provisions specified in 33-22-204 through 33-22-215, in the words in which the same appear, except that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Each such provision *must* be preceded individually by the applicable caption shown or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

(2) If any such provision is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from such policy any inapplicable provision or part of a provision and shall modify any inconsistent provision or part of a provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(3) The provisions which are the subject of *33-22-204 through 33-22-232* or any corresponding provisions which are used in lieu thereof in accordance with such sections shall be printed in the consecutive order of the provisions in such sections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy with other provisions to which it may be logically related, provided that the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued."

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Section 27. Section 33-17-216, MCA, is amended to read:

"33-17-216. Temporary agent licenses — fee. (1) The commissioner may issue a temporary license as agent to or with respect to an individual qualified therefor only as to age, residence, and trustworthiness and without requiring such individual to take an examination, in the following cases:

(a) to the surviving spouse or next of kin or to the administrator or executor, or the employee of such administrator or executor, of a licensed agent *upon such agent's death*;

(b) to the spouse, next of kin, employee, or legal guardian of a licensed agent disabled by injury or *physical or mental illness*;

(c) to an employee of a firm, or officer or employee of a corporation, licensed as agent, upon the death or disability of an individual designated in the license to exercise the powers thereof;

(d) to the designee of a licensed agent entering upon active service in the armed forces of the United States of America;

(e) upon *the* request of the insurer, to an applicant for *a* license as a life insurance agent, pending the taking of any examination required of the applicant by the commissioner under 33-17-212, if the applicant is duly enrolled in and is actively pursuing an adequate course of instruction, as provided by or through the insurer, in preparation for such examination. Such license shall be for a period of not over 90 days or until the applicant has had a reasonable opportunity to take such examination and be informed by the commissioner as to the results thereof, whichever is the shorter period, but subject to extension by the commissioner as provided in subsection (3).

(2) The temporary license shall be issued upon application filed with the commissioner in such form and containing such information as the commissioner may reasonably require and upon payment of the applicable fee as stated in 33-2-708.

(3) The temporary license shall be for a period of not over 90 days, subject to extension by the commissioner in his discretion for an additional period of not more than 90 days, except that such a license issued pursuant to subsection (1)(a) may be continued without payment of *an* additional fee until the executor or administrator disposes of the insurance business but not to exceed a period of 15 months. *A temporary* license issued to the next of kin under such subsection (1)(a) *may* not be extended for an additional term after *the* appointment and qualification of an administrator or executor.

(4) The fee paid for the temporary license may be applied upon the fee required for *a* permanent license issued to the licensee upon or prior to expiration of the temporary license and covering the same kinds of insurance."

Section 28. Section 33-20-121, MCA, is amended to read:

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"**33-20-121. Prohibited provisions — limitations on liability.** (1) No policy of life insurance *may* be delivered or issued for delivery in this state if it contains any of the following provisions:

(a) a provision for a period shorter than that provided by statute within which an action at law or in equity may be commenced on *the* policy;

(b) a provision which excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified therein in the event of death under any one or more of the following circumstances:

(i) death as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces or of any act or hazard of such war or action or of service in the military, naval, or air forces or in civilian forces auxiliary thereto or from any cause while a member of such military, naval, or air forces of any country at war, declared or undeclared, or of any country engaged in such military action;

(ii) death as a result of aviation or any air travel or flight;

(iii) death as a result of a specified hazardous occupation or occupations;

(iv) death while the insured is a resident outside *the* continental United States and Canada; or

(v) death within 2 years from the date of issue of the policy as a result of suicide, while *seriously mentally ill or otherwise.*

(2) A policy which contains any exclusion or restriction pursuant to subsection (1) of this section shall also provide that in the event of death under the circumstances to which any such exclusion or restriction is applicable, the insurer will pay an amount not less than a reserve determined according to the commissioner's reserve valuation method upon the basis of the mortality table and interest rate specified in the policy for the calculation of nonforfeiture benefits (or if the policy provides for no such benefits, computed according to a mortality table and interest rate determined by the insurer and specified in the policy) with adjustment for indebtedness or dividend credit.

(3) This section *does* not apply to industrial life insurance, group life insurance, disability insurance, reinsurance, or annuities or to any provision in a life insurance policy relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(4) Nothing contained in this section *prohibits* any provision which in the opinion of the commissioner is more favorable to the policyholder than a provision permitted by this section."

Section 29. **Repealer.** Section 40-1723, R.C.M. 1947, is repealed.

Approved March 22, 1979.

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CHAPTER NO. 199

AN ACT TO GIVE EXPRESS RULEMAKING AUTHORITY FOR CERTAIN PROGRAMS TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES; AMENDING SECTIONS 53-2-201, 53-3-102, 53-5-304, AND 53-7-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-201, MCA, is amended to read:

"53-2-201. Powers and duties of department. (1) The department shall:

(a) administer or supervise all forms of public assistance, child protection, and child welfare, including the provision of medical care payments in behalf of recipients of public assistance;

(b) administer or supervise all child welfare activities, including importation and exportation of children; licensing and supervising of private and local child-caring agencies; the care of dependent, neglected, and delinquent children in foster family homes, especially children placed for adoption or those of illegitimate birth;

(c) give consultant service to private institutions providing care for the needy, indigent, handicapped, or dependent adults;

(d) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(e) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administation of public assistance functions and for efficiency and economy;

(f) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when so requested, by performing services in conformity with public assistance purposes;

(g) administer all *state and* federal funds allocated to the department for public assistance *and* do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes*; and*

(h) make rules governing payment for services and supplies provided to recipients of public assistance.

(2) The department may:

(a) purchase, exchange, condemn, or receive by gift either real or personal property which is necessary to carry out its public assistance functions. Title to property obtained under this subsection shall be taken in the name of the state of Montana for the use and benefit of the department.

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(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance."

Section 2. Section 53-3-102, MCA, is amended to read:

"**53-3-102. Administration.** The department and county departments of public welfare are hereby authorized and charged with the administration and supervision of general relief under the powers, duties, and functions as prescribed in chapter 2 of this title. *The department may adopt rules and take other action necessary to carry out its responsibilities under this chapter.*"

Section 3. Section 53-5-304, MCA, is amended to read:

"**53-5-304. Standards for adult foster family care homes.** The department may establish *by rules* standards by which private residences may be licensed as adult foster family care homes. These standards shall provide for the safety and comfort of the residents and shall be subject to the advice and recommendations of the department of health and environmental sciences in relation to fire and safety requirements."

Section 4. Section 53-7-302, MCA, is amended to read:

"**53-7-302. Administration.** The department shall provide the services authorized by this part to blind individuals determined by it to be eligible therefor. In carrying out the purposes of this part, the department may, among other things:

(1) cooperate with other departments, agencies, and institutions, both public and private, in providing the services authorized by this part to blind individuals; in studying the problems involved therein; and in establishing, developing, and providing, in conformity with the purposes of this part, such programs, facilities, and services as may be necessary or desirable;

(2) enter into reciprocal agreements with other states to provide the services authorized by this part to residents of the states concerned;

(3) conduct research and compile statistics relating to the provision of services to or the need of services of blind individuals;

(4) provide supplementary services to any applicant or recipient who is in need of treatment either to prevent blindness or to restore his eyesight, whether or not he is blind, if he is otherwise qualified for services or training under this part and if the supplementary services are recommended because of the findings of an opthalmologist or optometric examination. The supplementary services may include necessary travel and other

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expenses to receive treatment from a hospital or clinic designated by the department.

(5) *make rules and* take other action necessary or appropriate to carry out this part."

Approved March 22, 1979.

CHAPTER NO. 200

AN ACT TO CLARIFY THE RELATIONSHIP BETWEEN THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AND LOCAL BOARDS OF HEALTH WITH RESPECT TO THE VALIDATION BY LOCAL HEALTH OFFICERS OF CERTAIN LICENSES ISSUED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AND TO LIMIT CERTAIN SUPERVISORY FUNCTIONS OF THE DEPARTMENT; AMENDING SECTIONS 50-1-202, 50-2-118, 50-50-201, 50-51-201, AND 50-52-201, MCA; AND REPEALING SECTION 50-2-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-2-118, MCA, is amended to read:

"50-2-118. Powers and duties of local health officers. (1) Local health officers or their authorized representatives shall:

(a) make inspections for sanitary conditions;

(b) as directed by the local board, issue written orders for the destruction and removal of filth which might cause disease;

(c) with written approval of the department, order buildings or facilities where people congregate closed during epidemics;

(d) on forms provided by the department, report communicable diseases to the department each week;

(e) before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of his activities, on forms and containing information required by the department;

(f) before the 10th day after the report is given to the local board, send a copy of the report required by subsection (1)(e) of this section to the department;

(g) as prescribed by rules adopted by the department, establish and maintain quarantines;

(h) as prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;

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(i) notify the department of his appointment and changes in membership of the local board;

(j) file a complaint with the appropriate court if this chapter or rules adopted by the local board or state department under this chapter are violated.

(k) validate state licenses issued by the department in accordance with chapters 50, 51, and 52 of this title.

(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.

(4) A local health officer who is not a physician shall not act as a physician to anyone."

Section 2. Section 50-50-201, MCA, is amended to read:

"50-50-201. License required. (1) A person operating an establishment shall procure an annual license from the department.

(2) A separate license is required for each establishment, but if more than one type of establishment is operated on the same premises and under the same management, only one license is required.

(3) Only one license is required for a person owning and operating one or more vending machines.

(4) Before a license may be issued by the department it must be validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located."

Section 3. Section 50-51-201, MCA, is amended to read:

"50-51-201. License required. (1) Each year, every person engaged in the business of conducting or operating a hotel, motel, tourist home, retirement home, or roominghouse shall procure a license issued by the department.

(2) A separate license is required for each establishment; however, where more than one of each type of establishment is operated on the same premises and under the same management, only one license is required which shall enumerate on the certificate thereof the types of establishments licensed.

(3) Before a license may be issued by the department it must be validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located."

Section 4. Section 50-52-201, MCA, is amended to read:

"50-52-201. Application for license. *(1)* Application for a license is made to the department on forms containing information required by the department.

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(2) The department may not issue a license unless it has been validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located."

Section 5. **Notification of and validation by local health officer.** (1) A license issued by the department under Title 50, chapters 50 through 52 is not valid until signed by the local health officer in the county where the establishment is located.

(2) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under Title 50, chapters 50 through 52, make a final decision on whether the license will be validated.

(3) Failure of the local health officer to validate the license within 15 days after its receipt is a refusal.

Section 6. **Refusal by local health officer -- appeal to board.** (1) The local health officer may only refuse to validate a license issued under Title 50, chapters 50 through 52, upon a finding that the requirements of these chapters and any rules implementing them are not satisfied. If the local health officer refuses to validate the license, he shall notify the applicant and the department in writing stating his reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

Section 7. Section 50-1-202, MCA, is amended to read:

"50-1-202. General powers and duties. The department shall:

(1) study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, administer any federal health program for which responsibilities are delegated to states;

(4) inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4) of this section, submit a written report on sanitary conditions to the governor and to the director of institutions or commissioner of higher education and include recommendations for improvement in conditions if necessary;

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(6) advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) organize laboratory services and provide equipment and personnel for those services;

(8) develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(9) develop and administer a program to protect the health of mothers and children;

(10) conduct health education programs;

(11) *provide consultation to school and local community health nurses in the performance of their duties;*

(12) consult with the superintendent of public instruction on health measures for schools;

(13) develop and administer a program for services to handicapped children including diagnosis, medical, surgical, and corrective treatment, and after-care and related services;

(14) *provide consultation to local boards of health;*

(15) bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(16) accept and expend federal funds available for public health services;

(17) have the power to use personnel of local departments of health to assist in the administration of laws relating to public health; and

(18) adopt rules imposing fees for the tests and services performed by the laboratory of the department. In adopting a rule imposing fees, the department may establish only a fee that will reimburse the department for the costs incurred in performing tests and services. All fees shall be deposited in the general fund."

Section 8. **Codification.** Sections 5 and 6 are intended to be codified as an integral part of Title 50 and the provisions contained in Title 50 apply to sections 5 and 6.

Section 9. **Repealer.** Section 50-2-102, MCA, is repealed.

Approved March 22, 1979.

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CHAPTER NO. 201

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO MINERALS, OIL, AND GAS; AMENDING SECTIONS 82-1-108, 82-4-142, 82-4-252, 82-4-304, 82-4-332, 82-10-201, 82-11-131, AND 82-15-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-1-108, MCA, is amended to read:

"82-1-108. Filing record of work performed. (1) Within 3 months from the day any firing of shotpoints in geophysical exploration is done by any person, firm, or corporation within this state, such person, firm, or corporation shall file with the county clerk and recorder of the county in which *the* work was done a record showing each township and range within *the* county in which *the* work was performed and the approximate date *on* which *the* work was performed.

(2) Such person, firm, or corporation shall file with *the* county clerk and recorder a record showing the location of each shotpoint and date fired within a maximum area of any square, 4-section area of land, upon written request *of the* county clerk and recorder. *The* request must be based upon the complaint of a property owner that physical *damage* to *his* property *has resulted from* the use of the seismograph and explosives in geophysical operations at some location within *the* maximum 4-square mile area, and *the request* shall designate the name and address of the complaining person and the approximate date and nature of the alleged damages. The required record of operations in response to *the request of* the county clerk and recorder shall be supplied within 10 days from the date on which *the request* is received."

Section 2. Section 82-4-142, MCA, is amended to read:

"82-4-142. Mandamus to compel enforcement. (1) A resident of this state, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed *in 45-7-202.*

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court of the county in which the land is located. *If the* court finds that a requirement of this part or a rule adopted under this part is not being enforced, *it* shall order the public officer or employee whose duty *it* is to enforce the requirement or rule to perform his duties.

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If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law."

Section 3. Section 82-4-252, MCA, is amended to read:

"82-4-252. Mandamus. (1) A resident of this state, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed *in 45-7-202.*

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this part or a rule adopted under this part is not being enforced, shall order the public officer or employee whose duty it is to enforce the requirement or rule to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law."

Section 4. Section 82-4-304, MCA, is amended to read:

"82-4-304. Exemption — works performed prior to promulgation of rules. No provision of this part shall be applicable to any exploration or mining work performed prior to the date of promulgation of the *board's* rules pursuant to 82-4-321."

Section 5. Section 82-4-332, MCA, is amended to read:

"82-4-332. Exploration license. (1) An exploration license shall be issued to any applicant therefor who shall:

(a) pay a fee of $5 to the board;

(b) agree to reclaim any surface area damaged by the applicant during exploration operations, as may be reasonably required by the board;

(c) not be in default of any other reclamation obligation under this law.

(2) An application for an exploration license shall be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The department shall by *rule* determine the precise nature of such exploration map or sketch. The applicant must state what *type* of prospecting and excavation techniques will be employed in disturbing the land.

(3) Upon filing of any certificate of claim location as permitted by federal and state mining laws and regulations, the locator shall provide copies of *the certificate* to the board.

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(4) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with 82-4-338.

(5) In the event that the holder of an exploration *license* desires to mine or develop the area covered by the exploration license and has fulfilled all of the requirements for a development or operating permit, the department may allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for a development or operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the development or operating reclamation plan shall be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner acceptable to the department."

Section 6. Section 82-10-201, MCA, is amended to read:

"82-10-201. Authorization for lease and terms — land not subject to leasing. The governing body of any county, city, town, school district, or incorporated political subdivision within the state of Montana may, if *in* the best interests of the county, city, town, school district, or incorporated political subdivision, lease any real property owned by the county, city, town, school district, or incorporated political subdivision for oil and gas development purposes. Such leases shall be made upon the best terms obtainable, shall provide for such terms, except as hereinafter provided, as the governing body shall *consider* to be for the best interests of the county, city, town, school district, or incorporated political subdivision, shall reserve a royalty of not less than 12 ½% which shall include any royalty payable to any person other than the lessor, and shall be for *a period* not exceeding 10 years and so long thereafter as oil, gas, or other hydrocarbons shall be produced from the premises embraced in the lease. *However*, nothing contained herein shall authorize the leasing of lands acquired by a county by tax deed except under the provisions of *Title 7, chapter 8, part 25.*"

Section 7. Section 82-11-131, MCA, is amended to read:

"82-11-131. Privilege and license tax. (1) For the purpose of providing funds for defraying the expenses of the operation and enforcement of this chapter and expenses of the board, *an operator or producer* of oil and gas shall pay an assessment not to exceed 2/10 of 1% of the market value of each barrel of crude petroleum originally produced, saved and marketed, or stored within the state or exported from the state and the same rate on the market value of each 10,000 cubic feet of natural gas produced, saved and marketed, or stored within the state or exported therefrom.

(2) The board shall by order, without prior notice or hearing, fix the amount of the *assessment* and may from time to time, without prior notice or hearing, reduce or increase the amount thereof as, in its judgment, the expenses chargeable against the oil and gas conservation fund may require. *However*, the *assessment* fixed by the board may not exceed the limits prescribed in this section. The *amount* of the *assessment* shall be a percentage factor (not to exceed 100%) of the *rate* set forth in subsection (1)

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above, and the same percentage factor shall be applied by the board in fixing the amount of the assessment on each barrel of crude production and each 10,000 cubic feet of natural gas mentioned in that subsection. *A producer* of the crude petroleum and natural gas shall pay the *assessment* on each barrel of crude petroleum and each 10,000 cubic feet of natural gas produced for *himself*, as well as for *another*, including *a* royalty *holder*, and the *producer* shall be reimbursed for the payments made on crude oil and natural gas produced for *another* in the same manner as *he is* reimbursed for net proceeds tax paid on crude petroleum or natural gas produced for *another* under 15-23-607."

Section 8. Section 82-15-202, MCA, is amended to read:

"82-15-202. Purpose. This part is intended to compel *a person, firm, company, association, or corporation* doing business in the state of Montana and engaged in the selling of and dealing in standard petroleum products to treat *a customer* in one part of the state of Montana on an equal *basis* with *a customer* in *another part* of the state or in the nearest adjoining state and to promote the uniform application of the law of the state of Montana providing a tax on gasoline used by *a* motor *vehicle* when traveling over *a* public *highway*. This part shall be liberally construed to accomplish those purposes."

Approved March 22, 1979.

CHAPTER NO. 202

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO CORPORATIONS AND PARTNERSHIPS; REPEALING SECTIONS 35-10-507 AND 35-16-316, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-1-110, MCA, is amended to read:

"35-1-110. Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation *is* invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) in a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being or are to be performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it *considers* the same to be equitable, set aside and enjoin the performance of such contract and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court

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in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract *may* not be awarded by the court as a loss or damage sustained.

(2) in a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation;

(3) in a proceeding by the *secretary of state or the* attorney general, as provided in chapter *6*, to dissolve the corporation or in a proceeding by the attorney general to enjoin the corporation from the transaction of unauthorized business."

Section 2. Section 35-1-928, MCA, is amended to read:

"35-1-928. State tax clearance certificate. No decree of voluntary dissolution shall be made and entered by any court, nor shall the clerk of the district court of any county or secretary of state file any such decree or file any other document by which the term of existence of any corporation is terminated, except a decree of involuntary dissolution in an action brought by the attorney general, nor shall the secretary of state file any certificate of surrender by a foreign corporation of its right to do intrastate business in the state unless the corporation obtains from the department of revenue and files with said court, clerk of the district court, or secretary of state, as part of the original instrument effecting the dissolution or withdrawal, a certificate to the effect the department of revenue is satisfied from the available evidence that all taxes imposed by *Title 15* have been paid. The issuance of the certificate shall not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana."

Section 3. Section 35-1-1017, MCA, is amended to read:

"35-1-1017. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, *the* foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) that the corporation is not transacting business in this state;

(c) that the corporation surrenders its authority to transact business in this state;

(d) that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of state;

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(e) a post-office address, including street and number, if any, to which the secretary of state may mail a copy of any process against the corporation that may be served on him;

(f) that all taxes imposed on the corporation by *Title 15* have been paid, supported by a certificate by the department of revenue to be attached to said application to the effect that the department is satisfied from the available evidence that all *such* taxes imposed have been paid. The issuance of such certificate *does* not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(2) The application for withdrawal shall be made in a form prescribed by the secretary of state and shall be executed for the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing the application or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him."

Section 4. Section 35-1-1101, MCA, is amended to read:

"35-1-1101. Annual report of domestic and foreign corporations. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall file, within the time prescribed by this chapter, an annual report setting forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the address of the registered office of the corporation in this state and the name of its registered agent in this state at such address, including street and number, if any, and, in the case of a foreign corporation, the address, including street and number, if any, of its principal office in the state or country under the laws of which it is incorporated;

(c) a brief statement of the character of the business in which the corporation is actually engaged in this state;

(d) the names and respective addresses, including street and number, if any, of the directors and officers of the corporation;

(e) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(f) a statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(g) a statement, expressed in dollars, of the amount of stated capital of the corporation as defined in this chapter.

(2) In addition thereto, every foreign corporation shall include a statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the 12

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months ended on December 31 preceding the date herein provided for the filing of such report and the gross amount thereof transacted by the corporation at or from places of business in this state. If on December 31 preceding the time herein provided for the filing of such report, the corporation had not been authorized to transact business in this state for a period of 12 months, the statement with respect to business transacted *must* be furnished for the period between the date of its authorization to transact business in this state and such December 31. If all the property of the corporation is located in this state and all of its business is transacted at or from places of business in this state, then the information required by this subsection need not be set forth in such report.

(3) Such annual report *must* be in a form prescribed by the secretary of state. The information therein contained *must* be given as of the date of the execution of the report, except as to the information required by subsection (1)(g) which *must* be given as of the close of business on December 31 next preceding the date herein provided for the filing of such report. It *must* be executed by the corporation by its president, a vice-president, secretary, an assistant secretary, or treasurer and verified by the officer executing the report, or if the corporation is in the hands of a receiver or trustee, it *must* be executed on behalf of the corporation and verified by such receiver or trustee."

Section 5. Section 35-2-110, MCA, is amended to read:

"35-2-110. Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation *is* invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) in a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being or are to be performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it *considers* the same to be equitable, set aside and enjoin the performance of such contract and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract *may* not be awarded by the court as a loss or damage sustained.

(2) in a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative or through members in a representative suit against the officers or directors of the corporation for exceeding their authority;

(3) in a proceeding by the *secretary of state or the* attorney general, as provided in chapter *6*, to dissolve the corporation or in a proceeding by the attorney general to enjoin the corporation from performing unauthorized acts or in any other proceeding by the attorney general."

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Section 6. Section 35-2-507, MCA, is amended to read:

"35-2-507. Voting — manner. (1) The right of the members or any class or classes of members to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation or the bylaws. Unless so limited, enlarged, or denied, each member, regardless of class, *is* entitled to one vote on each matter submitted to a vote of members.

(2) A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy *is* valid after 11 months from the date of its execution unless otherwise provided in the proxy. *Whenever* directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

(3) The articles of incorporation or the bylaws may provide that in all elections for directors, every member entitled to vote *has* the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected or *to distribute* such votes on the same principle among any number of such candidates."

Section 7. Section 35-2-1001, MCA, is amended to read:

"35-2-1001. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

(1) filing articles of incorporation and issuing a certificate of incorporation, $20;

(2) filing articles of amendment and issuing a certificate of amendment, $20;

(3) filing restated articles of incorporation and issuing restated certificate of incorporation, $20;

(4) filing articles of merger or consolidation and issuing a certificate of merger or consolidation, $20;

(5) filing an application to reserve a corporate name, $2;

(6) filing a notice of transfer of a reserved corporate name, $2;

(7) filing a statement of change of address of registered office or change of registered agent, or both, $2;

(8) filing articles of dissolution and issuing a certificate of dissolution, $5;

(9) filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, $20;

(10) filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority, $20;

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(11) filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this state, $10;

(12) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state, $20;

(13) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, $5;

(14) filing an annual report, $5;

(15) filing any other statement or report, except an annual report, of a domestic or foreign corporation, $2."

Section 8. Section 35-4-203, MCA, is amended to read:

"35-4-203. Board of directors. The number of shareholder members of the board of directors may be less than the number of shareholders, *and* if a corporation has only one shareholder, the board may consist of such shareholder."

Section 9. Section 35-4-211, MCA, is amended to read:

"35-4-211. Transfer of shares. (1) No shareholder of a corporation organized under this chapter may sell or transfer his shares in such corporation except to another individual who is eligible to be a shareholder of such corporation, and such sale or transfer may be made only after *it has* been approved at a *shareholders'* meeting by such proportion, not less than a majority, of the outstanding stock as may be provided in the *articles* of incorporation or in the bylaws. At such shareholders' meeting the shares of stock held by the shareholder proposing to sell or transfer his shares may not be voted or counted for any purpose.

(2) The articles of incorporation may provide specifically for additional restraints on the alienation of shares and may require the redemption or purchase of such shares by the corporation at prices and in a manner specifically set forth in such articles, or the articles may specifically authorize the corporation's board of directors or its shareholders to adopt bylaws or resolutions restraining the alienation of shares and providing for the purchase or redemption by the corporation of its shares. However, such provisions dealing with the purchase or redemption by the corporation of its shares may not be invoked at a time or in a manner that would impair the capital of the corporation."

Section 10. Section 35-10-506, MCA, is amended to read:

"35-10-506. Partner's application to discharge attachment — undertaking. (1) If a writ of attachment is levied upon the interest *in a partnership* of one or more *of the* partners, the other partners who are not defendants in the action or any of them may, at any time before final judgment, apply to the judge who granted the writ or to the court, upon an affidavit showing the facts, for an order to discharge the attachment as to that interest.

(2) Upon such an application, the applicant *shall* give an undertaking, with at least two sufficient sureties, to the effect that they will pay to the

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sheriff, on demand, the amount of any judgment which may be recovered against the partner who is defendant in the action or which may be recovered against him in any other action *in which* the other partners are not defendants and *in which* a writ of attachment or an execution may come into the sheriff's hands at any time before the writ of attachment which was so levied is vacated and annulled, not exceeding the sum specified in the undertaking, which *may* not be less than the value of the interest of the defendant in the *partnership* as fixed by the court or judge. If, in the opinion of the court or judge, *the value* is uncertain, the sum must be such as the court or judge determines. For the purpose of fixing the sum or to determine the sufficiency of its sureties, the court or judge may receive affidavits or oral testimony or may direct a reference."

Section 11. Section 35-16-212, MCA, is amended to read:

"35-16-212. Association operating two or more enterprises in different parts of state — control by delegates. *(1)* Any, either cooperative stock or nonprofit nonstock, agricultural association or company existing on July 1, 1921, or thereafter organized under the laws of Montana may own and operate two or more cooperative enterprises in different parts of the state and may exercise and possess the following powers by providing in their articles of incorporation or in their bylaws that:

(a) all powers of the association members or stockholders shall be exercised by duly elected delegates at any meeting of such delegates which may be called. They shall elect such officers and transact such business in the same manner as the association members or stockholders are empowered to do. Such officers and board of directors as the delegates may elect shall be known as "general officers" or "general board of directors".

(b) stockholders or members of such cooperative stock or nonprofit nonstock agricultural associations or companies shall be grouped into locals in such districts as the general board of directors may from time to time direct;

(c) each local, with territorial limits as determined by the general board of directors, shall elect from among its stockholders or members one delegate and one alternate to represent the local at any meeting of the association or company. Such delegate and alternate shall serve for 1 year. The alternate shall serve as delegate at all meetings where the delegate may not be in attendance.

(d) each delegate *may* have only one vote, regardless of the number of stockholders or members which he *represents.*

(2) Nothing in this section limits the powers of the board of directors of any corporation."

Section 12. **Repealer.** Sections 35-10-507 and 35-16-316, MCA, are repealed.

Approved March 22, 1979.

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CHAPTER NO. 203

AN ACT TO INCREASE THE PROVISION SETTING A MAXIMUM VALUE ON VEHICLES FOR WHICH TITLE MAY BE ISSUED BY RIGHT OF SURVIVORSHIP; AMENDING SECTION 61-3-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-201, MCA, is amended to read:

"61-3-201. Transfer of title or interest. (1) Upon a transfer of any title or interest of an owner in or to a motor vehicle registered under the provisions of this chapter as hereinafter required, the person whose title or interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for such vehicle in the appropriate space provided upon the reverse side of such certificate, and such signature shall be acknowledged before a notary public.

(2) Within 20 calendar days thereafter, the transferee shall forward both the certificate of ownership so endorsed and the certificate of registration, together with the information required under 61-3-202, to the county treasurer, who shall forward the same to the division, and no certificate of ownership and certificate of registration may be issued by the division until the outstanding certificates are surrendered to that office or their loss established to its reasonable satisfaction. Failure to make such application within the 20-day grace period subjects the transferee to a penalty of $10. The penalty is to be collected by the county treasurer at the time of registration and is in addition to the fees otherwise provided by law.

(3) In the event of a transfer by operation of law of any title or interest of an owner of the legal title or owner in and to a motor vehicle as upon inheritance, devise, or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is so transferred, the executor, administrator, receiver, trustee, sheriff, or other representative or successor in interest of the person whose title or interest is so transferred shall forward to the division an application for registration in the form required for an original application for registration, together with a verified or certified statement of the transfer of such title or interest. Such statement shall set forth the reason for such involuntary transfer, the title or interest so transferred, the name or names of the person or persons to whom such title or interest is to be transferred, the process of procedure effecting such transfer, and such other information as may be requested by the division. Such evidence and instruments as may otherwise be required by law to effect a transfer of legal or equitable title to or an interest in chattels as may be required in such cases shall be furnished with such statement. In the event the division shall be satisfied that such transfer is regular and that all formalities as required by law have been complied with, it shall cause to be sent to the owner, conditional sales vendors, lessors, mortgagees, and other lienors, as shown by its records, notice of such intended transfer and thereafter,

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but not less than 5 days thereafter, shall register such motor vehicle and shall issue a new certificate of ownership and certificate of registration to the person or persons entitled thereto. The notice herein required shall be deemed complied with by deposit in the post office in Deer Lodge, Montana, such notice postage prepaid, addressed to such person or persons at the respective addresses shown on its records.

(4) When the vehicle title that is involuntarily transferred is not registered in this state the procedure set forth above must be followed in applying for a new certificate of ownership and certificate of registration, but the division need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled thereto.

(5) *(a)* In the event of the death of *the* owner of one or more motor vehicles, *trailers, semitrailers, or housetrailers* registered hereunder and not exceeding *a combined* value of *$15,000* without leaving other property necessitating the procuring of letters of administration or letters testamentary, then the surviving *spouse* or other heir, unless such property is by will otherwise bequeathed, may secure transfer of the *decedent's* certificate of ownership and the certificate of registration *for the* vehicle.

(b) The person seeking transfer of the certificate of ownership shall file an affidavit with the division setting forth the fact of survivorship and the name and address of any other heirs and such other facts as are hereby made necessary to entitle the affiant to a transfer.

(c) The division is authorized to transfer the certificate of ownership and certificate of registration, subject to all *security interests* shown by *its* records, *upon receipt of an affidavit showing that the affiant is entitled to a transfer under the provisions of subsection (5)(a) of this section.*

(6) Nothing in subsection (5) shall prevent any *secured party* from assigning his interest in a motor vehicle registered under the provisions of this chapter to any other person without the consent of and without effecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any *assignment by a secured party of his security* interest in any motor vehicle registered under this chapter a copy of such assignment must be filed with the division and record thereof made upon his records.

(7) The certificates of ownership shall remain valid until canceled by the division upon a transfer of any interest shown therein and need not be renewed annually.

(8) Every person who transfers any motor vehicle to a junk dealer for the purpose of scrapping said vehicle shall so notify the division and deliver the certificate of ownership and certificate of registration to the division for cancellation."

Approved March 22, 1979.

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CHAPTER NO. 204

AN ACT AUTHORIZING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO CONTRACT WITH LOCAL SCHOOL DISTRICTS OR SERVICE ORGANIZATIONS FOR THE DELIVERY OF AUDIOLOGICAL SERVICES TO THOSE CHILDREN ALLOWED BY LAW; AMENDING SECTION 20-7-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-403, MCA, is amended to read:

"20-7-403. Duties of superintendent of public instruction. The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

(1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;

(2) administering the policies adopted by the board of public education;

(3) certifying special education teachers on the basis of the special qualifications for such teachers as prescribed by the board of public education;

(4) establishing procedures to be used by school district personnel in identifying handicapped children;

(5) recommending to districts the type of special education class or program needed to serve the handicapped children of the districts and preparing appropriate guides for developing individual education programs;

(6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in diagnosing the special education needs of children, in planning programs, and in admitting and discharging children from such programs;

(7) assisting local school districts, institutions, and other agencies in developing full-service programs for all handicapped children;

(8) approving, as they are proposed and annually thereafter, those special education classes or programs which comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction;

(9) providing technical assistance to district superintendents, principals, teachers, and trustees;

(10) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;

(11) acting as the coordinating agency with federal agencies, other state agencies, political subdivisions of the state, and private bodies on matters concerning special education, reserving to the other agencies and political

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subdivisions their full responsibilities for other aspects of the care of children needing special education; and

(12) administering regional special education services for children in need of special education in accordance with policies of the board of public education;

(13) contracting directly with local school districts or cooperative service organizations for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education."

Approved March 22, 1979.

CHAPTER NO. 205

AN ACT TO REQUIRE POSTSECONDARY VOCATIONAL-TECHNICAL CENTERS TO EXPEND NONGENERAL FUND MONEY FIRST AND TO REVERT UNEXPENDED GENERAL FUND BALANCES AT FISCAL YEAR END; AMENDING SECTION 20-7-325, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-325, MCA, is amended to read:

"**20-7-325. Postsecondary vocational-technical center fund — nongeneral fund money expended first — reversion of general fund money.** (1) Whenever an approved postsecondary vocational-technical center under the provisions of 20-7-311 is operated within a district, the trustees of such district shall establish a postsecondary vocational-technical center fund. All *money* prescribed and received under the provisions of 20-7-324 shall be credited to the postsecondary vocational-technical center fund. The expenditure of the *money* deposited in the postsecondary vocational-education center fund shall be made under the budget and for the programs approved by the board of public education under the provisions of 20-7-323 and the financial administration provisions of this title.

(2) A postsecondary vocational-technical center shall apply expenditures against nongeneral fund money wherever possible before using state general fund appropriations. All state general fund money appropriated or disbursed to a postsecondary vocational-technical center which is unexpended at fiscal year end shall revert to the state general fund.

(3) The approval of the postsecondary vocational-technical center budget and subsequent revision or amendment of such budget by the board of public education shall constitute the final budget approval, and the inclusion of such fund in the district's preliminary budget and the final budget approved by the budget board shall not be required.

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(4) Whenever the county tax prescribed in 20-7-324(1)(b) is to be used in support of the postsecondary vocational-technical center fund budget, the county commissioners are authorized to levy such tax on the county in accordance with the provisions of 20-9-142."

Approved March 22, 1979.

CHAPTER NO. 206

AN ACT AMENDING SECTION 15-24-1001, MCA, TO REQUIRE A CUSTOM COMBINER'S FEE FOR MONTANA RESIDENT CUSTOM COMBINERS SIMILAR TO THE FEE PAID BY NONRESIDENTS AND IN LIEU OF FEES PRESENTLY REQUIRED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-1001, MCA, is amended to read:

"15-24-1001. Custom combiner's tax — collection — distribution — not transferable. (1) In lieu of the taxes required by 15-24-301, motor vehicle license fees and gross vehicle weight fees, overwidth and overheight permits, Title 61, a nonresident engaged in the business of custom combining who brings equipment into the state shall pay a fee of $40 per unit for a period beginning July 1 and ending October 31. A unit shall include:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks and all other equipment, except combines, used by a nonresident and brought into the state as part of his business of custom combining.

(2) In lieu of gross vehicle weight fees and overwidth and overheight permits, Montana residents engaged in the business of custom combining may pay the annual farm gross vehicle weight fees and a fee of $20 per unit for a period beginning May 1 and ending October 31 of the same year. A unit includes:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks used by the resident in his business of custom combining.

(3) The fee required by this section shall be collected by the department of highways. Upon payment of the fee, the department of highways shall provide an identifying device to be displayed on each truck, header trailer, or combine trailer and other equipment used by the nonresident *or resident* in his business of custom combining in the state, which device shall be valid for a period beginning July 1 and ending October 31.

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(4) All fees collected under this section shall be distributed not later than December 1 immediately following the period of license as follows: 62 ½ % to the county general fund in the county in which the permittee declares the greatest amount of time will be spent to operate, 37 ½ % to the earmarked revenue fund for the department of highways.

(5) The identifying devices and fee paid for each unit shall not be transferable from one vehicle to another or transferable on the sale or change of ownership.

(6) Any owner or operator of any equipment included in the unit definition in subsection *(1) or* (2) of this section who violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine of not more than $300 or by a sentence of not more than 60 days in the county jail, or both."

Approved March 22, 1979.

CHAPTER NO. 207

AN ACT TO AMEND SECTION 46-9-103, MCA, TO PROVIDE THAT THERE IS A REBUTTABLE PRESUMPTION THAT A DEFENDANT CONVICTED OF DELIBERATE HOMICIDE IS A DANGER TO OTHERS AND NOT ENTITLED TO BAIL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-9-103, MCA, is amended to read:

"46-9-103. Bail after conviction. *(1)* After conviction of an offense not punishable by death, a defendant who intends to appeal may be admitted to bail:

(a) as a matter of right, from a judgment imposing a fine only or any judgment rendered by a justice's or city court;

(b) as a matter of discretion in all other cases.

(2) A defendant convicted of the offense of deliberate homicide is presumed to be a danger to others and not entitled to be admitted to bail, which presumption is rebuttable."

Approved March 22, 1979.

CHAPTER NO. 208

AN ACT TO AUTHORIZE THE COUNTY GOVERNING BODY AUTHORITY TO CONTROL AND LICENSE DOGS THROUGH ADOPTION OF AN ORDINANCE; REPEALING SECTIONS 7-23-2101 THROUGH 7-23-2107 AND 7-23-2111 THROUGH 7-23-2117, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **County control of dogs.** (1) The governing body of the county has power to regulate, restrain, or prohibit the running at large of dogs by the adoption of an ordinance which substantially complies with

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the provisions of 7-5-103 through 7-5-107 and which may provide for the wearing of a license tag upon the collar of the dog and the keeping of a record which will establish the identity of the person who owns, keeps, or harbors the dog.

(2) The county governing body is authorized to impound, sell, kill, or otherwise destroy dogs found at large contrary to ordinances.

(3) Nothing in this section restricts the governing body from enacting dog control measures in a portion of the county only.

Section 2. **Vicious dog control.** (1) The county governing body may regulate, restrain, control, kill, or quarantine any vicious dog, whether such dog is licensed or unlicensed, by the adoption of an ordinance which substantially complies with the provisions of 7-5-103 through 7-5-107.

(2) A violation of any ordinance established as provided in subsection (1) is a misdemeanor.

(3) For purposes of this section, a "vicious dog" is defined as one which bites or attempts to bite any human being without provocation or which harasses, chases, bites, or attempts to bite any other animal. The term "animal" includes all livestock and any domestic pet.

Section 3. **Repealer.** Sections 7-23-2101 through 7-23-2107 and 7-23-2111 through 7-23-2117, MCA, are repealed.

Approved March 22, 1979.

CHAPTER NO. 209

AN ACT TO AMEND SECTION 61-8-301, MCA, TO CLARIFY THE REQUIREMENT THAT THE OFFENSE OF FLEEING OR ELUDING A POLICE OFFICER MUST INCLUDE THE ACTIONS REQUIRED FOR THE CONVICTION OF RECKLESS DRIVING.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-301, MCA, is amended to read:

"61-8-301. Reckless driving. (1) A person commits the offense of reckless driving if he:

(a) operates any vehicle in willful or wanton disregard for the safety of persons or property; or

(b) *operates any vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting* to flee from or elude a peace officer who is lawfully in pursuit and whose vehicle is at the time in compliance with the requirements of 61-9-402.

(2) Each municipality in this state may enact and enforce 61-8-715 and subsection (1) of this section as an ordinance."

Approved March 22, 1979.

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CHAPTER NO. 210

AN ACT TO REDUCE GOVERNMENT PAPERWORK BY REQUIRING ALL STATE AGENCIES TO REVIEW FORMS REQUIRED OF CITIZENS AND REPORT PROGRESS TO THE ADMINISTRATIVE CODE COMMITTEE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Committee" means the administrative code committee as defined in Title 5, chapter 14, part 1.

(2) "Government paperwork" means all forms filled out in full or in part by citizens and required by a state agency.

Section 2. **State agencies to review forms — report recommendations.** (1) Every state agency shall review all forms that it requires of citizens.

(2) The review shall determine:

(a) if the forms are serving their intended purposes; and

(b) if the forms are necessary for the agency to perform its prescribed functions.

(3) The agency shall report the results of its review and, if any, its recommendations to reduce government paperwork to the committee prior to April 30, 1980.

Section 3. **Committee duties.** The committee shall:

(1) make an interim study of all government paperwork that affects citizens; and

(2) make recommendations to the legislature to reduce the volume of government paperwork.

Section 4. **Committee powers.** The committee may:

(1) examine government paperwork to determine if it is serving the functions for which it is intended;

(2) request and shall receive from all government agencies such assistance and data as will enable the committee to fulfill its duties;

(3) recommend administrative changes which would eliminate or reduce the volume of government paperwork; and

(4) hold public hearings.

Section 5. **Committee report.** Prior to September 15 of the next legislative session, the committee shall prepare a report of its activities, together with its recommendations, to be submitted to the legislature.

Approved March 22, 1979.

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CHAPTER NO. 211

AN ACT TO REPEAL SECTION 7-14-2104, MCA, AND CHAPTER 45, LAWS OF 1923, RELATING TO SOVEREIGN IMMUNITY OF LOCAL GOVERNMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 7-14-2104, MCA, and Chapter 45, Laws of 1923, are repealed.

Approved March 22, 1979.

CHAPTER NO. 212

AN ACT TO GENERALLY REVISE AND CLARIFY THE LOCAL GOVERNMENT LAWS RELATING TO DEBT MANAGEMENT AND TO PERMIT THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO ISSUE REFUNDING REVENUE BONDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-105, MCA, is amended to read:

"**7-7-105. Challenges to local government bond elections.** (1) No action *may* be brought for the purpose of restraining the issuance and sale of bonds or other obligations by any county, city, town, or political subdivision of the state or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations after the expiration of 60 days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of 60 days from the date of the order, resolution, or ordinance authorizing the issuance thereof, on account of any defect, irregularity, or informality in giving notice of or *in* holding the election. *No* defense based upon any such defect, irregularity, or informality *may* be interposed in any action unless brought within this period. This subsection applies but is not limited to any action and defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon.

(2) (a) Any elector qualified to vote in a bond election of a county, a city, or any political subdivision of either may contest a bond election for any of the following causes:

(i) that the precinct board, in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election;

(ii) that any official charged with a duty under the election laws failed to perform that duty;

(iii) that in conducting the election, any official charged with a duty under the election laws violated any of the provisions of Title 13 relating to bond elections;

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(iv) that electors qualified to vote in the election under the provisions of the constitutions of Montana and the United States were not given opportunity to vote in the election;

(v) that electors not qualified to vote in the election under the provisions of the constitutions of Montana and the United States were permitted to vote in the election.

(b) Within 60 days after the election, the contestant shall file a verified petition with the clerk of the court in the judicial district where the election was held.

(3) The word "action", as used in this section, is to be construed, whenever it is necessary to do so, as including a special *proceeding* of a civil nature."

Section 2. Section 7-7-4103, MCA, is amended to read:

"7-7-4103. General qualifications to vote on questions of municipal indebtedness. (1) *Registered* electors of the city, town, or other municipal corporation *may* vote upon any proposal to create or increase any indebtedness of the city, town, or other municipal corporation required by law to be submitted to a vote of the electors.

(2) No elector, otherwise qualified, *may* be denied the right to vote *because* the polling place for a general election for the precinct wherein he resides and is entitled to vote lies within another city, town, or other municipal corporation."

Section 3. Section 7-7-4111, MCA, is amended to read:

"7-7-4111. Procedure to declare municipal bankruptcy. *(1) Any* city or town *may* submit itself and a proposed plan of composition to the jurisdiction of the bankruptcy court having jurisdiction of such matter *and* be governed by the proceedings, orders, and decrees of *the* court as provided by *the federal municipal bankruptcy laws.*

(2) The city or town may compose and enter into, submit itself to, and perform the plan of composition *as* required by *the federal laws* and the orders and decrees of *the bankruptcy* court:

(a) upon the adoption by its city council or town council of an ordinance or resolution:

(i) declaring that it is insolvent or unable to meet its debts as they mature;

(ii) declaring that it desires to effect a plan for the composition of its debts under the provisions of the *federal municipal bankruptcy laws*; and

(iii) providing that *the* city or town shall proceed to the composition of its municipal indebtedness under the provisions of *the federal laws*; and

(b) upon the acceptance in writing of the *proposed* plan of composition of municipal indebtedness by creditors of the petitioning municipal corporation owning not less than the percentage thereof in amount of the municipal securities affected or to be affected by the proposed plan of composition, as provided in *the federal laws.*"

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Section 4. Section 7-7-4112, MCA, is amended to read:

"7-7-4112. Power to comply with court decrees related to bankruptcy. Any city or town *may* comply with all orders and decrees contemplated by *the federal municipal bankruptcy laws* and *may* issue its bonds and other securities for the carrying out and consummation of the composition of its debts as provided and contemplated by *the federal law* and as required by the orders and decrees of *the bankruptcy* court."

Section 5. Section 7-7-4221, MCA, is amended to read:

"7-7-4221. Election on question of incurring indebtedness — exception. (1) Except as provided in subsection (2), whenever the *governing body* of any *municipality considers* it necessary to issue bonds pledging the general credit of the municipality for any purpose *authorized by law*, the question of issuing *the* bonds shall first be submitted to the electors of *the* city or town who are qualified to vote on such question.

(2) It *is* not necessary to submit to *the* electors the question of issuing refunding bonds to refund bonds issued and outstanding or the question of issuing revenue bonds not pledging the general credit of the municipality under any laws of this state."

Section 6. Section 7-7-4226, MCA, is amended to read:

"7-7-4226. Resolution to submit question of issuing bond to voters. (1) When the *governing body* of any *municipality considers* it necessary to issue bonds pledging the general credit of the municipality pursuant to any statute of this state, the *governing body* shall pass and adopt a resolution.

(2) The resolution shall:

(a) recite the purpose or purposes for which it is proposed to issue *the bonds*;

(b) fix the amount of bonds to be issued for each purpose;

(c) determine the number of years through which *the* bonds are to be paid, not exceeding the limits fixed in *7-7-4205*; and

(d) unless such bonds are revenue bonds not pledging the general credit of the municipality, make such provisions as are necessary for *submitting* the question to the qualified electors of the city or town at the next general city or town election or at a special election which the *governing body* may call for such purpose.

(3) *Whenever* the bond issuance is proposed by petition, the *governing body* shall, before submitting the measure to the *electors*, pass a resolution containing the information herein required and, in addition thereto, setting forth the essential facts in regard to the filing and presentation of the petition."

Section 7. Section 7-7-4236, MCA, is amended to read:

"7-7-4236. Resolution to issue bonds. (1) If 40% or more of the qualified electors of the city or town entitled to vote on *the* question *of*

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issuing bonds voted thereon and a majority of *the* votes were cast in favor of the issuing of *the* bonds, the city or town council shall, at a regular or special meeting held within 30 days thereafter, pass a resolution providing for the issuance of *the* bonds.

(2) *The* resolution shall recite:

(a) the purpose for which *the* bonds are to be issued;

(b) the amount thereof;

(c) the maximum rate of interest the bonds may bear;

(d) the date they shall bear;

(e) the period of time through which they *are* payable; and

(f) that any *bond* may be redeemed in full, at the option of the city or town, on any interest payment date after *expiration of one-half of the term for which the bond was issued.*

(3) *The* resolution shall provide for the manner of execution of the bonds. It shall provide that preference shall be given amortization bonds but shall fix the denomination of serial bonds in case it shall be found advantageous to issue bonds in that form. The *council* may in its discretion provide that such bonds may be issued and sold in two or more series or installments.

(4) The resolution shall adopt a form of notice of the sale of the bonds."

Section 8. Section 7-7-4254, MCA, is amended to read:

"7-7-4254. Procedure for sale of bonds. (1) The city or town council shall meet at the time and place fixed in the notice to consider bids for the bonds.

(2) The bonds shall be sold at not less than par and accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have preference over a bid for serial bonds, all other things being equal. In determining the kind of bonds to be issued, the council shall take into consideration not only the rate of interest demanded on each kind but also all other known elements affecting the interests of the city or town. The council shall accept the bid *it considers* most advantageous to the city or town. The *council may* reject any and all bids and sell the bonds at private sale if *this is considered to be in* the best interests of the city or town; provided, however, that *the* bonds *may* not be sold at less than par and accrued interest to date of delivery.

(3) No attorneys' fees or brokerage or other fees or commissions of any kind *may* be paid to any person or corporation for assisting in the proceedings, in the preparation of the bonds, or in negotiating the sale thereof."

Section 9. Section 7-7-4265, MCA, is amended to read:

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"7-7-4265. Tax levy for payment of bonds. (1) The city or town council, at the time of making the levy of taxes for general city or town purposes, must levy a separate and special tax upon all taxable property in the city or town for the payment of interest *and* principal *for* each series or issue of bonds outstanding. The tax levy for any one series or issue of bonds must be entirely separate and distinct from *the* levy for any other issue or series of bonds.

(2) The levy made for the purpose of paying interest on and principal of each series or issue of bonds must be high enough to raise an amount sufficient to pay all interest on and so much of the principal, if any, of *the* bonds as will become due and payable during the then-current fiscal year or within 90 days thereafter, as such amount is shown by the treasurer's statement provided for by 7-7-4264. If no part of the principal of such bonds will become due and payable within such time, then such tax levy must be high enough to raise an amount sufficient to pay all interest which will become due and payable during the current fiscal year or within 90 days thereafter and to also place in the sinking fund for such issue or series of bonds, for the payment of the principal when the same becomes due, an amount not less than a sum produced by dividing the whole amount for which *the* series or issue of bonds were originally issued by the number of years for which such series or issue of bonds were originally issued to run, as such amounts are shown by the treasurer's statement provided for by 7-7-4264."

Section 10. Section 7-7-4602, MCA, is amended to read:

"7-7-4602. Definitions. *As used in this part, unless the context indicates otherwise, the following definitions apply*:

(1) *"Enterprise" means* any work, undertaking, or project which the municipality is authorized to construct and from which the municipality *derives* revenues, for the refinancing or the refinancing and improving of which enterprise refunding bonds are issued under this part; and such enterprise *includes* all improvements, betterments, extensions, and replacements thereto and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto.

(2) *"Federal agency" means* the United States, the president of the United States, the federal emergency administrator of public works, or any agency, instrumentality, or corporation of the United States designated or created by or pursuant to any act or joint resolution of the congress of the United States or directly or indirectly owned or controlled by the United States.

(3) *"Governing body" means*, in the case of a city or town, the council, commission, or other body, board, officer, or officers having charge of the finances thereof.

(4) *"Holder of bonds"* or "bondholder" *(*or any similar term*) means* any person who *is* the bearer of any outstanding refunding bond, registered to bearer or not registered, or the registered owner of any such outstanding bond which *is* at the time registered other than to bearer.

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(5) *"Improving" means* reconstructing, replacing, extending, repairing, bettering, equipping, developing, embellishing, or improving or any one or more of the foregoing.

(6) *"Law" means* any act or statute (general, special, or local) of this state, including without being limited to the charter of any municipality.

(7) *"Municipality" means* any city or town of this state.

(8) *"Refinancing" means* funding, refunding, paying, or discharging, by means of refunding bonds or the proceeds received from the sale thereof, all or any part of any notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, or improving of an enterprise and payable solely from all or any part of the revenues thereof, including interest thereon in arrears or about to become due, whether or not represented by coupons or interest certificates.

(9) *"Refunding bonds" means* notes, bonds, certificates, or other obligations of a municipality issued pursuant to this part or pursuant to any other law as supplemented by or in conjunction with this part.

(10) *"Revenues" means* all fees, tolls, rates, rentals, and charges to be levied and collected in connection with and all other income and receipts of whatever kind or character derived by the municipality from the operation of any enterprise or arising from any enterprise."

Section 11. **Refunding revenue bonds.** The board may issue refunding revenue bonds under the provisions of Title 7, chapter 7, part 46. For this purpose, in Title 7, chapter 7, part 46, references to "governing body" means the "board" and references to "municipality" means the "board".

Section 12. **Codification.** It is intended that section 11 be codified as an integral part of Title 85, chapter 1, part 3, and the provisions of Title 85, chapter 1, apply to section 11.

Approved March 22, 1979.

CHAPTER NO. 213

AN ACT TO AMEND THE LOCAL GOVERNMENT LAWS RELATING TO RURAL FIRE DISTRICTS, HOSPITAL DISTRICTS, AND CEMETERY DISTRICTS TO DELETE TAXPAYER AND FREEHOLDER REQUIREMENTS TO VOTE IN CERTAIN ELECTIONS AND TO HOLD CERTAIN OFFICES; AMENDING SECTIONS 7-33-2106, 7-34-2113, 7-35-2108, AND 7-35-2133, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2106, MCA, is amended to read:

"7-33-2106. Details relating to board of trustees of fire district. (1) The five trustees initially appointed by the county commissioners shall hold office until their successors are elected and qualified as hereinafter provided.

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(2) Qualifications of electors and trustees, terms of office, vacancies, and manner and date of elections shall, as far as possible, be the same as provided in the school election laws for school districts of the second class, except that there need be no special registration of electors.

(3) The trustees shall organize by choosing a chairman and appointing one member to act as secretary."

Section 2. Section 7-34-2113, MCA, is amended to read:

"7-34-2113. Who may vote. Only qualified electors residing within the proposed hospital district *may* vote on the question of the creation of the hospital district."

Section 3. Section 7-35-2108, MCA, is amended to read:

"7-35-2108. Government of district by trustees. (1) *The* cemetery district shall be governed and managed by three trustees appointed by the board of county commissioners. The trustees at their first meeting shall adopt bylaws for the government and management of the district.

(2) The trustees may be appointed from the *residents of the* district for terms of 1, 2, and 3 years, respectively, and until their successors *are* appointed and qualified. Annually thereafter the board of county commissioners shall appoint one trustee for a term of 3 years or until his successor *is* appointed and qualified.

(3) Per diem and mileage of *the* cemetery trustees may be set by resolution of the board of county commissioners."

Section 4. Section 7-35-2133, MCA, is amended to read:

"7-35-2133. Appointment of trustees of fund. (1) The *district* judge shall, upon receipt of the application, appoint a trustee or a board of trustees *to administer the fund* from a list submitted to him by the trustees of *the* public cemetery district.

(2) *The number of trustees for the fund may not exceed* five, *with* the exact number to *be set at* the discretion of the trustees of *the* public cemetery district. *Each* trustee *for the fund* must be *a resident* of the state during the time *he exercises* the powers of such trust.

(3) *Whenever a person,* so chosen and appointed, *fails* to qualify within 30 days after *his* appointment, a vacancy *exists,* and the judge of *the* district court shall appoint from a list submitted to him by the trustees of *the* public cemetery district some person possessing the above qualifications to fill the vacancy in *the* board of trustees of *the* fund. Trustees of *the* fund appointed by *the* public cemetery district or district court *prior to July 1, 1955,* continue to hold office as trustees until terminated *as* provided in 7-35-2131 through 7-35-2150."

Approved March 22, 1979.

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CHAPTER NO. 214

AN ACT TO ABOLISH THE REPORTING REQUIREMENTS OF THE STATE TREASURER TO THE DEPARTMENT OF STATE LANDS; REPEALING SECTION 77-1-508, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 77-1-508, MCA, is repealed.

Approved March 22, 1979.

CHAPTER NO. 215

AN ACT TO REVISE THE LAW RELATING TO TIME LIMITATIONS FOR A PROCEEDING ALLEGING A YOUTH DELINQUENT OR IN NEED OF SUPERVISION; PROVIDING THAT A YOUTH COURT JUDGE MAY GRANT A CONTINUANCE IF THE YOUTH IS NOT IN CUSTODY AND THE INTERESTS OF JUSTICE SO REQUIRE; AMENDING SECTION 41-5-516, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-516, MCA, is amended to read:

"41-5-516. Time limitations on petition hearing — continuance. *(1)* Unless the allegations of a petition alleging that a youth is a delinquent youth or a youth in need of supervision are determined by a written admission of the allegations by the youth, the petition shall be dismissed with prejudice if a hearing on the petition is not begun within 15 days after all service is completed. *However, either party may move for a continuance under subsection (2) of this section if the youth is not in custody.*

(2) The youth court may, upon motion of either party or upon the court's own motion, order a continuance if the youth is not in custody and interests of justice so require. All motions for a continuance are addressed to the discretion of the youth court judge and must be considered in the light of the diligence shown on the part of the movant.

(3) Delays resulting from service of process or delays resulting from legal actions taken in behalf of the youth shall not be included in the 15-day time limitation."

Approved March 22, 1979.

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CHAPTER NO. 216

AN ACT TO PERMIT LICENSEES UNDER THE MONTANA CONSUMER LOAN ACT TO MAKE LOANS NOT EXCEEDING $25,000 AND REVISING ALLOWABLE CHARGES; AMENDING SECTIONS 32-5-102, 32-5-103, 32-5-201, 32-5-306, AND 32-5-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-5-102, MCA, is amended to read:

"32-5-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Person" means individuals, partnerships, associations, corporations, and all legal entities in the loaning business.

(2) "License" means one or both of the licenses provided for by this chapter.

(3) "Licensee" means the person holding a license.

(4) "Department" means the department of business regulation provided for in Title 2, chapter 15, part 18.

(5) "Consumer type loan business" means the business of making loans of *$25,000* or less, generally repayable in substantially equal installments."

Section 2. Section 32-5-103, MCA, is amended to read:

"32-5-103. Engaging in business of making loans restricted. (1) No person shall engage in the business of making loans or advances of money on credit in amounts of *$25,000* or less and contract for, charge, or receive directly or indirectly on or in connection with any such loan or advance any charges, whether for interest, compensation, consideration, or expense, which in the aggregate are greater than *those provided by 31-1-107(1)*, except as provided in and authorized by this chapter. A person doing business under the authority of this state or the United States relating to banks, trust companies, savings or building and loan associations, credit unions, or a person engaged in business as a licensed pawnbroker or any person who shall extend credit in connection with the sale of a commodity shall not become a licensee under this chapter nor shall any of the provisions of this chapter apply to any such exempted person.

(2) The provisions of subsection (1) shall apply to any person who seeks to evade its applications by any device, subterfuge, or pretense whatsoever.

(3) Any contract of loan in the making or collection of which any act shall have been done which violates subsection (1) of this section shall be void, and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever."

Section 3. Section 32-5-201, MCA, is amended to read:

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"32-5-201. License application and fees — supplementary license. (1) (a) A place of business operated under this chapter shall properly display on the premises a nontransferable and nonassignable license. The same person may obtain additional licenses upon compliance with this chapter as to each license.

(b) Application for a license shall be on a form prescribed and furnished by the department.

(c) A licensee may move his place of business from one place to another within a county without obtaining a new license, provided he obtains written permission from the department.

(d) With each application the applicant shall submit $50 as an investigation fee and $125 as a license fee. The license fee shall be returned to the applicant if the application is denied. The license year is the calendar year, and the license fee for any period less than 6 months is $62.50. A license remains in force until surrendered, suspended, or revoked.

(2) No licensee under the provisions of this chapter shall lend money in a total sum greater than $1,000 to any borrower or to any borrower and spouse except under the following circumstances:

(a) When any person holding a license provided for in subsection (1) desires to make loans for any amount in excess of $1,000 but not exceeding *$25,000,* the holder of such license may apply to the department for a supplementary license and pay therefor an additional license fee of $75 per calendar year or one-half of said sum for any period less than 6 months.

(b) The department shall grant, on application, a supplementary license to a holder of a license provided for in subsection (1).

(c) Section 32-5-204 shall be applicable as to time of payment of supplementary license fee and penalty for failure to pay the same.

(d) Provisions of 32-5-301 relating to refunds, fees, and charges and the other provisions of this chapter not inconsistent with this section shall be applicable to loans made under authority of a supplementary license.

(3) All moneys collected under the authority of this chapter shall be paid into the state treasury by the department."

Section 4. Section 32-5-306, MCA, is amended to read:

"32-5-306. Insurance. (1) No insurance of any kind shall be written by a licensee or employee, affiliate, or associate of the licensee, in connection with any loan except as hereinafter provided.

(2) Insurance permitted under the provisions of this section shall be obtained through an insurance company authorized to conduct such business in Montana by a duly licensed agent or agency of this state. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written as authorized by this section may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(3) When the principal amount of the loan exceeds $300 exclusive of the portion thereof attributable to insurance premiums and charges, the

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licensee may require a borrower to insure property offered as security against any substantial risk of loss, damage, or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to obtain such insurance in an amount greater than the amount of the loan or for a longer term.

(4) Subject to the laws of this state, credit life insurance and credit disability insurance may be provided at the expense of the borrower and may be provided by a licensee upon the request of the borrower when the principal amount of the loan exceeds $300, exclusive of the portion thereof attributable to insurance premiums and charges. If any loan shall include amounts advanced for insurance premiums and charges, such loan shall not in any event exceed *$25,000.*

(5) The insurance authorized by this section may be sold, obtained, or provided by or through a licensee, and the premium or identifiable charge for the insurance may be included in the principal amount of the loan; provided, however, that no licensee shall require a borrower to purchase such insurance from such licensee or from any particular agent, broker, or insurance company as a condition precedent for the obtaining of a loan. Any gain or advantage to the licensee or any employee, affiliate, or associate of the licensee from the sale, provision, or obtaining of insurance as authorized by this section shall not be deemed to be additional charges or a violation of this chapter.

(6) A licensee shall not require insurance under this section until any existing insurance of the same type has expired or has been canceled and the unearned portion of the premium for the canceled insurance has been rebated to the borrower."

Section 5. Section 32-5-402, MCA, is amended to read:

"32-5-402. Investigations. The department may at any time investigate any transaction with borrowers and may examine the books, accounts, and records in this state to discover violations of this chapter by:

(1) a licensee;

(2) a person who advertises for, solicits, or holds himself out as willing to make loans in amounts of *$25,000* or less; or

(3) a person whom the department has reason to believe is violating or is about to violate this chapter."

Section 6. **Charges on loans in excess of $7,500.** (1) On any loan of money exceeding $7,500 in principal amount, a licensee may not make charges as provided in subsections (1) and (2) of 32-5-301 but shall make charges in accordance with the provisions of this section.

(2) On any loan of money exceeding $7,500 but not exceeding $25,000 in principal amount, a licensee may contract and receive charges at a rate not in excess of 1 ½ % per month on the principal amount as follows:

(a) Charges shall be computed on unpaid balances of the principal amount outstanding from time to time for the actual time outstanding.

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Each payment shall be applied first to accumulated charges and the remainder of the payment applied to the unpaid principal balance, except that if the amount of the payment is insufficient to pay the accumulated charges, unpaid charges continue to accumulate to be paid from the proceeds of subsequent payments and are not added to the principal balance.

(b) Charges made under this section may not be payable in advance or compounded. However, if part or all of the consideration for a new loan contract is the unpaid principal balance of a prior loan, the principal amount payable under such new loan contract may include any unpaid charges which have accrued. The resulting loan contract is a new and separate loan transaction for all purposes. The principal balance of a prior loan on which charges have been made pursuant to subsections (1) and (2) of 32-5-301 is the balance due after refund or credit is given to the borrower pursuant to subsection (5) of 32-5-301.

(3) For purposes of computing charges for a fraction of a month, a day is considered one-thirtieth of a month.

(4) The provisions of subsections (5) and (6) of 32-5-301 do not apply to loans made under this section.

Section 7. **Codification.** Section 6 is intended to be codified as an integral part of Title 32, chapter 5. The provisions in Title 32, chapter 5, apply to section 6, and section 6 applies to the provisions of Title 32, chapter 5. All references in the MCA to Title 32, chapter 5, include section 6.

Approved March 22, 1979.

CHAPTER NO. 217

AN ACT TO INSURE THAT STATUTES IMPOSING NEW LOCAL GOVERNMENT DUTIES PROVIDE A SPECIFIC MEANS OF FINANCING; AMENDING SECTION 1-2-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-2-112, MCA, is amended to read:

"1-2-112. Statutes imposing new local government duties. (1) Any law enacted by the legislature after *[the effective date of this act]*, which requires a local government unit to perform an activity or provide a service or facility which will require the direct expenditure of additional funds must provide a *specific* means to finance the activity, service, or facility *other than the existing authorized mill levies or the all-purpose mill levy. Any law that fails to provide a specific means to finance any service or facility other than the existing authorized mill levies or the all-purpose mill levy is not effective until specific means of financing are provided by the legislature.*

(2) The legislature may fulfill the requirements of [this act] by providing for an increase in the existing authorized mill levies or the all-purpose mill levy, special mill levies, or remission of money by the state

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of Montana to local governments; however, an increase in the existing authorized mill levies or the all-purpose mill levy or any special mill levy must provide an amount necessary to finance *the additional costs* and if financing is provided by remission of funds by the state of Montana, *the* remission shall bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility.

(3) No subsequent legislation shall be *considered* to supersede or modify any provision of this section, whether by implication or otherwise, except to the extent that such legislation shall do so expressly.

(4) This section shall not apply to any law under which the required expenditure of additional local funds is incidental to the main purpose of the law."

Approved March 22, 1979.

CHAPTER NO. 218

AN ACT TO CHANGE THE NAME OF THE DEPARTMENT OF FISH AND GAME TO REFLECT ITS FULL RESPONSIBILITIES; AND TO INSTRUCT THE CODE COMMISSIONER TO MAKE NECESSARY CHANGES IN THE MONTANA CODE ANNOTATED; AMENDING SECTION 2-15-3401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3401, MCA, is amended to read:

"2-15-3401. Department of fish, wildlife, and parks — head. There is a department of fish, *wildlife, and parks.* The department head is the director of fish, *wildlife, and parks* appointed by the governor in accordance with 2-15-111. The director is the secretary of the commission."

Section 2. **Instructions to code commissioner.** The code commissioner is authorized and instructed to change any references to the department of fish and game in the Montana Code Annotated to the department of fish, wildlife, and parks.

Approved March 22, 1979.

CHAPTER NO. 219

AN ACT TO AMEND AND CLARIFY THE AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT AND ENFORCE RULES FOR THE CONTROL OF COMMUNICABLE DISEASES AND TRANSPORTATION OF DEAD HUMAN BODIES; AMENDING SECTION 50-1-202, MCA; AND REPEALING SECTION 50-1-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-1-202, MCA, is amended to read:

"50-1-202. General powers and duties. The department shall:

(1) study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

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(2) make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, administer any federal health program for which responsibilities are delegated to states;

(4) inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4) of this section, submit a written report on sanitary conditions to the governor and to the director of institutions or commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) organize laboratory services and provide equipment and personnel for those services;

(8) develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(9) develop and administer a program to protect the health of mothers and children;

(10) conduct health education programs;

(11) supervise school and local public health nurses in the performance of their duties;

(12) consult with the superintendent of public instruction on health measures for schools;

(13) develop and administer a program for services to handicapped children including diagnosis, medical, surgical, and corrective treatment, and after-care and related services;

(14) supervise local boards of health;

(15) bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(16) accept and expend federal funds available for public health services;

(17) have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(18) adopt rules imposing fees for the tests and services performed by the laboratory of the department. In adopting a rule imposing fees, the department may establish only a fee that will reimburse the department for the costs incurred in performing tests and services. All fees shall be deposited in the general fund.

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(19) adopt and enforce rules regarding the definition of communicable diseases and the reporting and control of communicable diseases; and

(20) adopt and enforce rules regarding the transportation of dead human bodies."

Section 2. **Repealer.** Section 50-1-205, MCA, is repealed.

Approved March 22, 1979.

CHAPTER NO. 220

AN ACT TO PROVIDE FOR THE HUNTING OF MOOSE, SHEEP, AND GOAT BY HOLDERS OF SPECIAL BOW AND ARROW LICENSES WHEN THEY ALSO HOLD PREREQUISITE LICENSES; AMENDING SECTIONS 87-1-304 AND 87-2-708, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-304, MCA, is amended to read:

"87-1-304. Fixing of seasons and bag and possession limits. (1) The commission may fix seasons, bag limits, possession limits, and season limits; open or close, shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by 87-2-101; and declare areas open to the hunting of deer, antelope, elk, *moose, sheep, and goat* by bow and arrow permit holders and designate times when only bow and arrows may be used to hunt deer, antelope, elk, *moose, sheep, and goat* in those areas. It may declare areas open to deer hunting where shotguns only may be used to hunt or kill deer. It may declare areas open to special license holders only and issue special licenses in a limited number when it determines, after proper investigation, that such a season is necessary to assure the maintenance of an adequate supply of game birds, fish, animals, or fur-bearing animals. It may declare a special season and issue special licenses when game birds or animals or fur-bearing animals are causing damage to private property or when written complaint of such damage has been filed with the commission by the owner of that property. In determining to whom those licenses shall be issued, it may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system shall be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles by archers during special archery seasons.

(3) It may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. It may declare closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

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(4) It may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. It may close any area or district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited periods of time, when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations or to prevent the undue depletion of fish, game and fur-bearing animals, and game and nongame birds. It later may open the area or district upon consent of a majority of the property owners affected.

(5) It may declare certain fishing waters closed to fishing except by persons under 13 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under 13 years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing."

Section 2. Section 87-2-708, MCA, is amended to read:

"87-2-708. Class A-2 — special bow and arrow license. A holder of any one of the following: a Class A-3, A-4, A-5, B-2, B-5, B-6, B-7, B-8, or B-10 license *or any special license* may, upon payment of an additional sum of $6 to any agent of the department authorized to issue fishing and hunting licenses, be entitled to a Class A-2 license which shall authorize the holder thereof to pursue, hunt, shoot, and kill the game animals authorized by the licenses held with bow and arrow and to possess these carcasses during special seasons and in special areas, as may be designated by the department."

Approved March 22, 1979.

CHAPTER NO. 221

AN ACT TO CONSOLIDATE THE PROVISIONS RELATING TO THE FIXING OF MUNICIPAL SALARIES; PERMITTING THE FIXING OF SALARIES BY ORDINANCE OR RESOLUTION; AND DELETING THE PROVISION THAT A MUNICIPAL OFFICER MAY NOT RECEIVE AN INCREASE OR DECREASE IN PAY DURING A TERM OF OFFICE; AMENDING SECTION 7-4-4201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-4201, MCA, is amended to read:

"7-4-4201. Salary of officers. The council *shall determine by ordinance or resolution the salaries and compensation of elected and appointed city officers and all city employees.*"

Approved March 22, 1979.

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CHAPTER NO. 222

AN ACT TO AMEND SECTION 15-8-104, MCA; ELIMINATING THE REQUIREMENT THAT A COUNTY PAY FOR AUDITS CONDUCTED BY THE DEPARTMENT OF REVENUE, AND PROVIDING THAT THE COSTS OF AN AUDIT BE PAID BY THE DEPARTMENT; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-8-104, MCA, is amended to read:

"15-8-104. Department audit of taxable value — penalty for underreporting — costs of audit paid by department. (1) When in the judgment of the director of revenue it is necessary, audits may be made for the purpose of determining the taxable value of net proceeds of mines and oil and gas wells, bank shares, business inventories, and all other types of property subject to ad valorem taxation.

(2) The taxable value of any underreported portion of any business inventory found as a result of an audit to have been underreported by the owner shall be increased by 25% as a penalty for underreporting.

(3) The 25% penalty may be waived by the department if reasonable cause for failure to report the total value of a business inventory is provided to the department.

(4) The cost of the audit shall be paid *by the department.*"

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1979.

CHAPTER NO. 223

AN ACT TO AUTHORIZE THE CHARGING OF TUITION TO RESIDENT AND NONRESIDENT STUDENTS AT POSTSECONDARY VOCATIONAL-TECHNICAL CENTERS BY THE BOARD OF PUBLIC EDUCATION; AUTHORIZING THE BOARD OF PUBLIC EDUCATION TO PRESCRIBE USES OF AUTHORIZED TUITION; AND AMENDING SECTION 20-7-332, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-332, MCA, is amended to read:

"20-7-332. Tuition rates. (1) Tuition *may* be charged to any resident *or nonresident* of the state of Montana by the governing board of any postsecondary vocational-technical center at rates to be determined by the board of public education. *The board of public education shall also prescribe permissible uses for any tuition authorized.*

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(2) For the purposes of this section the eligibility of a student for resident status shall be determined in the same manner as that prescribed for use by the Montana university system, except that those provisions referring to "high school graduates" or "graduation from high school" shall be considered to refer to a person who has attended school or who was in attendance at a school."

Approved March 22, 1979.

CHAPTER NO. 224

AN ACT TO PROVIDE MINIMUM RETIREMENT ALLOWANCE PAYMENTS FOR CERTAIN SURVIVING SPOUSES OF RETIRED HIGHWAY PATROLMEN WHO HAVE EXHAUSTED THEIR BENEFITS; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Extension of benefits.** If no retirement allowance was payable on January 1, 1979, to the surviving spouse of a member of the Montana highway patrol under subsections (2) through (5) of section 1, Chapter 349, Laws of 1975, because of the exhaustion of benefits prior to that date, a retirement allowance of $300 per month shall be paid to such surviving spouse.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1979.

CHAPTER NO. 225

AN ACT TO DELETE THE REQUIREMENT THAT CLAIMS AGAINST THE COUNTY BE CERTIFIED; AMENDING SECTION 7-6-2421, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2421, MCA, is amended to read:

"7-6-2421. Presentation of claims against county. (1) No account must be allowed by the board unless the same is made out in separate items, with the nature of each item stated. If the claim is for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such services must be stated. No account must be necessarily passed upon by the board unless made out as prescribed in this section and filed by the clerk prior to the session at which it is asked to be heard.

(2) Every claim against the county, except claims arising from injury to a person or property, which are limited under provisions of Title 2, chapter

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9, parts 1 through 3, as amended, must be presented within 1 year after the last item accrued.

(3) No county officer must, except for his own service, present any claim, account, or demand for allowance against the county or in any way advocate the relief asked on the claim or demand made by another.

(4) If money deposited in the county treasury pursuant to [former section 16-2616, R.C.M. 1947] is demanded within 6 years by the legal representatives of the decedent, the treasurer must pay it to them, after deducting the fees and expenses of the coroner and of the county in relation to the matter, or the same may be so paid at any time thereafter upon the order of the board of county commissioners."

Approved March 22, 1979.

CHAPTER NO. 226

AN ACT TO PROVIDE FOR PAYMENT OF THE STATE'S CONTRIBUTION TO THE HIGHWAY PATROLMEN'S RETIREMENT ACCOUNT DIRECTLY FROM THE GENERAL FUND RATHER THAN FROM MOTOR VEHICLE DRIVER'S LICENSE FEES; AND AMENDING SECTION 19-6-404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-6-404, MCA, is amended to read:

"19-6-404. State's contribution. The state of Montana shall annually contribute to the account an amount equal to 16% of the salaries paid to the highway patrolmen who are covered by this account from the *general fund.*"

Approved March 22, 1979.

CHAPTER NO. 227

AN ACT TO REQUIRE A REPORT ON THE SALE OR TRANSFER OF PRECURSORS TO CONTROLLED SUBSTANCES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Report required for precursor to controlled substance.** (1) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to a person in this state must submit a report to the department of justice detailing all such transactions:

(a) phenyl-2-propanone;

(b) methylamine;

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(c) d-lysergic acid;

(d) ergotamine tartrate;

(e) diethyl malonate;

(f) malonic acid;

(g) ethyl malonate;

(h) barbituric acid; and

(i) piperidine.

(2) The department of justice may adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act that add or delete substances to the list of regulated substances detailed in subsection (1), if the substance is a precursor to a dangerous drug as defined in 50-32-101.

(3) This section does not apply to any of the following:

(a) a pharmacist or other authorized person who sells or furnishes the substance upon the prescription of a physician, dentist, podiatrist, or veterinarian;

(b) a physician, dentist, podiatrist, or veterinarian who administers or furnishes the substance to his patients;

(c) a manufacturer or wholesaler licensed by the board of pharmacists who sells, transfers, or otherwise furnishes the substance to a licensed pharmacist, physician, dentist, podiatrist, or veterinarian;

(d) transfers of the substances listed in subsection (1) within any college or university to an employee or student of the college or university for the purpose of teaching or research authorized by the college or university.

Section 2. **Reports required — exceptions.** (1) Except as provided in subsection (2), a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance regulated pursuant to [section 1] to a person in this state must, within 72 hours, submit a report of the transaction to the department of justice.

(2) The department may authorize the submission of the reports on a monthly basis for repeated, regular transactions between the furnisher and the recipient involving the same substance, if the department determines:

(a) a pattern of regular supply of the substance exists as between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance and the recipient of the substance; and

(b) the recipient has established a record of use of the substance for lawful purposes.

Section 3. **Common reporting form.** (1) The department of justice must provide a common reporting form for the report required under [section 1].

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(2) The form must contain the following information:

(a) name of the substance;

(b) quantity of the substance sold, transferred, or furnished;

(c) the date the substance was sold, transferred, or furnished;

(d) the name and address of the person buying or receiving the substance; and

(e) the name and address of the manufacturer, wholesaler, or retailer.

Section 4. **Loss, theft, or other discrepancy to be reported.** (1) The theft or loss of a substance regulated in accordance with [section 1] must be reported to the department of justice within 3 days after the theft or loss is discovered.

(2) Any difference between the quantity received of any substance regulated as provided in [section 1] and the quantity shipped must be reported to the department of justice within 3 days of the discovery of the discrepancy.

(3) A report made pursuant to this section shall also include the name of the common carrier or person who transported the substance and the date of shipment.

Section 5. **Violation — penalties.** (1) A person commits the offense of failure to report sale or transfer of a precursor to a controlled substance if he purposely or knowingly fails to report the sale, transfer, or other furnishing of a substance regulated by [section 1].

(2) A person convicted of failing to report the sale or transfer of a precursor to a controlled substance shall be fined not more than $10,000 or imprisoned in the state prison for not more than 10 years, or both.

Approved March 22, 1979.

CHAPTER NO. 228

AN ACT TO AMEND SECTION 61-4-102, MCA, TO RAISE THE MOTOR VEHICLE DEALER REGISTRATION FEE TO $45.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-102, MCA, is amended to read:

"61-4-102. Fees. (1) Upon making such application, the applicant shall pay to the division, in addition to the fees required of dealers under the provisions of subsection (2), a fee of $5. Upon receipt of the application, fee, and bond, as provided above, the division shall examine the application, and may, prior to issuing a license, make individual investigation of the truth of the statements contained in the application. If the

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division is satisfied that the applicant qualifies for the issuance of a dealer's license under the provisions of this chapter, it may thereupon issue the same.

(2) Registration or license fees shall be paid upon registration or reregistration of dealers in motor vehicles or trailers as follows:

(a) all dealers in motor vehicles, a fee of *$45*, which shall entitle such dealer to two sets of number plates, and $5 additional fee for each additional set of number plates up to six sets, and $2 additional fee for each additional set of number plates, as may be applied for;

(b) dealers in motorcycles and trailers, including housetrailers, *$45*.

(3) If any dealer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half of the regular fee above given.

(4) A dealer in motor vehicles or trailers who shall maintain more than one place of business or who shall maintain any branch establishment or establishments must register and pay a registration or license fee for each such place of business or establishment.

(5) A new applicant for a used motor vehicle dealer license shall pay $300 to the division in addition to any other sums required by this section or other provisions of the law. An applicant for a renewal of a used motor vehicle dealer license shall certify under oath that he has sold more than five used motor vehicles during the preceding calendar year or pay an additional $300 before he may be licensed."

Approved March 22, 1979.

CHAPTER NO. 229

AN ACT TO EXEMPT ANTIQUE AIRCRAFT FROM PROPERTY TAXATION; AMENDING SECTIONS 15-6-113, 67-3-201, AND 67-3-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Antique aircraft exempt — application procedure.** (1) Aircraft 40 years old or older and not regularly used for transportation are exempt from property taxation.

(2) To apply for this exemption, the owner shall file a signed application with the department of revenue containing:

(a) the name and address of the owner;

(b) a description of the aircraft;

(c) a statement that the aircraft is not regularly used for transportation.

Section 2. Section 15-6-113, MCA, is amended to read:

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"15-6-113. Class twelve property — description — taxable percentage. (1) Class twelve property includes:

(a) boats and all watercraft;

(b) aircraft, *except as provided in [section 1]*;

(c) motorcycles; and

(d) large farm machinery valued in the official guide tractors and farm implements and department valuation schedules.

(2) Class twelve property is taxed at 11% of its market value."

Section 3. Section 67-3-201, MCA, is amended to read:

"67-3-201. Aircraft registration and licensing. (1) Except as provided in 67-3-102, a person may not operate or cause or authorize to be operated a civil aircraft within this state unless the aircraft has an appropriate effective license, certificate, or permit issued by the United States government which has been registered with the department and the registration with the department is in force.

(2) Aircraft customarily kept in this state shall be registered with the department, which may charge a fee therefor of not more than $10. The registration shall be renewed annually on or before March 1 each year.

(3) Section 67-3-202 and subsections (2) through (6) of this section shall not apply to:

(a) aircraft owned and operated by the federal government, the state, or any political subdivision thereof;

(b) aircraft owned and held by an aircraft dealer solely for the purpose of resale;

(c) aircraft operated by an airline company and regularly scheduled for the primary purpose of carrying persons or property for hire in interstate or international transportation; or

(d) dismantled or otherwise nonflyable aircraft.

(4) An aircraft shall be registered as property within a particular county of the state. This county shall be the county of the owner's principal residence, if the owner is a natural person, or the owner's principal place of doing business in the state, if the owner is not a natural person. However, if the owner declares by affidavit that the aircraft is customarily kept at a landing facility in another county within the state, he may register the aircraft as property within such other county.

(5) *Except as provided in [section 1], all* aircraft shall be subject to all state, county, and school district tax levies and all other levies designated for aircraft- or airport-related uses. Such aircraft shall not be liable for other city tax levies.

(6) Aircraft not registered in the state but entering the state to engage in commercial operations shall be registered prior to commencing operation."

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Section 4. Section 67-3-202, MCA, is amended to read:

"67-3-202. Penalty for registration violations. (1) When an aircraft required to be registered under the provisions of subsections (2) through (6) of 67-3-201 is not registered on or before March 1 of the current calendar year, a penalty fee of $100 shall be added to the registration fee and collected. Registration of an aircraft in the name of the applicant for the year immediately preceding the year for which application for registration is made shall be prima facie evidence that the aircraft has been based in this state during the year for which application for registration is made.

(2) *Except for aircraft exempt from property taxation as provided in [section 1], an* application for registration shall be accompanied by a copy of the receipt for or statement of personal property tax paid, signed by the treasurer of the county where the aircraft is registered or a statement of lien assignment against real property signed by the county assessor where the aircraft is registered. A person who pays personal property tax on his aircraft to any jurisdiction other than the county where the aircraft is required to be registered is liable for the tax in that county without credit for such other taxes paid. In addition to this civil liability, a person who attempts to establish the situs of his aircraft in any jurisdiction other than the county where the aircraft is required to be registered with intent to avoid payment of taxes to that county commits the offense of false swearing as defined in 45-7-202.

(3) A person who operates an aircraft required to be registered in the state without having displayed upon such aircraft a certificate of registration issued by the department for that aircraft commits a misdemeanor."

Approved March 22, 1979.

CHAPTER NO. 230

AN ACT PROVIDING FOR AN INCREASE IN LICENSING AND REGISTRATION FEES OF PESTICIDE-RELATED ACTIVITIES; AMENDING SECTIONS 80-8-201, 80-8-203, 80-8-204, AND 80-8-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-8-201, MCA, is amended to read:

"80-8-201. Registration. (1) Every pesticide distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state shall be registered with the department. The registration shall be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all approved pesticides and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

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(2) The applicant for registration shall file with the department a statement including:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is so registered, and a statement of all claims to be made for it, including directions for use;

(c) the trade and chemical name of the pesticide;

(d) if requested by the department, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(3) Any pesticide imported into this state which is subject to the provisions of any federal act providing for the registration of pesticides and has been registered under the provisions of a federal act shall be registered in the state. However, the state may restrict the use and application of the pesticide by type of applicator, time, and place and may establish special registrations of pesticides as outlined in subsection (8) of this section and 80-8-105(3). The annual registration fee must also be paid, and registration information required by the department must be provided.

(4) The applicant shall pay an annual fee of *$15* for each pesticide registered. A registration fee is not required to register an experimental use permit. Fees collected shall be deposited in the state treasury to the credit of the general fund.

(5) The department may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department that the composition of the article warrants the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of 80-8-202, it shall register the article.

(6) If it does not appear to the department that the article warrants the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with this chapter, it shall notify the applicant of the manner in which the article, labeling, or other material required to be submitted fails to comply with the chapter so as to afford the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the article. The department may suspend or cancel the registration of a pesticide whenever it does not appear that the article or its labeling comply with this chapter. When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may appeal the department's decision.

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(7) Registration is not required in the case of a pesticide shipped from one plant in this state to another plant in this state by the same person.

(8) (a) The departments of health and environmental sciences, agriculture, and fish and game shall review all applications for registration of an experimental-use permit or a registration for special local needs. The departments shall utilize the same requirements and standards for reviewing registrations as established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted thereunder. The department of agriculture shall provide the departments of health and environmental sciences and fish and game with a complete copy of the application, related correspondence, and a statement of the department of agriculture's proposed action on the application. The departments of health and environmental sciences and fish and game shall approve or disapprove the application within 10 days after the receipt of the application. If the departments of health and environmental sciences, agriculture, and fish and game are in agreement with the proposed registration, the department of agriculture shall issue the registration.

(b) The department of agriculture shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two of the departments approve the proposed registration, the department of agriculture shall issue the registration.

(c) The registrant applying for registration shall be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, health and environmental sciences, and fish and game.

(d) Following the interagency conference and, if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in 80-8-108 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration shall be accepted by the departments and implemented by the department of agriculture."

Section 2. Section 80-8-203, MCA, is amended to read:

"80-8-203. Commercial applicator. (1) It shall be unlawful for any person to engage in the business of applying pesticides for another without a pesticide applicator's license obtained from the department of agriculture. The application shall be accompanied by a fee of *$15*. Applicators applying for a dealer's license under this chapter shall be required to pay only a *$10* licensing fee for the dealer's license. The provisions of this section shall not apply to any person employed only to operate any equipment used for the application of any pesticide and in which the person has no financial interest or other control over such apparatus other than its day-to-day mechanical operation for the purpose of applying any pesticide.

(2) Public utility applicators shall be licensed in the same manner as commercial applicators, provided that public utility operators working under public utility applicators are not required to be licensed except as provided for under 80-8-205.

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(3) Veterinarians licensed as provided in Title 37, chapter 18, part 3, shall not be required to be licensed to apply nonrestricted pesticides, provided that these veterinarians shall register with the department each year; provided further that the veterinarians shall be required to meet all other requirements and rules of the Montana Pesticides Act. The department shall consider the professional licensing requirements for veterinarians when adopting rules."

Section 3. Section 80-8-204, MCA, is amended to read:

"80-8-204. Application for applicator's license. (1) Application for a pesticide applicator's license provided for in 80-8-203 shall be made annually to the department before applying pesticides in any calendar year, provided that pesticide applicators applying for renewal of license shall do so on or before May 1 of that calendar year. Any applicator applying for renewal of license after May 1 shall be assessed a *$15* late licensing fee.

(2) If the application is made for a license to engage in aerial application of pesticides, the applicant shall first meet all of the requirements of the federal aviation agency and the department of community affairs to operate the equipment described in the application."

Section 4. Section 80-8-207, MCA, is amended to read:

"80-8-207. Dealers. (1) It is unlawful for a dealer to sell, deliver, or have delivered within this state any pesticide without first procuring a license from the department of agriculture for each calendar year or portion thereof. A separate dealer's license and fee shall be required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide fieldmen or salesmen employed directly out of the same location or outlet and under a licensed dealer shall not be required to obtain a license. The dealer shall furnish the department the names and addresses of its fieldmen and salesmen selling pesticides within the state.

(2) The application for a license shall be accompanied by a fee of *$15*. Dealers applying for renewal of license shall do so on or before May 1 of that calendar year. Any dealer applying for renewal of license after May 1 shall be assessed a *$15* late licensing fee.

(3) The dealer shall require the purchaser of any restricted pesticide to exhibit his license or permit issued under authority of this chapter before completing a sale.

(4) Dealers may make one application for two annual licenses if the application is accompanied by a *$15* licensing fee for each year of the state biennium.

(5) Pharmacists licensed as provided for in 37-7-302 and 37-7-303, veterinarians licensed as provided for in 37-18-302 and 37-18-303, and certified pharmacies licensed under 37-7-321 shall not be required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians shall register with the department each year. However, the certified pharmacies and veterinarians shall be required to meet all other

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requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules."

Approved March 22, 1979.

CHAPTER NO. 231

AN ACT TO INCREASE JURORS' FEES IN COURTS NOT OF RECORD; AMENDING SECTION 3-15-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-15-203, MCA, is amended to read:

"3-15-203. Fees in courts not of record and coroner's inquests. (1) Jurors in courts not of record, in both civil and criminal actions, shall receive a fee of *$12* per day. In civil actions, the jurors' fees must be paid by the party demanding the jury and taxed as costs against the losing party.

(2) Jurors in coroner's inquests shall receive a fee of $7.50 per day."

Approved March 22, 1979.

CHAPTER NO. 232

AN ACT REQUIRING THE BOARD OF COUNTY COMMISSIONERS TO SET COUNTY SURVEYOR'S FEES BY RESOLUTION; AMENDING SECTION 7-4-2821, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2821, MCA, is amended to read:

"7-4-2821. Fees of county surveyor. *The board of county commissioners shall set the county surveyor's fees by resolution."*

Approved March 22, 1979.

CHAPTER NO. 233

AN ACT TO AMEND SECTION 32-3-804, MCA, TO ALLOW A CENTRAL CREDIT UNION TO BORROW AN AMOUNT NOT IN EXCESS OF THREE TIMES ITS TOTAL ASSETS LESS NOTES PAYABLE AND MORE THAN THREE TIMES ITS TOTAL ASSETS LESS NOTES PAYABLE WITH PRIOR APPROVAL OF THE DIRECTOR; AND TO ALLOW A CENTRAL CREDIT UNION TO LOAN AN AMOUNT NOT IN EXCESS OF 20% OF ITS ASSETS TO ANY ONE MEMBER.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-3-804, MCA, is amended to read:

"32-3-804. Additional rights and powers. (1) A central credit union shall have all of the rights and powers of any other credit union

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organized under this chapter and the additional rights and powers specified in this section, notwithstanding any limitations or restrictions found elsewhere in this chapter.

(2) A central credit union may make loans to other credit unions, purchase shares of other credit unions, and obtain or acquire the assets and liabilities of any credit union operating in this state which enters into liquidation.

(3) A central credit union may invest in and grant loans to associations of credit unions, central funds of credit unions, or organizations chartered to provide service to credit unions.

(4) A central credit union may borrow and accept money from any source and issue notes or debentures.

(5) A central credit union with corporate shareholdings equal to or in excess of 95% of its total assets may, by vote of its board of directors:

(a) elect exemption of insurance on share accounts under the provisions of Title II of the Federal Credit Union Act;

(b) borrow from any source an amount not in excess of three times its total assets after deduction of the notes payable account; however, with prior written approval of the director of the department of business regulation, the credit union may exceed such limitation; and

(c) make loans to any member in an aggregate amount not in excess of 20% of the central credit union's total assets."

Approved March 22, 1979.

CHAPTER NO. 234

AN ACT TO GENERALLY REVISE LAWS RELATING TO BUTCHERS AND MEAT PEDDLERS AND INSPECTION OF HIDES FROM SLAUGHTERED ANIMALS; AMENDING SECTIONS 81-9-101, 81-9-112, AND 81-9-113, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-9-101, MCA, is amended to read:

"**81-9-101. Definitions.** *As used in this part, the following definitions apply:*

(1) "Butcher" means a person, firm, corporation, or association that slaughters livestock for the purpose of selling or distributing meat or byproducts of livestock and maintains slaughterhouses for this purpose, a person who maintains a meat market for the purpose of selling or distributing meat or byproducts of livestock, or a person who maintains a slaughterhouse, meat depot, or packing plant for the purpose of engaging in custom slaughter of livestock.

(2) "Custom slaughter" means the butchering for a consideration of livestock owned by someone else on behalf of the owner in which there has not been a sale of the meat.

(3) "Deputy state stock inspector" means a person designated by the department as a deputy state stock inspector and who does not receive salary or compensation from the department.

(4) "Livestock" means cattle, horses, sheep, swine, goats, mules, or asses.

(5) "Meat peddler" means a person, firm, corporation, or association that slaughters livestock, buys and sells any dressed livestock, or engages in custom slaughter or packing but does not maintain a licensed slaughterhouse or meat market.

(6) "State stock inspector" means an employee of the department of livestock designated by the department as a state stock inspector."

Section 2. Section 81-9-112, MCA, is amended to read:

"81-9-112. Inspection and marking of hides and meat of slaughtered cattle — records — bill of sale — when inspection not necessary. *(1) All butchers and meat peddlers shall maintain the hide of an animal in its entirety with tail and ears attached for each animal slaughtered until inspected by a state or deputy state stock inspector in the county where the animal was slaughtered. The inspector shall mark the hide in the manner prescribed by the department. This inspection may be waived for those animals inspected by a state or deputy state stock inspector on a preslaughter inspection.*

(2) Each dressed carcass of such animal shall be stamped with an ink stamp in a manner specified by the department. The inspector shall keep a record and issue a certificate of inspection as specified by the department giving the butcher's or peddler's name, the place of business, the serial number of the inspection of the hide, the brand on the hide, the date of inspection, and the place where the inspection was made. The inspector shall forward a copy of the inspection certificate to the department and issue one copy to the person requesting the inspection.

(3) When ownership of the carcass and hide presented is claimed on a bill of sale, the officer making the inspection shall demand and receive the original bill of sale, which shall be attached to the inspector's certificate sent to the county clerk and recorder. When the bills of sale cover cattle not included in the inspection, the inspector shall issue to the owner of the bill of sale a receipt for the bill of sale. The receipt shall describe the balance of the cattle covered by the original bill of sale.

(4) Any person who kills beef or veal in good faith for his own use shall not be required to have such meat inspected or stamped."

Section 3. Section 81-9-113, MCA, is amended to read:

"81-9-113. Fees for inspection. *The state or deputy state stock inspector making the inspection required by 81-9-112 shall collect 25 cents a head plus all necessary expenses. State stock inspectors shall*

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promptly remit all fees and expenses collected under this section to the department for deposit in the earmarked revenue fund. Deputy state stock inspectors shall keep their fees and expenses."

Approved March 22, 1979.

CHAPTER NO. 235

AN ACT REQUIRING PRESLAUGHTER INSPECTION OF LIVESTOCK AT LICENSED LIVESTOCK SLAUGHTERHOUSES; AMENDING SECTIONS 81-3-203 THROUGH 81-3-205, 81-3-211, AND 81-3-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-3-203, MCA, is amended to read:

"81-3-203. Duties of state stock inspectors and deputy stock inspectors. (1) State stock inspectors and deputy state stock inspectors, upon the application of the owner or the duly authorized agent of the owner of livestock, shall inspect the livestock which is intended for sale, removal, shipment, *or slaughter at a licensed slaughter plant* and issue a certificate of inspection therefor if it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession thereof.

(2) The inspection shall include an examination of the livestock and all marks and brands thereon to identify *ownership of* the livestock. The certificate of inspection shall be made in triplicate and shall specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock or of the applicant for inspection and the purchaser or transferee, if applicable, the class of the animal, the marks and brands, if any, upon the animal, and any other information upon the form of certificate as the department may from time to time require. One copy of the certificate shall be retained by the inspector, one copy shall be furnished by the inspector to the owner or shipper of the livestock, and one copy shall be filed by the inspector with the department within 5 days.

(3) If it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession thereof, the state stock inspectors or deputy state stock inspectors or any sheriff or deputy sheriff, upon application of an owner or his agent of the livestock to be consigned and delivered directly to a licensed livestock market *or licensed livestock slaughterhouse* located in another county of the state or delivered directly to a shipping point duly approved by the department where a livestock inspector is available for inspection in an adjoining county, shall issue to the person a separate market consignment permit or transportation permit for each owner when the owner or owners or their duly authorized agents sign the permit certifying the brands, description, and destination of the livestock. The market consignment permit or transportation permit shall be made in triplicate, shall specify the date and

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time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock and the name and address of the person actually transporting the livestock if different than the owner, the kind of livestock, the marks and brands, if any, upon the livestock, a description of the vehicle or vehicles to be used to transport the livestock to include the license number of the vehicles, and any other information upon the form of permit as the department may from time to time require. Any permit so issued shall be good for shipment within 36 hours from date and time of issue; however, permits not used within this time limitation must be returned to the issuing officer to be canceled and to release the permittee from performance. One copy of the permit shall be retained by the inspector or sheriff's office, one copy shall be filed by the inspector or sheriff's office with the department within 5 days of the date of issue, and one copy shall be furnished by the inspector or sheriff's office to the owner or shipper of the livestock, which copy of the permit shall accompany the shipment and be delivered to the state stock inspector at the livestock market or shipping point where the livestock is delivered.

(4) Upon application of an owner or his agent, when it appears with reasonable certainty that the applicant is the owner of the livestock or has lawful right to the possession thereof, a state stock inspector shall issue a transportation permit which will allow the movement of the livestock into an immediately adjoining county to land owned or controlled by the owner or his agent for purposes of grazing. The transportation permit shall state the breed, description, marks and brands, if any, head count, and description of land to and from which the livestock will be moved. The permit will be valid for 6 months. A state stock inspector may enter the premises where livestock so moved have been transported and inspect any livestock moved under the transportation permit or any livestock commingled therewith.

(5) Any person transporting strays or livestock not lawfully under his control is guilty of a misdemeanor and punishable as provided in 81-3-231."

Section 2. Section 81-3-204, MCA, is amended to read:

"81-3-204. Seizure of livestock — retention of livestock — sale — disposal of proceeds. (1) All state stock inspectors inspecting any livestock before or after shipment or removal from any county in this state, upon a change of ownership, *or at the preslaughter inspection at a licensed slaughterhouse* may inspect and seize either at the point of sale, shipment, destination, *or slaughter* or en route any livestock or proceeds thereof which the inspector believes is stolen or upon which brands have been altered or obliterated or which does not conform to the description contained on the tally sheet furnished by the shipper thereof or to the description contained in any certificate of inspection or release issued before shipment or removal of the livestock.

(2) Upon taking possession of livestock under this section, a state stock inspector may retain the livestock in his possession for 15 days to make further investigation relative to its ownership. A state stock inspector may either at once or at any time within 15 days sell the livestock at a licensed

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livestock market or in the open market for the best available price and remit the proceeds, less the cost of keeping and sale, to the department together with a full description of the livestock sold, giving marks and brands, if any, and a statement of the reason for the seizure and sale. The proceeds shall be deposited by the department with the state treasurer and credited to the department fund, where it is subject to claim by the owner of the livestock in the same manner and for the same length of time as is provided by law for the making of claims for moneys arising from the sale of stray stock."

Section 3. Section 81-3-205, MCA, is amended to read:

"81-3-205. Fees for inspection and livestock transportation permits. (1) For the service of inspection before removal from a county or before change of ownership, the inspector making the inspections shall receive 25 cents per head for 12 head or less, or $3 for 12 head to 20 head and 20 cents per head for each head over 20 head. For the issuance of a market consignment permit or transportation permit (other than a permanent permit) before removal from a county, the inspector, sheriff, or deputy sheriff issuing the permits shall receive 25 cents for each permit issued for 12 head or less, 50 cents for each permit for 12 to 30 head, and $1 for each permit issued for over 30 head and shall receive in addition his necessary actual expenses, to be paid by the owner or the person for whom the inspection is made or permit issued. For the issuance of a permanent horse transportation permit, the state stock inspector taking the application for permit shall receive $5 per head for each permit issued. All inspection and permit fees and expenses shall be collected by the inspector, sheriff, or deputy sheriff at the time of inspection or issuance of permit, and all the fees and expenses collected by a deputy state stock inspector, sheriff, or deputy sheriff shall be retained by him, and all such fees and expenses collected by a state stock inspector shall be sent by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department.

(2) For the service of inspection before livestock is sold or offered for sale at a licensed livestock market *or slaughtered at a licensed slaughterhouse,* a state stock inspector *or deputy state stock inspector* making the inspection shall receive 20 cents per head for an animal originating within the county in the state in which the market *or slaughterhouse* is maintained or transported under a market consignment permit *or transportation permit* and 10 cents per head for an animal previously inspected before removal from a county as herein provided. All fees shall be paid by the owner or by the person for whom the inspection is made. For releasing an animal so that it may be removed from the premises of a licensed livestock market, the state stock inspector making the release shall receive 20 cents per head from the owner or the person for whom the release is made. All fees for inspection and release at the market shall be collected at the time the inspection or release is made by the state stock inspector making the inspection or release and shall be sent by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department. *All fees for preslaughter inspection made at a licensed slaughterhouse by the state stock inspector shall be paid to*

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the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department. Preslaughter inspection fees paid to a deputy state stock inspector shall be retained by him.

(3) All inspection and release fees and expenses shall be paid to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department *unless paid to a deputy state stock inspector.* State stock inspectors shall be paid for their services and receive their expenses as fixed by the department."

Section 4. Section 81-3-211, MCA, is amended to read:

"81-3-211. Inspection of livestock before change of ownership or removal from county — transportation permits. (1) Except as otherwise provided in this part, it is unlawful to remove or cause to be removed from a county in this state any livestock or to transfer ownership by sale or otherwise or for an intended purchaser or his agent to take possession of any such animal subject to title passing upon meeting or satisfaction of any conditions, unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate of the inspection has been issued in connection with and for the purpose of the transportation or removal or of such change of ownership as provided in this part. The inspection must be made in daylight; provided, however, that the change of ownership inspection requirements of this subsection shall not apply when such sale or change of ownership transaction involves five or less such animals.

(2) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained or transported under a market consignment permit until the livestock has been inspected for marks and brands by a state stock inspector, as provided in this part.

(3) It is unlawful to slaughter livestock at a licensed livestock slaughterhouse unless the livestock have been inspected for marks or brands by a state or deputy state stock inspector.

(4) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock has been released by a state stock inspector and a certificate of release for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market. The release obtained pursuant to this subsection will permit the movement of the livestock so released directly to the destination shown on the certificate.

(5) The person in charge of livestock being removed from a county in this state, where inspection thereof is required by this section or where change of ownership has occurred or when moved under a market consignment permit or a market release certificate, shall have in his possession the certificate of inspection, market consignment permit, transportation permit, or market release certificate issued in connection therewith and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector, or deputy state stock inspector upon request. Section 81-3-204 shall be extended to livestock transported or sold under the above-mentioned permits.

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(6) The following transportation permits may be issued:

(a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for his personal use or business or where a purebred cow is being transported from county to county in this state by its owner for show purposes and where there is no change of ownership, the inspection certificate required by this section may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for a period not to exceed 1 year for the horse or cow described thereon. The permit becomes void upon any transfer of ownership or if the horse or cow is to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

(b) The owner of a saddle, work, or show horse may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the horse until there is a change of ownership. To obtain a permit a horse must have either a registered brand that has been legally cleared or a lip tattoo or the owner must present proof of ownership to a state stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector together with a $5 permit fee for each horse. The application shall contain a thorough physical description of the horse and list all brands and tattoos carried by the horse. Upon approval of the application by a state stock inspector, a permanent transportation permit shall be issued by the department to the owner for each horse and such permit shall be valid for the life of the horse. If there is a change of ownership in a horse the permit shall automatically become void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit shall be in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. Such a permit shall be automatically void upon a change of ownership.

(c) When livestock owned by and bearing the registered brand of a bona fide rodeo producer is being transported from county to county in this state by the owner for rodeo purposes and where there is no change of ownership, the inspection certificate required by this section may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for the livestock described thereon. The certificate is effective only between April 1 and October 31 of the year for which it is issued. The certificate shall be issued by a state stock inspector.

(d) An owner of livestock or his agent may be issued a transportation permit allowing the movement of his livestock into an immediately adjoining county and return when the livestock is being moved for grazing purposes and when it is being moved to and from land owned or controlled by the owner of the livestock or his agent. The permit is valid for 6 months and must be issued by a state stock inspector. The fee for the permit is $5, which shall be paid to the state stock inspector at the time

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the permit is issued and remitted by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department. This permit may be used in lieu of the inspection and certificate required by this section for movement of livestock across a county line."

Section 5. Section 81-3-213, MCA, is amended to read:

"81-3-213. Inspection of livestock removed from state. Except as provided for in subsections (1) and (2) of 81-3-212 and subsections *(4)* and *(6)*(b) of 81-3-211, nothing contained in this part authorizes or permits a person to remove or cause to be removed livestock from this state to a location outside of this state, unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate for the inspection has been issued in connection with and for the purpose of the transportation or removal as provided in this part."

Approved March 22, 1979.

CHAPTER NO. 236

AN ACT TO GENERALLY REVISE THE LAW RELATING TO HIDE DEALERS; AMENDING SECTIONS 81-9-401, 81-9-402, AND 81-9-423, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-9-401, MCA, is amended to read:

"81-9-401. Definitions. (1) "Animal hide" means the hide of a *bovine, equine, mule, ass, sheep, goat, or swine of any age, sex, or breed.*

(2) "Hide certificate" means a certificate showing a transfer of ownership of animal hides.

(3) "Hide dealer" or "buyer" means, for the purpose of this part, every person, firm, corporation, or association engaged in the business of buying or selling *animal hides*. However, licensed slaughterhouses shall not be deemed hide dealers or buyers.

(4) "Inspector" means a state stock inspector or deputy state stock inspector, *as defined in 81-3-201,* appointed by the department of livestock.

(5) "Seller" means a person selling or delivering animal hides for or without a pecuniary consideration."

Section 2. Section 81-9-402, MCA, is amended to read:

"81-9-402. Hide certificate — identification. (1) A seller of an animal hide shall obtain a hide certificate from the person receiving the hide. The department shall prescribe the form of the certificate, which shall include the marks and brands on each hide. The party receiving the hide must designate where it will be kept for 30 days following delivery.

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The certificate must be signed by the seller or his agent and the person receiving the hide.

(2) The original certificate shall be sent by the party receiving the hide to the department *within 5 days after purchase. One copy shall be* retained by the seller; and one, by the hide buyer. On reasonable notice, *an* inspector or *other agent of the department or a peace officer* may inspect the hide certificate copy of the seller or buyer.

(3) The department shall prescribe an identification tag to be affixed to each hide by the person receiving the hide when it is delivered. Hide certificates, tags, and glue shall be furnished by the department at cost to any person requiring the certificates, tags, and glue. Only those certificates, tags, and glue distributed by the department may lawfully be used under this part."

Section 3. Section 81-9-423, MCA, is amended to read:

"81-9-423. Mutilation or concealment of hides a felony. Every person who *knowingly* mutilates, destroys, or conceals *an animal* hide for the purpose of removing evidence of ownership of such hide or the animal from which the hide was removed is guilty of a felony and punishable upon conviction thereof by *a fine of not less than $500 or more than $5,000 or* imprisonment in the state prison for not less than 1 year or more than 10 years, *or both.*"

Approved March 22, 1979.

CHAPTER NO. 237

AN ACT TO AMEND THE RURAL ELECTRIC AND TELEPHONE COOPERATIVE ACT TO AUTHORIZE RURAL TELEPHONE COOPERATIVES TO ESTABLISH, MAINTAIN, AND OPERATE CABLE TELEVISION AND BROADBAND SYSTEMS AND FACILITIES FOR THE BENEFIT OF THEIR TELEPHONE CUSTOMERS; AMENDING SECTIONS 35-18-102, 35-18-105, AND 35-18-106, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-18-102, MCA, is amended to read:

"35-18-102. Definitions. (1) Corporations organized under this chapter and corporations which become subject to this chapter in the manner hereinafter provided are hereinafter referred to as "cooperatives".

(2) In this chapter, unless the context otherwise requires the following definitions apply:

(a) "Cable television system" means a system that receives and amplifies the signals broadcast by one or more television stations and redistributes the signals to subscribing members of the public for a fixed

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or periodic fee by wire, cable, microwave, or other means, whether such means are owned or leased.

(b) "Broadband" means transmission facilities capable of handling frequencies greater than those required for high grade voice communication (higher than 4 kilohertz).

(c) "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein and shall include a husband and wife admitted to joint membership.

(d) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof, or any body politic.

(e) "Rural area", as applied to all corporations organized under the provisions of 35-18-105(1), means any area not included within the boundaries of any incorporated or unincorporated city, town, village, or borough having a population in excess of 3,500 persons on March 17, 1939, or subsequent thereto, and every incorporated municipality in which 95% or more of the premises are served by an electric cooperative on February 1, 1971; "rural area", as applied to all corporations organized under the provisions of 35-18-105(2), means any area not included within the boundaries of any incorporated or unincorporated city or town having a population in excess of 1,500 persons."

Section 2. Section 35-18-105, MCA, is amended to read:

"35-18-105. Permissible purposes for incorporation. Cooperative nonprofit membership corporations may be organized under this chapter for the following purposes:

(1) for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas, as provided in this chapter;

(2) for the *purposes* of making generally available in rural areas adequate telephone service, *cable television service, or broadband facilities* through the improvement and expansion of existing telephone, *cable television, or broadband* facilities and the construction and operation of such additional facilities as are required to assure the availability of such service to the widest practicable number of rural users thereof, provided that nonduplication of lines, facilities, or systems providing reasonably adequate service will result therefrom."

Section 3. Section 35-18-106, MCA, is amended to read:

"35-18-106. Powers of cooperatives. A cooperative shall have power to:

(1) sue and be sued in its corporate name;

(2) have perpetual existence;

(3) adopt a corporate seal and alter the same at pleasure;

(4) become a member in one or more other cooperatives or corporations or to own stock therein;

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(5) construct, purchase, take, receive, lease as lessee, or otherwise acquire and to own, hold, use, equip, maintain, and operate and sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, telephone lines, facilities or systems (but not telegraph or radio broadcasting services or facilities) as defined by law, lands, buildings, structures, dams, plants and equipment, and any and all kinds or classes of real or personal property whatsoever, which shall be deemed necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

(6) purchase or otherwise acquire and own, hold, use, and exercise and sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way, and easements;

(7) borrow money and otherwise contract indebtedness and issue notes, bonds, and other evidences of indebtedness therefor and secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then owned or after-acquired real or personal property, assets, franchises, revenues, or income;

(8) construct, maintain, and operate electric transmission and distribution lines or telephone, *cable television, or broadband* lines, facilities, or systems along, upon, under, and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges, and causeways and upon, under, and across all publicly owned lands, subject, however, to the same requirements in respect of the use of such thoroughfares and lands as are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(9) exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(10) conduct its business and exercise any or all of its powers within or without this state;

(11) adopt, amend, and repeal bylaws;

(12) in the case of corporations organized under the provisions of 35-18-105(1):

(a) generate, manufacture, purchase, acquire, accumulate, and transmit electric energy and distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10% of the number of its members;

(b) make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of and otherwise to assist such persons in wiring their premises and installing therein electrical and

plumbing fixtures, appliances, apparatus, and equipment of any and all kinds and character and, in connection therewith, purchase, acquire, lease, sell, distribute, install, and repair such electrical and plumbing fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and any and all types of security therefor;

(c) make loans to persons to whom electric energy is or will be supplied by the cooperatives for the purpose of and otherwise to assist such persons in constructing, maintaining, and operating electric refrigeration plants;

(13) in the case of corporations organized under the provisions of 35-18-105(2):

(a) improve and expand existing telephone lines, facilities, and systems in rural areas and construct, acquire, operate, and furnish such additional telephone lines, facilities, and systems as are required to assure the availability of adequate telephone service to the widest practicable number of rural users thereof, provided that no duplication of lines, facilities, or systems providing reasonably adequate service will result therefrom;

(b) make loans to persons to whom telephone service is or will be supplied by the cooperative for the purpose of and otherwise to assist such persons in wiring their premises for telephone service and installing therein telephone fixtures, appliances, apparatus, and equipment of any and all kinds and character and, in connection therewith, purchase, acquire, lease, sell, distribute, install, and repair such telephone fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and any and all types of security therefor;

(14) do and perform any and all other acts and things and have and exercise any and all other powers which may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized."

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1979.

CHAPTER NO. 238

AN ACT TO AMEND SECTION 33-2-111, MCA, RELATING TO DEPOSIT REQUIREMENTS OF INSURERS, BY INCREASING DEPOSIT REQUIREMENTS OF TITLE INSURERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-111, MCA, is amended to read:

"33-2-111. Deposit requirement. (1) An insurer shall not be authorized to transact insurance in this state unless it makes and thereafter maintains in trust in this state through the commissioner for the protection of all its policyholders or of all its policyholders and creditors a

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deposit of cash or securities eligible for deposit under 33-2-603 in an amount not less than the minimum paid-in capital stock (if a stock insurer) or minimum surplus (if a mutual or reciprocal insurer), other than special surplus, required to be maintained for authority to transact the kinds of insurance to be transacted, except as to:

(a) title insurers, the deposit shall be in the amount of *$100,000*;

(b) foreign insurers, in lieu of such deposit or part thereof in this state, the commissioner shall accept the certificate in proper form of the public official having supervision over insurers in any other state to the effect that a like deposit or part thereof by such insurer is being maintained in public custody therein in trust for the purpose, among other reasonable purposes of protection of policyholders and/or creditors, of the protection of all its policyholders or policyholders and creditors in Montana;

(c) alien insurers, in lieu of such deposit or part thereof in this state, the commissioner shall accept evidence satisfactory to him that the insurer maintains within the United States by way of trust deposits with public depositaries or in trust institutions approved by the commissioner assets available for discharge of its United States insurance obligations which assets shall be in amount not less than the outstanding liabilities of the insurer arising out of its insurance transactions in the United States, together with the larger of the following sums:

(i) the largest deposit required by this code to be made by foreign insurers transacting like kinds of insurance; or

(ii) $300,000.

(2) Deposits of foreign or alien insurers in another state shall be in cash and/or securities of substantially the same quality as those eligible for deposit in this state under 33-2-603.

(3) Deposits of reserves by domestic life insurers shall be made as provided in 33-2-531.

(4) Deposits made in this state shall further be subject to the provisions of part 6 of this chapter."

Approved March 23, 1979.

CHAPTER NO. 239

AN ACT TO REPEAL SECTIONS 33-2-1001 THROUGH 33-2-1007, MCA, RELATING TO REGULATION OF INSURANCE HOLDING COMPANIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 33-2-1001 through 33-2-1007, MCA, are repealed.

Approved March 23, 1979.

CHAPTER NO. 240

AN ACT TO AMEND SECTION 20-4-110, MCA, RELATING TO SUSPENSION OR REVOCATION OF TEACHER CERTIFICATES BY THE BOARD OF PUBLIC EDUCATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-110, MCA, is amended to read:

"20-4-110. Suspension, revocation, and denial — appeals. (1) The board of public education shall have the power and authority to suspend or revoke the teacher certificate of any person for any of the following reasons:

(a) making any statement of material fact in the application for a certificate which the applicant knows to be false;

(b) any reason that would have required or authorized the denial of the teacher certificate to such person if it had been known at the time such certificate was issued;

(c) incompetency;

(d) gross neglect of duty;

(e) conviction in this state or any other state or country of a criminal offense involving moral turpitude;

(f) substantial and material nonperformance of the employment contract between the teacher and the trustees of a district without good cause or the written consent of the trustees; or

(g) denial, revocation, suspension, or surrender of a teacher certificate in another state for any reason constituting grounds for such action in this state.

(2) *The board shall initiate proceedings under this section if, and only if, a request* for the suspension or revocation of the teacher certificate of any person is *made* to *it by:*

(a) the trustees of a district as to a teacher employed by that district within the 12 months immediately preceding receipt of the request by the board of public education; or

(b) the superintendent of public instruction as to a teacher not employed by any district within the 12 months immediately preceding receipt of the request by the board.

(3) The *board* shall give a 30-day written notification to any person when the board intends to consider the suspension or revocation of his certificate. The board shall *conduct* an investigation of the reasons for the suspension or revocation charge and then, if the investigation warrants further action, conduct a hearing in the manner provided by board policies. *At the hearing the board shall afford the person an opportunity to defend himself and his qualifications against the charge.*

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(4) After a full investigation and proper hearing, the board may suspend or revoke the person's teacher certificate, except that in *the case* of a first violation under subsection (1)*(f)* above, the maximum penalty shall not be more than a *2-year* suspension of the person's certificate.

(5) Whenever the superintendent of public instruction denies the issuance or the renewal of a teacher certificate to a person, he may appeal the denial to the board of public education. The appeal shall be heard in the same manner provided for in this section for suspension or revocation and in accordance with the policies of the board. The decision of the board shall be final."

Approved March 23, 1979.

CHAPTER NO. 241

AN ACT TO AMEND SECTION 33-16-203, MCA, RELATING TO FILING OF INSURANCE RATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-16-203, MCA, is amended to read:

"33-16-203. Rates filed. Every insurer, *rating organization, or advisory organization* shall file with the commissioner all rates *intended for use* within this state, *together with supporting data sufficient to substantiate such filing. The filing required by this subsection may be made by rating organizations on behalf of their members and subscribers; but this provision does not prohibit a member or subscriber from filing any such rates on its own behalf. Any deviations from a rating organization's rates by a member or subscriber must be filed with the commissioner and must be accompanied by supporting data.*"

Approved March 23, 1979.

CHAPTER NO. 242

AN ACT TO REVISE THE PROCEDURE FOR HEARING AND APPEAL WHEN A YOUTHFUL OFFENDER IS ALLEGED TO HAVE VIOLATED HIS AFTERCARE AGREEMENT; AMENDING SECTION 53-30-229, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-30-229, MCA, is amended to read:

"53-30-229. Hearing on alleged violation of aftercare agreement — right to appeal outcome. (1) When *it is alleged by an aftercare counselor that a youth has violated* the terms of *his* aftercare agreement, the youth shall be granted a hearing at the site of the alleged

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violation *or in the county where the youth is residing or is found* within 10 days after *notice has been served on the youth or the youth is detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that he should be returned to the juvenile facility from which he was released or a different plan for treatment should be pursued by the department of institutions.*

(2) The youth, upon advice of an attorney, may waive his right to a hearing.

(3) With regard to this hearing, the youth shall be given:

(a) written notice of the alleged violation of his aftercare agreement, including notice *of* the purpose of the hearing;

(b) disclosure of the evidence against him and the facts constituting the alleged violation;

(c) opportunity to be heard in person and to present witnesses and documentary evidence to controvert the evidence against him and to show that there are compelling reasons which justify or mitigate the violation;

(d) opportunity to have the referee subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the referee.

(4) The department shall appoint a referee, who shall not be an employee of the department, to conduct the hearing. *In the conduct of the hearing, the department may request the county attorney's assistance as necessary.* The department shall adopt rules necessary to effect a prompt and full review.

(5) If the referee finds, by a preponderance of the evidence, that the youth did in fact commit the violation, *he shall make a recommendation to the department for the placement of the youth. In making this recommendation, the referee may consider mitigating circumstances. Final approval rests with the department and must be made within 10 days of the referee's recommendation.*

(6) The youth may appeal from the decision at the hearing to the district court of the county in which the *hearing was held* by serving and filing a notice of appeal with the court within 10 days of the *department's* decision. *The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal.* The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on

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appeal. The decision of the department shall not be altered except for abuse of discretion or manifest injustice.

(7) Pending the hearing on a violation *and pending the department's decision,* a youth may not be detained except when his detention or care is required to protect the person or property of the youth or of others or he may abscond or be removed from the community. Procedures for taking into custody and detention of a youth charged with violation of his aftercare agreement shall be as provided in 41-5-302 and 41-5-306.

(8) If the decision is made to return the youth to the institution from which he was released and the youth appeals that decision, he shall await the outcome of the appeal at such institution."

Approved March 23, 1979.

CHAPTER NO. 243

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO ADMINISTRATIVE RULEMAKING; TO DEFINE "PERSON" TO INCLUDE AGENCIES; TO CREATE A REVOLVING FUND FOR PAYING THE EXPENSES OF PUBLICATION OF ADMINISTRATIVE RULES OF MONTANA AND THE REGISTER; AMENDING SECTIONS 2-3-102, 2-4-102, 2-4-103, 2-4-302, 2-4-303, 2-4-305, 2-4-306, 2-4-307, 2-4-311, 2-4-312, 2-4-313, 2-4-402, 2-4-501, AND 2-4-506, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-3-102, MCA, is amended to read:

"2-3-102. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:

(a) the legislature and any branch, committee, or officer thereof;

(b) the judicial branches and any committee or officer thereof;

(c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or

(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include:

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(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or

(b) declaratory rulings as to the applicability of any statutory provision or of any rule.

(3) "Agency action" means the whole or a part of *the adoption of* an agency rule, *the issuance of a* license *or* order, *the award of a* contract, or the equivalent or denial thereof."

Section 2. Section 2-4-102, MCA, is amended to read:

"2-4-102. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 10, part 3.

(2) "Agency" means any agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(a) the state board of pardons, except that the board shall be subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules shall be published in the administrative rules of Montana and Montana administrative register;

(b) the supervision and administration of any penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(c) the board of regents and the Montana university system;

(d) the financing, construction, and maintenance of public works.

(3) "ARM" means the administrative rules of Montana.

(4) "Contested case" means any proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to rate making, price fixing, and licensing.

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(7) "Party" means any person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but nothing herein shall be construed to prevent an agency from admitting any person as a party for limited purposes.

(8) "Person" means any individual, partnership, corporation, association, governmental subdivision, *agency,* or public organization of any character.

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(9) "Register" means the Montana administrative register.

(10) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) *formal opinions of the attorney general and* declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of such rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of such rules and rules adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with 2-4-306 and shall be published in the administrative rules of Montana.

(11) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority *to promulgate rules to implement a statute* have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this *chapter* and under express or implied authority to codify an interpretation of a statute. *Such* interpretation lacks the force of law."

Section 3. Section 2-4-103, MCA, is amended to read:

"2-4-103. Rules and statements to be made available to public. (1) Each agency shall:

(a) make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions;

(b) upon request of any person, provide a copy of any rule.

(2) Unless otherwise provided by statute, an agency may require the payment of the cost of providing such copies.

(3) No agency rule is valid or effective against any person or party whose rights have been substantially prejudiced by an agency's failure to comply with the public inspection requirement herein."

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Section 4. Section 2-4-302, MCA, is amended to read:

"2-4-302. Notice, hearing, and submission of views. (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, *the* rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views thereon.

(2) The notice shall be filed with the secretary of state for publication in the register as provided in 2-4-312 and mailed to persons who have made timely requests to the agency for advance notice of its rulemaking proceedings. The notice shall be published and mailed at least 30 days in advance of the agency's intended action.

(3) If any statute provides for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained herein. However, in no case may the notice period be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and 28 days *from the day of notice* to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for oral hearing shall be granted if requested by either 10% or 25, *whichever is less,* of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, or by an association having not less than 25 members who will be directly affected.

(5) An agency may continue a hearing date for cause. Contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing herein alters that requirement."

Section 5. Section 2-4-303, MCA, is amended to read:

"2-4-303. Emergency rules. (1) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than *30* days' notice and states in writing its reasons for that finding, it may proceed, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, but the adoption of an identical rule under 2-4-302 is not precluded.

(2) The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to judicial review."

Section 6. Section 2-4-305, MCA, is amended to read:

"2-4-305. Requisites for validity — authority and statement of reasons. (1) The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. *When no written or oral*

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submissions have been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and the portion which is amplification of the language.

(3) Each rule shall include a citation *to the specific grant* of *rulemaking* authority pursuant to which it or any part thereof is adopted. *In addition, each rule shall include a citation to the specific section or sections in the Montana Code Annotated which the rule purports to implement.*

(4) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(5) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, no rule adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

(6) No rule is valid unless adopted in substantial compliance with 2-4-302 *or 2-4-303* and this section and *unless notice of adoption thereof is published* within 6 months of the publishing of notice *of the proposed rule.*"

Section 7. Section 2-4-306, MCA, is amended to read:

"2-4-306. Filing, format, and effective date — dissemination of emergency rules. (1) Each agency shall file with the secretary of state a copy of each rule adopted by it.

(2) The secretary of state may prescribe a format, style, and arrangement for *notices and* rules which are filed pursuant to this chapter and may refuse to accept the filing of any *notice or* rule that is not in compliance therewith. He shall keep and maintain a permanent register of all *notices and* rules filed, including superseded and repealed rules, which shall be open to public inspection and shall provide copies of any *notice or* rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing such copies.

(3) In the event that the administrative code committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll shall be published with the rule.

(4) Each rule shall become effective after publication in the register as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date shall be the effective date;

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(b) subject to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon filing with the secretary of state or at a stated date following publication in the register if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them."

Section 8. Section 2-4-307, MCA, is amended to read:

"2-4-307. Omissions from ARM or register. The secretary of state, with the consent of the adopting agency, may omit from ARM or the register any rule, *either proposed or adopted,* the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient if the rule merely incorporates by reference a model code, federal agency rule, or like publication made available on application to the agency and if ARM or the register contains a notice stating the citation and general subject matter of the omitted rule and stating how a copy may be obtained. *A copy of the omitted matter shall be filed with the secretary of state.*"

Section 9. Section 2-4-311, MCA, is amended to read:

"2-4-311. Publication and arrangement of ARM. (1) The secretary of state shall compile, index, arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule, and publish all rules filed pursuant to this chapter in ARM. The secretary of state shall supplement, revise, and publish ARM or any part thereof as often as he considers necessary. He may include such editorial notes, cross-references, and other matter as he and the administrative code committee consider desirable or advantageous. He shall publish supplements to ARM at such times and in such form as he considers appropriate.

(2) ARM shall be arranged, indexed, and printed or duplicated in such manner as to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the secretary of state for the printing of as many copies of such separate publications as it may require. The cost of any such separate publications, *determined in accordance with 2-4-313(4),* shall be paid by the agency."

Section 10. Section 2-4-312, MCA, is amended to read:

"2-4-312. Publication and arrangement of register. (1) The secretary of state shall publish *in the register* all notices, rules, and interpretations filed with him at least once a month or as directed by the administrative code committee but not more often than twice a month.

(2) He shall send the register without charge to each person listed in 2-4-313(1) and to each member of the legislature requesting the same. *The cost, determined in accordance with 2-4-313(4), must be paid by appropriation from the general fund to the account within the revolving fund created in 2-4-313(5).* He shall send the register to any other person who pays a subscription fee which he shall fix in *accordance with 2-4-313(4).*

(3) The register *must* contain three sections, a rules section, a notice section, and an interpretation section:

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(a) The rules section of the register *must* contain all rules filed since the compilation and publication of the preceding issue of the register, together with the concise statement of reasons required under 2-4-305(1).

(b) The notice section of the register *must* contain all rulemaking notices filed with the secretary of state pursuant to 2-4-302 since the compilation and publication of the preceding register.

(c) The interpretation section of the register *must* contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

(4) Each issue of the register *must* contain the issue number and date of the register and a table of contents. Each page of the register *must* contain the issue number and date of the register of which it is a part. The secretary of state may include with the register information to help the user in relating the register to ARM."

Section 11. Section 2-4-313, MCA, is amended to read:

"2-4-313. Distribution, costs, and maintenance. (1) The secretary of state shall distribute copies of ARM and supplements or revisions thereto, *with costs paid as provided in 2-4-312(2),* to the following:

(a) attorney general, one copy;

(b) clerk of each court of record of this state, one copy;

(c) clerk of United States district court for the district of Montana, one copy;

(d) clerk of United States court of appeals for the ninth circuit, one copy;

(e) each county clerk of this state, for use of county officials and the public, one copy, which may be maintained in a public library in the county seat or in the county offices;

(f) state law library, one copy;

(g) state historical society, one copy;

(h) each unit of the Montana university system, one copy;

(i) law library of the university of Montana, one copy;

(j) legislative council, three copies;

(k) library of congress, one copy;

(l) state library, one copy.

(2) The secretary of state, clerk of each court of record in the state, clerk of each county in the state, and the librarians for the state law library and the university of Montana law library shall maintain a complete, current set of ARM, including supplements or revisions thereto. Such persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall also maintain a permanent set of the registers.

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(3) The secretary of state shall make copies of and subscriptions to ARM and supplements or revisions thereto and the register available to any person at prices fixed *in accordance with subsection (4).*

(4) The secretary of state, *in consultation with the administrative code committee,* shall determine the cost of supplying copies of ARM and supplements or revisions thereto and the register. *The* cost shall be the approximate cost of *publication, including indexing,* printing or duplicating, and mailing, *less fees charged agencies pursuant to subsection (6) and money appropriated for 2-4-312(2) and 2-4-313(1).* However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of ARM and supplements or revisions thereto and the register.

(5) The secretary of state shall deposit all fees he collects in *an account within the revolving fund created for paying the expenses of publication of ARM and the register.*

(6) The secretary of state may charge agencies a filing fee for all material to be published in ARM or the register. *He* shall fix, in consultation with the administrative code committee, *the fee to cover a portion of the costs of publication and mailing.*"

Section 12. Section 2-4-402, MCA, is amended to read:

"**2-4-402. Powers of the committee — duty to review rules.** (1) The committee shall review all proposed rules filed with the secretary of state.

(2) The committee may:

(a) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule when a rulemaking hearing will not be held in accordance with the provisions of 2-4-302 through 2-4-305;

(b) prepare recommendations for the adoption, amendment, or rejection of a rule and submit oral or written testimony at a rulemaking hearing;

(c) require that a rulemaking hearing be held in accordance with the *provisions* of 2-4-302 through 2-4-305;

(d) institute, intervene in, or otherwise participate in proceedings involving this chapter in the state and federal courts and administrative agencies;

(e) review the incidence and conduct of administrative proceedings under this chapter."

Section 13. Section 2-4-501, MCA, is amended to read:

"**2-4-501. Declaratory rulings by agencies.** Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. *A copy of a declaratory ruling must be*

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filed with the secretary of state for publication in the register. A declaratory ruling or the refusal to issue such a ruling shall be subject to judicial review in the same manner as decisions or orders in contested cases."

Section 14. Section 2-4-506, MCA, is amended to read:

"2-4-506. Declaratory judgments on validity or application of rules. (1) A rule may be declared invalid or inapplicable in an action for declaratory judgment if it is found that the rule or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff.

(2) A rule may also be declared invalid in such an action on the grounds that the rule was adopted with an arbitrary or capricious disregard for the purpose of authorizing statute, as evidenced by documented legislative intent.

(3) If the administrative code committee has objected to the adoption or amendment of a rule on the grounds set forth in *subsection (2)*, the agency bears the burden, in any action brought under this section, of proving that its rule was not adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute.

(4) A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

(5) The action may be brought in the district court for the county in which the plaintiff resides or has his principal place of business or in which the agency maintains its principal office. The agency shall be made a party to the action."

Section 15. **Other act to prevail.** Section 5 is intended to correct an apparent oversight creating an inconsistency in relation to notice periods. If 2-4-303(1) is amended by another act to change "20 days" to some period other than "30 days", such other act prevails.

Approved March 23, 1979.

CHAPTER NO. 244

AN ACT TO REQUIRE THAT A DAMAGED MOTOR VEHICLE MAY BE DISPOSED OF AT A WRECKING FACILITY WHEN AN INSURANCE COMPANY SETTLES A CLAIM AT TOTAL LOSS LESS SALVAGE ONLY IF THE WRECKING FACILITY IS LICENSED.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Disposal of damaged vehicle when insurance company settles at total loss.** An insurance company settling an insurance claim on a damaged motor vehicle as a total loss less salvage may dispose of the motor vehicle at a motor vehicle wrecking facility only if it is licensed under the provisions of 75-10-511.

Approved March 23, 1979.

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CHAPTER NO. 245

AN ACT TO GENERALLY PROVIDE FOR THE USE OF INTERPRETERS FOR THE DEAF IN CERTAIN ADMINISTRATIVE OR JUDICIAL PROCEEDINGS; TO REPEAL SECTION 3-1-316, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Policy.** It is the policy of this state to secure the constitutional rights of deaf persons who, because of impairment of hearing or speech, are unable to readily understand or communicate spoken language and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Appointing authority" means the presiding judge or justice of any court, the chairman of any board, commission, or authority, the director or commissioner of any department or agency, or any other person presiding at any hearing or other proceeding in which a qualified interpreter is required pursuant to [this act].

(2) "Deaf person" means a person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding oral communications. The term further includes, but is not limited to, a person who, because of loss of hearing, cannot communicate spoken language.

(3) "Principal party in interest" means a person who is a named party in any proceeding or who will be directly affected by the decision or action which may be made or taken.

(4) "Qualified interpreter" means an interpreter listed by the department of social and rehabilitation services as provided in [section 7].

(5) "Intermediary interpreter" means a knowledgeable deaf person who, because of his intimate acquaintance with deaf persons who use mainly natural gestures for communicating, can be used as an intermediary between the deaf person and a qualified interpreter.

Section 3. **Deaf person as participant in judicial or administrative proceeding — interpreter to be used.** A qualified interpreter shall be appointed as follows:

(1) In any case before any court or a grand jury in which a deaf person is a party, either as a complainant, defendant, or witness, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person and interpret his testimony or statements and to assist in preparation with counsel.

(2) At all stages in any proceeding of a judicial or quasi-judicial nature before any agency of the state or governing body or agency of a local government in which a deaf person is a principal party in interest, either as

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a complainant, defendant, witness, or supplicant, the agency or governing body shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret his testimony or statements.

(3) (a) In any proceedings in which a deaf person may be subjected to confinement or criminal sanction or in any proceeding preliminary thereto, including a coroner's inquest, grand jury proceedings, and proceedings relating to mental health commitments, the presiding judicial officer shall appoint a qualified interpreter to assist the deaf person throughout the proceedings.

(b) Upon arresting a deaf person for an alleged violation of a criminal law and prior to interrogating or taking a statement of the deaf person, the arresting law enforcement official shall make available to the person, at the earliest possible time, a qualified interpreter to assist the person throughout such interrogation or taking of a statement.

(c) No statement, written or oral, made by a person who is deaf in reply to a question of a law enforcement officer or any other person having a prosecutorial function in any criminal or quasi-criminal proceeding may be used against that deaf person unless either the statement was made or elicited through a qualified interpreter and was made knowingly, voluntarily, and intelligently or, in the case of waiver, the court makes a special finding that any statement made by the deaf person was made knowingly, voluntarily, and intelligently.

(d) This subsection (3) does not apply to apprehensions, arrests, or statements involving a violation of the traffic laws of Montana.

Section 4. **Preliminary determination.** The appointing authority may not appoint a qualified interpreter in any case until he makes a preliminary determination that the qualified interpreter is able to accurately communicate with and translate information to and from the deaf person in the case.

Section 5. **Intermediary interpreter to be used.** If a qualified interpreter states that he is unable to render a satisfactory interpretation and that an intermediary interpreter will improve the quality of interpretation, the appointing authority shall appoint an intermediary interpreter to assist the qualified interpreter subject to the same provisions that govern a qualified interpreter under [this act].

Section 6. **Interpreter in full view.** In any action or proceeding in which an interpreter is required to be appointed, the court or administrative authority may not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure proper communication with the deaf person or persons involved as participants.

Section 7. **Coordination of interpreter requests.** (1) Whenever an appointing authority is required to appoint an interpreter, the authority shall request the department of social and rehabilitation services to furnish the authority with a list of qualified interpreters. If the choice of qualified interpreters does not meet the needs or wishes of the deaf person, the appointing authority shall appoint another qualified interpreter.

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(2) The Montana association of the deaf and the Montana registry of interpreters for the deaf shall provide the department of social and rehabilitation services with a list of qualified and available interpreters.

(3) The only function of the department of social and rehabilitation services is to maintain the list referred to in subsection (2).

Section 8. **Oath of interpreter.** Every interpreter appointed to interpret for a deaf person, before entering upon his duties, shall take an oath that he will make a true interpretation in an understandable manner to the person for whom he is appointed and that he will repeat the statements of such person in the English language to the best of his skill and judgment.

Section 9. **Compensation.** An interpreter appointed to interpret for the deaf is entitled to receive a reasonable fee for his services, together with his actual expenses for travel and transportation. The appointing authority shall set the fee. When the interpreter is appointed in a criminal proceeding, the fee shall be paid out of the county general fund; and when the interpreter is otherwise appointed, the fees shall be paid out of funds available to the appointing authority.

Section 10. **Waiver.** The right of a deaf person to an interpreter may not be waived except by a deaf person who requests a waiver in writing. Such waiver is subject to the approval of counsel to the deaf person, if existent, and is subject to the approval of the appointing authority.

Section 11. **Privileged communications.** Any information that the interpreter gathers from the deaf person pertaining to any proceeding then pending shall at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless such deaf person desires that such information be communicated to other persons.

Section 12. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 13. **Repealer.** Section 3-1-316, MCA, is repealed.

Section 14. **Effective date.** This act is effective on passage and approval.

Approved March 23, 1979.

CHAPTER NO. 246

AN ACT TO REVISE THE MONTANA YOUTH COURT ACT TO PROVIDE FOR RESTITUTION AS A PERMISSIBLE DISPOSITION OF A CASE; AMENDING SECTIONS 41-5-102, 41-5-103, 41-5-403, 41-5-522, AND 41-5-523, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-102, MCA, is amended to read:

"41-5-102. Declaration of purpose. The Montana Youth Court Act shall be interpreted and construed to effectuate the following express legislative purposes:

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(1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to remove from youth committing violations of the law the element of retribution and to substitute therefor a program of supervision, care, rehabilitation, *and, in appropriate cases, restitution as ordered by the youth court*;

(3) to achieve the purposes of (1) and (2) of this section in a family environment whenever possible, separating the youth from his parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are assured a fair hearing and recognition and enforcement of their constitutional and statutory rights."

Section 2. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. For the purposes of the Montana Youth Court Act, unless otherwise stated the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means the department of institutions, the department of social and rehabilitation services, and any division or department of either.

(3) "Commit" means to transfer to legal custody.

(4) "Court", when used without further qualification, means the youth court of the district court.

(5) "Foster home" means a private residence approved by the court for placement of a youth.

(6) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(7) "Judge", when used without further qualification, means the judge of the youth court.

(8) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

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(9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

(10) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(11) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court, the judge, and probation officers.

(12) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) habitually disobeys the reasonable and lawful demands of his parents or guardian or is ungovernable and beyond their control;

(c) being subject to compulsory school attendance, is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

(14) "Youth in need of care" means a youth as defined in 41-3-102.

(15) "Custodian" means a person other than a parent or guardian to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(16) "Necessary parties" include the youth, his parents, guardian, custodian, or spouse.

(17) "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth such as Pine Hills school in Miles City, and Mountain View school in Helena, and Swan River youth forest camp.

(18) "Shelter care" means the temporary care of youth in physically unrestricting facilities.

(19) "Detention" means the temporary care of youth in physically restricting facilities.

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(20) "District youth guidance home" means a family-oriented residence established in a judicial district of the state of Montana as an alternative to existing state youth correctional facilities, the function of which is to provide a home and guidance through adult supervision for delinquent youths and youths in need of supervision.

(21) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made under the jurisdiction of a youth court proceeding."

Section 3. Section 41-5-403, MCA, is amended to read:

"41-5-403. Disposition permitted under informal adjustment. *(1)* The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth in a licensed foster home or other home approved by the court;

(c) placement of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;

(d) transfer of legal custody of the youth to the department of institutions, provided that such commitment does not authorize the department of institutions to place the youth in a state youth correctional facility, and such commitment may not exceed a period of 6 months without a subsequent order of the court, after notice and hearing;

(e) restitution upon approval of the youth court judge.

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim."

Section 4. Section 41-5-522, MCA, is amended to read:

"41-5-522. Dispositional hearing. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the

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social summary or predisposition report. The court may order the examination of a parent or guardian who gives his consent and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

(6) In determining whether restitution, as authorized by 41-5-523(1)(f), is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim."

Section 5. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place in a licensed foster home or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody shall not authorize the department of institutions to place the

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youth in a state youth correctional facility and such custody shall not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court deems beneficial to the youth, consistent with subsection (d) of this section;

(f) order restitution by the youth.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision:

(a) order the youth to be evaluated for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths; or

(b) in the case of a delinquent youth 16 years or older whom the court deems a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the finding. The director of the department of institutions shall then designate to the court the facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed 45 days for the purpose of evaluation as to the youth's suitability for placement and order the youth delivered for evaluation to the youth facility designated by the director. If after the evaluation the department of institutions reports to the court that such child is suitable for placement in a youth forest camp and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this chapter. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such further disposition as the court may deem advisable under the provisions of this chapter. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.

(3) No youth shall be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes except as provided by subsection (2)(b).

(4) Any order of the court may be modified at any time.

(5) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(6) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

State of Montana, County of ...., ss:

In the district court for the .... judicial district.

On the .... day of ...., 19.., ..., a minor of this county, ... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

It is ordered that .... be committed to the department of institutions until .....

The names, addresses, and occupations of the parents are:

Name	Address	Occupation
.....	.....	.....
.....	.....	.....

The names and addresses of their nearest relatives are:

.....

.....

Witness my hand this .... day of ...., A.D. 19...

.....
Judge "

Approved March 23, 1979.

CHAPTER NO. 247

AN ACT TO AMEND SECTION 40-1-301, MCA, TO SPECIFICALLY INCLUDE TRIBAL JUDGES ON THE LIST OF OFFICIALS AUTHORIZED TO SOLEMNIZE MARRIAGE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-1-301, MCA, is amended to read:

"**40-1-301. Solemnization and registration.** (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor or justice of the peace, *by a tribal judge,* or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

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(3) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified."

Approved March 23, 1979.

CHAPTER NO. 248

AN ACT TO CLARIFY THE REVIEW OF LOCAL GOVERNMENT BOND PROCEEDINGS AND BOND ISSUES BY REQUIRING REVIEW OF ONLY GENERAL OBLIGATION BONDS BY THE ATTORNEY GENERAL; AMENDING SECTIONS 7-7-101 THROUGH 7-7-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-101, MCA, is amended to read:

"7-7-101. Submission of local government general obligation bond proceedings to attorney general for review. The governing body of any county, city, or town shall submit a certified copy of all proceedings preliminary to *the* issue *of general obligation bonds* to the attorney general, together with such other proceedings, certificates, and records as he may require, and request his report as to validity."

Section 2. Section 7-7-102, MCA, is amended to read:

"7-7-102. Reason for review by attorney general. Sections 7-7-101 through 7-7-104 are intended to improve the marketability of *general obligation* bonds issued by counties, cities, or towns in order that *these* bonds may be sold upon the most favorable terms."

Section 3. Section 7-7-103, MCA, is amended to read:

"7-7-103. Review by attorney general — report. (1) *The* attorney general *shall* examine certified copies of all proceedings preliminary to the issuance of *general obligation* bonds by any county, city, or town which *are* submitted to him for such examination, and if *the proceedings are* found *to be* regular and valid, he shall deliver to the recording officer of *the local government* a report of his examination and determination.

(2) A certified copy of *the* report shall be filed with the officer required by law to register *the* bonds, and a notation thereof shall be entered in the bond register."

Section 4. Section 7-7-104, MCA, is amended to read:

"7-7-104. Limitation on action to test bond validity. No *local government general obligation* bond of any issue, whereof the preliminary proceedings have been submitted to and approved by the attorney general, *may* be held invalid because of any defect or failure to comply with any

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statutory provision relating to the authorization, issuance, or sale of *the bonds* unless an action to contest the validity thereof *is* brought within 30 days after the date of sale."

Approved March 23, 1979.

CHAPTER NO. 249

AN ACT TO GENERALLY REVISE AND CLARIFY THE LOCAL GOVERNMENT LAWS RELATING TO BUSINESS, AGRICULTURE, AND LIVESTOCK SERVICES AND REGULATIONS AND TO WEED AND PEST CONTROL; REPEALING SECTION 84-3205, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-21-2103, MCA, is amended to read:

"7-21-2103. Determination of persons required to obtain licenses — classes of licenses. (1) The county treasurer must make diligent inquiry as to all persons in his county liable to pay *a* license *fee* as provided in this part.

(2) *Whenever* the *licenses are* divided into classes, the county treasurer must require each person to state, under oath or affirmation, the probable amount of business which he, the firm of which he is a member or for which he is an agent or attorney, or the association or corporation of which he is the president, secretary, or managing agent will do in the succeeding 3 months. Thereupon such person, agent, president, secretary, or other officer must procure a license from the county treasurer for the term desired and the *proper* class. In all cases where an underestimate has been made by the party applying, the party making *the* underestimate or the company he represented is required to pay double the sum otherwise required for a license for the next quarter."

Section 2. Section 7-21-2105, MCA, is amended to read:

"7-21-2105. Disbursement of license fees. (1) *Unless the disposition is otherwise provided for, all* money collected *by the county treasurer* for licenses *issued by the county under this chapter* must be paid into the treasury of the county.

(2) *Unless otherwise provided, the* county treasurer shall retain 50% thereof for the use of the county, pay over 45% thereof to the state treasurer for the use of the general fund of the state, and pay over 5% thereof to the state treasurer for deposit in the earmarked revenue fund to be used by the livestock commission for predatory animal control."

Section 3. Section 7-21-2211, MCA, is amended to read:

"7-21-2211. Railway warehouse license. Each railway company acting in the capacity of a warehouse for the purpose of storing and distributing goods, other than *in* the capacity of *a* common *carrier*, shall pay,

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in each county in which *the* business *is* carried on, a license of $10 per quarter."

Section 4. Section 7-21-2401, MCA, is amended to read:

"7-21-2401. Definitions. *As used in this part, unless the context indicates otherwise, the following definitions apply:*

(1) *"Temporary premises" means* any hotel, roominghouse, storeroom, building or part of any building, tent, vacant lot, freight station, railroad car, automobile, truck, trailer or trailer house, or public or quasi-public place, temporarily occupied for such business as described in subsection (2).

(2) *"Transient retail merchant" means* every person, firm, or corporation acting for himself or itself or representing any other person, firm, or corporation who or which brings into temporary premises a stock of goods, wares, articles of merchandise, notions, or other articles of trade and who or which solicits, sells, offers to sell, or exhibits for sale such stock of goods, wares, articles of merchandise, notions, or other articles of trade at retail."

Section 5. Section 7-21-3401, MCA, is amended to read:

"7-21-3401. Authorization to create county fair commission. (1) The board of county commissioners may, at *any* regular meeting, appoint from the electors of *the county* five responsible persons to constitute a county fair commission, three of *the* members to be appointed for a term of 2 years and two for a term of 1 year and until their successors are appointed.

(2) *Each* year thereafter, the board of county commissioners shall appoint members of the county fair commission to succeed the members whose terms then expire."

Section 6. Section 7-21-3405, MCA, is amended to read:

"7-21-3405. Compensation of county fair commissioners. (1) Each member of the commission *is entitled to* a salary of $25 a year as compensation for his services. *If* the secretary of the county fair commission *is* a member of the commission, then his salary shall be fixed by the commission in lieu of the salary of $25 a year.

(2) In addition to the salary provided by subsection (1), each commissioner may be allowed his actual and necessary expenses while fulfilling the duties of his office."

Section 7. Section 7-21-3421, MCA, is amended to read:

"7-21-3421. Authorization to create multicounty fair district. (1) Two or more counties within the state, constituting a contiguous territory, may group themselves together and form a fair district.

(2) The board of county commissioners of any such county, upon application from the regularly appointed county fair *commission*, may by resolution declare its intention to join in and form a fair district."

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Section 8. Section 7-21-3422, MCA, is amended to read:

"7-21-3422. Notice of intention to create fair district — hearing. Notice of the resolution of intent to create a fair district shall be published in two regular weekly issues of a newspaper in *the* county, setting forth the date on which a hearing shall be had on *the* resolution by the taxpayers *and residents* of the county and *at which time* objections *will be* heard."

Section 9. Section 7-21-3423, MCA, is amended to read:

"7-21-3423. Decision by board of county commissioners. After the consideration of objections if *there are* any, the county commissioners may authorize the county fair *commission* to join with any existing contiguous district *or to* form a fair district with counties in contiguous territory."

Section 10. Section 7-21-3425, MCA, is amended to read:

"7-21-3425. Board of directors of fair district. (1) The members of the respective county fair *commissions* of the counties forming a fair district constitute a board of directors for *the* fair district.

(2) After a district has been formed and a county *is* added thereto, the members of the county fair *commission* of the county added to the fair district *are* likewise members of the board of directors of *the* fair district."

Section 11. Section 7-21-3426, MCA, is amended to read:

"7-21-3426. Organization of board and conduct of business. (1) The board of directors shall meet at the place of business, established under 7-21-3427, during the month of December of each year and organize, electing a chairman, vice-chairman, and secretary for the board.

(2) Such subsequent meetings shall be held as may be found necessary for the conduct of the district fair.

(3) The board of directors shall have power to employ a secretary, whom they may vest with managerial powers, and they shall also appoint a treasurer. The office of secretary may be combined with that of treasurer.

(4) *The board of directors* shall see that:

(a) all records and accounts are properly kept, supervised, and approved;

(b) proper vouchers evidence all disbursements of money; and

(c) the records are at all reasonable hours open to the *public*."

Section 12. Section 7-21-4201, MCA, is amended to read:

"7-21-4201. Regulation of certain activities. (1) The city or town council *may* license, tax, and regulate:

(a) auctioneers, peddlers, pawnbrokers, and secondhand and junk shops;

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(b) motor vehicles and motor vehicle bodies, except those on commercial property, which are not otherwise taxed;

(c) drivers, porters, tenpin alleys, shooting galleries, shows, circuses, street parades, theatrical performances, and places of amusement within the city or town.

(2) The power to license, tax, and regulate circuses and shows of like character *extends* 3 miles beyond the limits of the city or town.

(3) *The* council of any city or town *may enact* necessary ordinances providing for the licensing, *taxation,* and regulation of soft drink establishments and all pool and billiard halls. *The* city *or* town council *may* regulate and limit the number of such licenses issued and provide by ordinance that the total number of such licenses may not exceed the number fixed by the city or town council by ordinance."

Section 13. Section 7-22-2101, MCA, is amended to read:

"7-22-2101. Definitions. *As used in this part, unless the context indicates otherwise, the following definitions apply:*

(1) "Commissioners" means the board of county commissioners.

(2) "District" means the area included within the boundaries of *an* organized weed control and weed seed extermination district.

(3) "Noxious weeds" or "weeds" means Canadian thistle (Cirsium arvense (L.) scop.), wild morning glory or bindweed (Convolvulus arvensis L.), whitetop (Lepidium draba L.), leafy spurge (Euphorbia virgata waldst. and kit.), Russian knapweed (Centaurea pieris pallas.), and such other weeds as may be defined and designated as noxious *weeds* by the board of county commissioners of each county, subject to the approval of the county extension agent or agricultural experiment station at Montana state university.

(4) "Seed" or "seeds" means the seed of any noxious weed.

(5) "Supervisors" means the persons appointed by the board of county commissioners to supervise the weed control and weed seed extermination within the county."

Section 14. Section 7-22-2103, MCA, is amended to read:

"7-22-2103. County weed board. (1) The board of county commissioners of each county shall appoint a county weed board consisting of three or five members, and:

(a) if a three-member board, two members shall be rural agricultural landowners within the county and one member shall be a teacher of biology or *a* person with comparable expertise; or

(b) if a five-member board, three members shall be rural agricultural landowners within the county, one *member shall be a resident of* a city or town within the county, and one *member shall be a* teacher of biology or *a* person with comparable expertise.

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(2) The county extension agent in each county *is* an ex officio member of that county's weed board.

(3) *The* supervisors *are* public officers."

Section 15. Section 7-22-2104, MCA, is amended to read:

"7-22-2104. Term of office. *(1) Except as provided in subsection (2), a member of a county weed board serves a term of 3 years and until the qualification of his successor.*

(2) When a three-member weed board is established, the initial board members serve terms of 1, 2, and 3 years, respectively, as designated by the commissioners. When a five-member weed board is established, two of the initial members serve terms of 1 year, two serve terms of 2 years, and one serves a term of 3 years. After expiration of an initial term of office, the successor serves a 3-year term as provided in subsection (1)."

Section 16. Section 7-22-2108, MCA, is amended to read:

"7-22-2108. Violations. (1) Any person who in any manner interferes with the *supervisors or their* deputies and employees in carrying out the provisions of this part or who refuses to obey an order of *a* supervisor *is* guilty of a misdemeanor, and upon conviction thereof, he shall be fined not to exceed $100.

(2) All fines, bonds, and penalties collected under the provisions of this part shall be paid to the county treasurer of each county and placed by him to the credit of *a* fund to be known as the noxious weed fund."

Section 17. Section 7-22-2148, MCA, is amended to read:

"7-22-2148. Tax liability for payment of weed control expenses. (1) The expenses referred to in 7-22-2124 shall be paid by the county out of the noxious weed fund, and unless the sum to be repaid by the owner or occupant is repaid before *the succeeding* October 15, the county clerk shall certify the amount thereof, with the description of the *land* to be charged, and shall *enter* the same *on* the assessment list of the county as a special tax on *the* land. If the land for any reason *is* exempt from general taxation, the amount of such charge may be recovered by direct claim against the lessee and collected in the same manner as personal taxes. When such *charges* are collected, they shall be credited to the noxious weed fund.

(2) In determining what lands *are* included as land covered by the special tax and *are* described in the certificate of the county clerk, it *is* presumed that all work done upon any of the land of any one landowner *is* for the benefit of all of the land within the district belonging to such owner which was contiguous to or *joined the* parcel upon which *the* work was done at the time *the* work was done, together with the parcel upon which *the* work was done, and the amount certified *becomes* a tax upon the whole thereof."

Section 18. Section 7-22-2403, MCA, is amended to read:

"7-22-2403. Petition to create mosquito control district — hearing required. (1) When a petition signed by not less than 25% of

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the qualified electors of the proposed district or 25% of the owners of any property within the boundaries whose names appear as such property owners upon the last-completed assessment roll of the county in which the proposed district is situated is presented to the board of commissioners of *the* county, asking for the creation of a mosquito control district, the commissioners shall set a day for *a* hearing *on* the *petition* and order notice *of the hearing* to be given to all persons interested.

(2) The commissioners by resolution shall fix a time for a hearing upon *the* petition at not less than 2 or more than 4 weeks from the time of presentation thereof *unless additional time is needed to prepare a survey and study as authorized by this subsection.* Before setting a time for hearing, the commissioners may cause a survey and study of the area sought to be included in such district to be made by competent personnel and may submit a report thereof to the department of health and environmental sciences for its review and recommendations."

Section 19. Section 7-22-2406, MCA, is amended to read:

"7-22-2406. Notice of hearing on petition to create district. (1) If addresses are known, the commissioners shall cause notice of the hearing provided for in 7-22-2403 to be mailed to each nonresident owner of taxable real and personal property within the proposed district.

(2) The commissioners shall cause notice to be posted in three public places within the district. *Whenever* the district is partly in one county and partly in another county, notice must be posted in each county but *posting need* not *be* in three places in each county.

(3) The commissioners shall also cause notice to be given of the time and place of the hearing and *the* methods of objection by publication in a newspaper within or nearest *to* the district and, if the district is partly in one county and partly in another county, in a newspaper in each county, if such newspaper exists. The publication must be for two weekly issues.

(4) Posting and first publication shall be at least 10 days before the hearing."

Section 20. Section 7-22-2411, MCA, is amended to read:

"7-22-2411. District to be governed by appointed mosquito control board. (1) Upon the creation of any mosquito control district, the commissioners shall appoint a mosquito control board composed of not less than three or more than five members.

(2) Each member of the mosquito control board shall be an elector within the boundaries of the district.

(3) The board *is* a body corporate and shall act as such, and the members *are* public officers.

(4) The health officer having jurisdiction in the proposed district, the sanitarian or a member of his staff, and the county extension agent, if the county has any or all such officers, *are* ex officio members of *the* board without vote."

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Section 21. Section 7-22-2446, MCA, is amended to read:

"7-22-2446. Hearing on petition for dissolution — notice. Upon the filing of *a* petition *for dissolution*, the board of county commissioners shall set a time for hearing the *petition* and shall cause notice thereof to be mailed to all nonresident property owners within the district whose addresses are known, to be posted in at least three public places within *the* district, and to be published at least once in the official newspaper of the county published in the district, *the* posting and publication to be at least 10 days before *the* date of hearing. *Whenever* the district is partly in one county and partly in another county, notice must be posted in each county, but *posting need* not *be* in three places in each county, and notice must be published in the official newspaper of each county."

Section 22. **Repealer.** Section 84-3205, R.C.M. 1947, is repealed.

Approved March 23, 1979.

CHAPTER NO. 250

AN ACT TO GENERALLY REVISE AND CLARIFY THE LOCAL GOVERNMENT LAWS RELATING TO GENERAL PROVISIONS AND TO THE CREATION, ALTERATION, AND ABANDONMENT OF LOCAL GOVERNMENTS; REPEALING SECTIONS 11-2901 THROUGH 11-2921 AND 11-3001 THROUGH 11-3026, R.C.M. 1947, AND SECTION 7-2-2101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-4111, MCA, is amended to read:

"7-1-4111. Classification of municipalities. (1) Every city having a population of 10,000 or more is a city of the first class.

(2) Every city having a population of less than 10,000 and more than 5,000 is a city of the second class.

(3) Every city having a population of less than 5,000 and more than 1,000 is a city of the third class.

(4) Every municipal corporation having a population of less than 1,000 *and more than 300* is a town."

Section 2. Section 7-2-103, MCA, is amended to read:

"7-2-103. Collection of taxes upon alteration of boundary of local government. *Subject to the provisions of part 27 of this chapter, if* any territory *is* detached from any county, city, or town and *is* annexed to any other county, city, or town therein, it *does not* invalidate or interfere with the collection of taxes in such territory and *the taxes* shall be collected by and the returns made to the county to which *the* territory is attached in the manner provided by law for levying and collecting taxes."

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Section 3. Section 7-2-2211, MCA, is amended to read:

"7-2-2211. Hearing on petition — protest. (1) At the time fixed for *the* hearing, the board of county commissioners shall hear the petitioners and any opponents and protestants upon the petition or protests filed on or before the time fixed for the hearing. The board may adjourn *the* hearing from time to time, but not for more than 10 days after the time fixed for the hearing, and shall receive the proof to establish or controvert the facts set forth in *the* petition.

(2) (a) No petition, protest, or petition for the exclusion of territory *may* be considered unless *it* is filed at least 1 day before the time fixed for the hearing.

(b) *A* petition for the exclusion of territory shall contain the names of not less than 50% of the qualified electors of any territory to be excluded.

(c) All such territory being excluded must be in one block and contain an area of not less than 36 square miles and be totally within one county and contiguous thereto.

(3) No withdrawals of signatures to the original petition for the creation of a proposed county shall be filed or considered which have not been filed with the county clerk on or before the date fixed for the hearing. No withdrawals of any signatures from the petition for the exclusion of territory *may* be received or considered which are not filed within 5 days after the filing of the petition for such exclusion of territory."

Section 4. Section 7-2-2212, MCA, is amended to read:

"7-2-2212. Exclusions and additions of territory upon petition. (1) Except as provided in subsection (3), on final hearing the board of commissioners, upon petition of not less than 50% of the qualified electors (as shown by the official registration books on the day of the filing of any such petition) of any territory lying within *the* proposed new county and contiguous to the boundary line of the proposed new county and of the old county from which such territory is proposed to be taken and lying entirely within a single old county and described in *the* petition, asking that *this* territory not *be* included within the proposed new county, must make such changes in the proposed boundaries as will exclude such territory from *the* new county and shall establish and define such boundaries. Petitions for exclusion shall be disposed of in the order in which they are filed with the clerk of the board.

(2) Except as provided in subsection (3), on final hearing the board, upon petition of not less than 50% of the qualified electors of any territory lying outside *the* proposed new county and contiguous to the boundary line of *the* proposed new county and of the old county or counties from which such territory is proposed to be *taken*, asking that *this* territory be included within the proposed new county, must make such changes in the proposed boundaries as will include such territory in *the* new county and shall establish and define such boundaries.

(3) (a) The segregation of such territory from any old county or counties *may* not leave such county or counties with less than $12 million of assessed valuation, based upon the last assessment roll.

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(b) No change or changes so made *may* result in reducing the valuation of the proposed new county to less than an assessed valuation of $10 million, inclusive of all assessed valuation.

(c) No change *may* be made which *leaves* the territory so excluded separate and apart from and without the county of which it was formerly a part.

(4) On final determination of boundaries, no changes in the boundaries originally proposed *may* be made except as prayed for in *the* petition or petitions or to correct clerical errors or uncertainties."

Section 5. Section 7-2-2219, MCA, is amended to read:

"7-2-2219. Conduct of election. (1) (a) The board issuing the proclamation and notice of election pursuant to 7-2-2215 shall cause the *county* clerk to furnish to the officers of each precinct in *the* proposed new county all ballots, poll lists, tally lists, registers for voters' signatures, ballot boxes, and other election supplies and equipment necessary to conduct *the* election and which are not specifically directed to be furnished by the clerk of another county or counties.

(b) The county clerk of each county from which territory is taken for the proposed new county shall, not less than 5 days before the date of *the* election, furnish to each board of election within *the* proposed new county a copy of the official register for the precincts of *the* proposed new county as are within their respective counties and the copies of indexes thereof required by law, containing the names of all persons who were qualified electors at the last general election before the date of *the* election *provided for in 7-2-2215.*

(2) *The* election *provided for in 7-2-2215* shall be governed and controlled by the general election laws of the state, so far as the same *are* applicable and except as otherwise provided herein. The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of *these* laws relating to primary elections in this state, *apply* to any election provided for in this part. All returns of election shall be made to *and canvassed by* the board calling *the* election.

(3) All nominations of candidates for *offices* required to be filled at *the* election shall be made in the manner provided by law for the nomination of candidates by petition."

Section 6. Section 7-2-2223, MCA, is amended to read:

"7-2-2223. Procedure to complete creation of county. (1) The board of county commissioners shall *immediately file* a copy of its resolution, authorized by 7-2-2222(1) and duly certified, in the office of the secretary of state. Ninety days from and after the date of such filing:

(a) *the* new county *is considered* to be fully created;

(b) the organization thereof *is considered* completed; and

(c) *the county* officers, *other than the county commissioners and the county clerk, are* entitled to enter upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties, as required by the laws of the state.

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(2) The clerk of the board with which *the* petition was filed must immediately make out and deliver to each of *the* persons declared and designated to be elected a certificate of election authenticated by his signature and the seal of said county. The persons elected members of the board and the county clerk shall, immediately upon receiving their certificates of election, assume the duties of their respective offices."

Section 7. Section 7-2-2224, MCA, is amended to read:

"7-2-2224. Offices and supplies for new county. The board of county commissioners *of the new county may* provide a suitable place for the county officers and purchase supplies necessary for the proper conduct of the county government."

Section 8. Section 7-2-2225, MCA, is amended to read:

"7-2-2225. Officers of new county. (1) Except as provided in subsections *(2) through (4)* of this section, at the election provided for in 7-2-2215, there shall be chosen *a board of county commissioners and* such *other* county, township, and district officers as are provided *by law* for counties of the class to which the new county *belongs*.

(2) All elected, qualified, and acting officers of the county or counties who may reside within the proposed new county *are considered* to be officers of *the* new county if they file, within 5 days after the final hearing and determination of *the* petition for *the* proposed new county, with the board of county commissioners whose duty it shall be to call the election their intention to become officers of *the* proposed new county, and the board issuing the proclamation of *the* election shall omit providing for the election of any such officers as have filed their declaration *to continue in office*.

(3) All elected, qualified, and acting justices of the peace residing within the proposed new county shall hold office as justices of the peace in *the new* county for the remainder of the term for which they were elected.

(4) All elected, qualified, and acting school trustees residing within the proposed new county at the time of the division of such county into school districts, as provided in 7-2-2214, shall hold office as school trustees in *the* new county for the remainder of the term for which they were elected on qualifying as school trustees for the respective districts in which they reside, as *these* districts are organized as provided by this part.

(5) The officers elected or appointed under the provisions of this part shall each perform the duties and receive the compensation now provided by general law for the office to which they have been appointed or elected in the counties of the class to which *the* new county *belongs*."

Section 9. Section 7-2-2252, MCA, is amended to read:

"7-2-2252. Assessment and collection of taxes for new county. (1) After the creation of a new county, its officers shall complete all proceedings necessary for the assessment or collection of the state and county taxes for the then-current year.

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(2) (a) All acts and steps taken by the officers of the old county or counties prior to the creation of the new county *are considered* as having been performed by the officers of the new county for the benefit of the new county. Upon the creation of the new county, it shall be the duty of the officers of the old county or counties to immediately execute and deliver to the board of county commissioners of *the* new county copies of all assessments or other proceedings relative to the assessment and collection of the current state and county taxes of property in *the* new county. Such copies shall be filed with the respective officers of the new county who would have the custody of the same if the proceedings had been originally had in the new county. Such certified copies *are considered* as originals in the new county, and all proceedings therein recited *are considered* as original proceedings in the new county and shall have the same effect as if the proceedings therein stated had been had at the proper time and in the proper manner by the respective officials of the new county.

(b) The officials of the new county *shall* proceed with the assessment and collection of *the* taxes as if the proceedings originally had in the old county or counties had been originally had in the new county."

Section 10. Section 7-2-2253, MCA, is amended to read:

"7-2-2253. Procedure to transfer money to school and road funds. (1) The county superintendent of schools of *an* old county shall furnish the county superintendent of schools of the new county with a certification of the average number belonging (ANB) in the different school districts in the territory set apart to form the new county and shall certify to the board of county commissioners *of the old county* the amount due. *The* board *of the old county* shall order a warrant drawn on the *treasury* of the *old* county for all the money that is or may be due by apportionment or otherwise to the different school districts embraced in the new county *and taken from the old* county.

(2) The county treasurer shall certify to the county commissioners *of an old county* the amount due in the different road funds. The county commissioners shall order a warrant drawn on the *treasury* of *the old* county in favor of the new county for all money that is or may be due by apportionment or otherwise to the different road and district funds in the territory set apart to form the new county *and taken from the old* county, which amounts shall be properly credited in both counties.

(3) Whenever in the formation of a new county a road or school district has been divided, the board of county commissioners shall by resolution direct the treasurer to transfer the proper proportionate amount of the money remaining in the fund of such district to the treasurer of the new county."

Section 11. Section 7-2-2254, MCA, is amended to read:

"7-2-2254. Transfer and transcription of records. (1) The board of county commissioners of any new county must provide suitable books and have transcribed from the records of the old county or counties all such parts thereof as relate to or affect property situated in the new county or the title thereof.

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(2) All chattel mortgages, renewals of chattel mortgages, articles of incorporation, contract notes, sheriff certificates of sale, liens, and original affidavits of registration which may affect or relate to property or persons situated within the new county shall be *delivered* by the county clerk of the old county to the county clerk of the new county and *shall* be preserved by *the* county clerk of the new county as permanent files of *the* new county."

Section 12. Section 7-2-2511, MCA, is amended to read:

"7-2-2511. Effect of name change on indebtedness, obligations, and contracts. (1) All indebtedness and obligations of the county, whether bonded or otherwise, shall be assumed by and become the indebtedness of the county under its new name. All bonds issued by the county under its former name, outstanding and unpaid at the time of the rendition of the decree, shall be assumed by and become due from and paid by *the* county under its new name.

(2) All contracts and obligations, express or implied, unfulfilled by the county at the date of the rendition of the decree shall be assumed and discharged by *the* county under its new name."

Section 13. Section 7-2-2608, MCA, is amended to read:

"7-2-2608. Frequency of elections on question of moving county seat. (1) When an election has been held and a majority of the votes are not cast for some place other than that fixed by law as the *existing* county seat, no second election for the removal thereof *may* be held within 4 years thereafter.

(2) When the county seat of a county has been once removed by a popular vote of the people of the county, it may be again removed from time to time in the manner provided by this part."

Section 14. Section 7-2-2713, MCA, is amended to read:

"7-2-2713. Effect of election results. (1) If at *the* election a majority of the votes cast in the county in which *the* petition *for abandonment* was filed *are* cast in favor of the abandonment and abolishment of *the* county and if a majority of the votes in the county designated in the petition as the county to which the territory of the abandoned county shall be attached *are cast* in favor *of attachment*, then:

(a) (i) the organization and *the* political and corporate existence of the county in which *the* petition for abandonment was filed terminate;

(ii) *the* county *is* abandoned, abolished, and disincorporated and *ceases* to exist; and

(iii) *except as provided in subsection (2) of this section,* its territory *is* attached to and *becomes* a part of the counties designated in the resolution adopted under 7-2-2707; and

(b) the *terms* of office of each of the officers *of the abandoned county and* of the members of the board of county commissioners thereof terminate at midnight on the following June 30.

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(2) If at *the* election a majority of the votes in any adjoining county named in the resolution adopted under 7-2-2707, other than the county designated in the petition for abandonment as the county to which the territory of the abandoned county shall attach, *are cast* against the attaching of any portion of the territory of the abandoned county to such adjoining county, then such portion of *the* territory described in *the* resolution *attaches and becomes* a part of the county designated in *the petition* for abandonment as the county to which the territory of the abandoned county *attaches*."

Section 15. Section 7-2-2726, MCA, is amended to read:

"7-2-2726. Status of printing contracts. (1) If the abandoned and abolished county *has* entered into a printing contract in accordance with the provisions of part 24 of chapter 5 and *the* contract *is* in full force and effect on the date when *the* county ceases to exist, *the purchase of* all supplies and printing for the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is attached shall be divided by the board of county commissioners of *the continuing* county between *the* contract *of the abandoned county* and any similar existing contract entered into by the board *of the continuing county* in such manner as *the* board *considers* equitable and just to the holders of both contracts until *the expiration of* the contract entered into by the abandoned and abolished county.

(2) When a petition *is* filed with the county clerk of a county for the abandonment and abolishment of *the* county in accordance with the provisions of 7-2-2702 and 7-2-2703, the board of county commissioners of *the* county *may* not thereafter enter into any contract under the provisions of part 24 of chapter 5 until the time has expired when *the* petition may be presented to *the* board by the county clerk as provided in 7-2-2702 and 7-2-2703."

Section 16. Section 7-2-2753, MCA, is amended to read:

"7-2-2753. Assessment of property in abandoned county. (1) The county assessor of a county abandoned and abolished under the provisions of this part shall, within 10 days after it *ceases* to exist, deliver to the county assessor of each county to which any part of its territory has been attached all assessment lists, reports, documents, and instruments relating to, concerning, or in any way affecting the assessment during the then-current assessment year of all taxable property within such portion of *the* abandoned and abolished county. The county assessor of *the* abandoned and abolished county shall, until midnight of June 30 *of the year* when *the* county ceases to exist, aid and assist the county assessors of the counties to which any part of the territory to be abandoned and abolished will be attached in the listing and assessing of all taxable property situated or located within each of such counties, to the end that all taxable property within the boundaries of *the* abandoned county will be fully assessed and taxed.

(2) It *is* the duty of the assessor of the county to whom such assessment lists, reports, documents, and instruments have been delivered by the

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assessor of the abandoned and abolished county to complete all assessments and to fully assess, during the then-current assessment year, all taxable property situated or located on January 1 of such year within the boundaries of such part of *the* abandoned and abolished county. Each such county assessor shall, in all matters and things connected in any way with the making of such assessments, have, possess, and exercise all of the powers and rights and shall perform all of the duties which the assessor of the abandoned and abolished county would or could have had, possessed, exercised, or performed if *the* county had not been abandoned and abolished."

Section 17. Section 7-2-4501, MCA, is amended to read:

"7-2-4501. Annexation of wholly surrounded land by cities of the first class. *A city* of the first class may include as part of *the* city any platted or unplatted tract or parcel of land that is wholly surrounded by *the* city upon passing a resolution *of intent, giving notice, and passing a resolution of annexation. Except as provided in 7-2-4502, the provisions of 7-2-4312 through 7-2-4314 apply to these resolutions and the notice requirement.*"

Section 18. Section 7-2-4609, MCA, is amended to read:

"7-2-4609. Applicability of part. (1) This part *is* not applicable to cities having a population, as shown by the last preceding federal census, of less than 20,000 *or of more than 35,000. This part does* not repeal parts 43 and 45 having reference to extension of the corporate limits of cities of the first, second, and third classes to include contiguous land but *provides* an alternative method for the annexation of territory or territories to municipal corporations.

(2) When any proceedings for annexation of territory or territories to any municipal corporation are commenced under this part, the provisions of this part and no other apply to such proceedings."

Section 19. Section 7-2-4705, MCA, is amended to read:

"7-2-4705. Annexation by municipalities providing services. (1) The governing body of any municipality may extend the corporate limits of such municipality under the procedure set forth in this part upon the initiation of the procedure by the *governing body* itself.

(2) Whenever the resident freeholders situated outside the corporate boundaries of any municipality, but contiguous thereto, desire to have real estate annexed to the municipality, they may file with the governing body of the municipality a petition bearing the signatures of 51% of the resident freeholders in the territory sought to be annexed, requesting a resolution stating the intent of the municipality to consider annexation. Upon passage of the resolution, the governing body shall follow the procedure in 7-2-4707 through 7-2-4713 and 7-2-4731(2)."

Section 20. Section 7-2-4733, MCA, is amended to read:

"7-2-4733. Vote required on proposed capital improvements. Included within the plan must be methodology whereby the area to be annexed may vote upon any proposed capital improvements. Should a

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negative vote be cast by over 50% of *the residents* in the section or sections to be annexed in such election, the area *may* not be annexed."

Section 21. **Repealer.** (1) Sections 11-2901 through 11-2921 and 11-3001 through 11-3026, R.C.M. 1947, are repealed.

(2) Section 7-2-2101, MCA, is repealed.

Approved March 23, 1979.

CHAPTER NO. 251

AN ACT TO GENERALLY REVISE AND CLARIFY THE LOCAL GOVERNMENT LAWS RELATING TO IMPROVEMENT DISTRICTS AND TO UTILITY SERVICES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2106, MCA, is amended to read:

"7-12-2106. General provisions related to notice. (1) The notices, resolutions, orders, or other *matters* required to be published by the provisions of this part shall be published in a daily, semiweekly, or weekly newspaper, to be designated by the board of county commissioners, as often as the same is issued during the period specified for publication, and no other statute *is* applicable to publications herein provided for. In case there is no daily, semiweekly, or weekly newspaper printed or circulated in *a* county, then *those* notices, resolutions, orders, or other matters as are herein required to be published in a newspaper shall be posted, for the same length of time as required herein for publication in a daily, semiweekly, or weekly newspaper, in three of the most public places in each voting precinct except *as* otherwise specifically provided herein.

(2) Proof of the publication or posting of any notice *is* made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the poster of the notice.

(3) No publication of notice other than that provided for in this part *is* necessary to give validity to any of the proceedings provided therein.

(4) The word "twice", as used in this part, referring to the number of times notices, resolutions, *orders,* or other *matters* shall be published, *means* publication of the same in two entire issues of the newspaper, one being on one day and the other issue being on a subsequent day of the same or subsequent week."

Section 2. Section 7-12-2121, MCA, is amended to read:

"7-12-2121. Administration of multicounty district. (1) If a rural improvement district includes areas in more than one county, the board of county commissioners of each county in which any portion of the district is situated shall, upon creation of *the* district and at a joint session, appoint *an initial* board of three trustees to administer the affairs of the district.

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(2) At the end of the *term of a trustee*, the board *of county commissioners of the county represented by the trustee* shall appoint a new trustee. In case of a vacancy by death, resignation, removal from the district, or otherwise, a trustee shall be appointed by the board *of county commissioners of the county represented by the trustee* to fill *the* vacancy.

(3) At least one trustee shall be appointed from each county within the district."

Section 3. Section 7-12-2122, MCA, is amended to read:

"**7-12-2122. Term of office of multicounty district trustee.** (1) The trustees appointed upon the creation of such district shall serve staggered terms of 1, 2, and 3 years. *Thereafter, each trustee serves a term of 3 years.*

(2) *A trustee holds* office for the term of *his* appointment or until *his* successor is appointed and qualified."

Section 4. Section 7-12-2154, MCA, is amended to read:

"**7-12-2154. Payment of damages incurred as a result of improvements.** Whenever the owner or anyone interested in any property situated in the special improvement district, after *filing* with the county clerk a written notice claiming that his property has been damaged, *is* awarded or *recovers* any amount *because* of damages sustained *by the* property *because* of the construction of any improvement in *the* special improvement district:

(1) before the resolution levying the assessment to defray the cost of making *the* improvement in *the* district *is* passed and adopted by the board of county commissioners, the amount ordered *to be* recovered shall be added to and constitute a part of making *the* improvements; but

(2) if the resolution levying the assessment to defray the cost and expenses of making *the* improvement has been passed and adopted by the board, it shall pass and adopt a supplemental resolution levying an additional assessment against the property in *the* district for the purpose of paying the amount awarded and the supplemental resolution shall be made in the same manner and prepared and certified the same as the original resolution levying the assessment to defray the cost of making *the* improvements."

Section 5. Section 7-12-2159, MCA, is amended to read:

"**7-12-2159. Notice of resolution for levy and assessment of tax — protest and hearing.** (1) A notice, signed by the county clerk and stating that the resolution levying a special assessment to defray the cost of making *the* improvements is on file in the office of the county clerk and is subject to inspection, shall be published at least *once* in a newspaper published nearest to where the special improvement is to be made.

(2) *The* notice shall state the time *at* and place in which objections to the final adoption of *the* resolution will be heard by the board of county

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commissioners. The time for *the* hearing *may* not *be* less than 5 days after the publication of *the* notice."

Section 6. Section 7-12-2165, MCA, is amended to read:

"7-12-2165. Procedure to correct assessment and relevy and collect tax. (1) Whenever, by reason of any alleged nonconformity to law or by reason of any omission or irregularity, any special tax or assessment is either invalid or its validity is questioned, the board of county commissioners may make all necessary orders and may take all necessary steps to correct, reassess, and relevy the same, including the ordering of work, with the same force and effect as *if* made at the time provided by *the* law or resolution relating thereto. The board may reassess and relevy the *tax or assessment* with the same force and effect as an original levy.

(2) Any special tax, upon reassessment or relevy, shall, so far as practicable, be levied and collected the same *as it* would have been if the first levy had been enforced. Any provision of any law specifying a time when or order in which acts shall be done in a proceeding which may result in a special tax *are* subject to the qualifications of this part.

(3) Whenever any apportionment or assessment is made and any property is assessed too little or too much, the *assessment* may be corrected and reassessed for such additional amount as *is* proper or the assessment may be reduced even to the extent of refunding the tax collected."

Section 7. Section 7-12-2301, MCA, is amended to read:

"7-12-2301. Rental provisions of municipal public sewer law applicable to rural districts. *The* provisions of part 42 of chapter 13 referring to sewer rentals apply to special improvement districts for the constructing and maintaining and operating of sanitary sewers and storm sewers, and the powers conferred on councils in part 42 of chapter 13 are conferred on *each board* of county commissioners *as far as those powers relate to sewer rentals*."

Section 8. Section 7-12-4101, MCA, is amended to read:

"7-12-4101. Definitions. *Unless the context indicates otherwise, as used in this part and part 42, the following definitions apply:*

(1) *"Blocks" means* blocks, *whether regular or irregular, that* are bounded by main streets or by *main streets and* a boundary line of the city.

(2) *"City" or "municipality" means* all corporations organized for municipal purposes.

(3) *"City clerk" or "clerk" means* any person or officer who *is* clerk of the council.

(4) *"City council" means* any body or board *that* is the legislative department of the government of the city.

(5) *"City engineer" means* any person or officer *who is responsible for the maintenance and improvement* of the streets in *a* city.

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(6) *"City treasurer"* means any person who, under whatever name or title, is the custodian of the funds of the municipality.

(7) *"Incidental expenses" means* the compensation of the city engineer for work done by him, the cost of printing and advertising as provided in this part and part 42, the compensation of persons appointed by the city engineer to take charge of and superintend any of the work mentioned in this part, *or* the expenses of making the assessment for any work authorized by this part.

(8) *"Main street"* means such actually opened street as *bounds* a block.

(9) *"Paved" or "repaved"* means pavement of stone (whether paving blocks or macadam), of bituminous rock or asphalt, or of wood, brick, or other material (whether patented or not) which the city council *adopts* by ordinance or resolution.

(10) *"Quarter-block", when used in reference* to irregular blocks, *means* all lots or portions of lots having any frontage on either *of two* intersecting *streets* halfway from *the* intersection to the next main street or, when no main street intervenes, all the way to a boundary line of the city.

(11) *"Street" means* avenues, highways, lanes, alleys, crossings or intersections, courts, and places which have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than 5 years.

(12) *"Street intersection" means* that parcel of land at the point of juncture or crossing of intersecting streets which lies between lines drawn from corner to corner of all lot lines immediately cornering at such juncture.

(13) *"Work", "improved", or "improvement" means* all work or the securing of property mentioned in this part and part 42 and also the construction, reconstruction, and repair of all or any portion of work."

Section 9. Section 7-12-4170, MCA, is amended to read:

"7-12-4170. Payment of damages incurred as a result of improvements. Whenever the owner or *anyone* interested in any property situated within any special improvement district, after *filing* with the clerk *a* written notice *claiming that his property has been damaged, is* awarded or *recovers* any amount *because* of damages sustained *by the* property *because* of the construction of any improvement in *the* special improvement district:

(1) if the resolution levying *the* assessment to defray the cost of making *the* improvement in *the* district *is* not passed and adopted by the city council, the amount *to be* recovered shall be added to and constitute a part of the cost of making *the* improvement; but

(2) if the resolution levying *the assessment* to defray the costs and expenses of making *the* improvement has been passed and adopted by the council, it shall pass and adopt a supplemental resolution levying additional assessments against all the property in *the* district for the purpose of paying the amount awarded and *the* supplemental resolution shall be made

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in *the same* manner *and* prepared and certified the same as the original resolution levying *the assessment* to defray the cost of making *the* improvement."

Section 10. Section 7-12-4179, MCA, is amended to read:

"7-12-4179. Payment of maintenance costs — resolution for assessment. (1) The cost of maintaining *the* improvements shall be paid by assessing the entire district *under a permissible assessment option as provided in 7-12-4162 through 7-12-4165.*

(2) It *is* the duty of *the* council to estimate, as near as practicable, the cost of maintaining the improvements in each district for the season. Before the first Monday in September of each year, the council shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to the whole cost of maintaining *the* improvements within the several districts.

(3) *The* resolution levying assessments to defray the cost of maintenance of *the* improvement shall be prepared and certified *in* the same *manner* as a resolution levying assessments for making improvements in *the* special improvement *district.*

(4) The council *may change* by resolution, not more than once a year, the boundaries of any maintenance district, but *the* change of boundaries *may* not affect indebtedness existing at the time of *the* change."

Section 11. Section 7-12-4184, MCA, is amended to read:

"7-12-4184. Reinstatement of delinquent assessment. (1) *Whenever* any special assessment or installment *is* delinquent, *is* declared *to be delinquent* by appropriate resolution *of* the city or town council, and *is* certified to the county clerk and county treasurer for collection as herein provided, the city or town council may, nevertheless, at its option, by appropriate resolution, *order the delinquent assessment to* be withdrawn from the county treasurer, canceled from his records and proceedings, and reinstated in the office of the city treasurer and on the assessment book thereof upon the payment to the city treasurer of the assessment or the installment and interest up to date.

(2) The certified copy of the resolution of the council with reference to such payment, withdrawal, and reinstatement, filed with the county treasurer, *is* authority for the county treasurer to cancel and withdraw *the* delinquent special *assessment or installment.*

(3) *The* withdrawal and reinstatement may be made at any time before or after sale of the property for delinquent taxes and before tax deed therefor *is* executed."

Section 12. Section 7-12-4206, MCA, is amended to read:

"7-12-4206. Redemption of bonds and warrants. (1) *The* warrants or bonds shall be redeemed by the treasurer when there *is money* in the special improvement district fund against which *the* warrants or bonds *are drawn,* on presentation of the coupons belonging thereto, and

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any *money* remaining shall be applied to the payment of the principal and the redemption of the warrants or bonds in the order of their registration.

(2) Whenever there *is* any *money* in any special improvement district fund after paying the interest on *the* warrants or bonds drawn against *the* fund, the treasurer shall call in for payment outstanding warrants or bonds which, together with the interest thereon to the date of redemption, will equal the amount of *the* fund on that date. The date of redemption shall be fixed by the treasurer and *may* not be less than 10 days after the date of publication or of service of notice, and on the date so fixed, interest *ceases*. The treasurer shall give notice by publication once in a newspaper published in the city or, at the option of the treasurer, by written notice to the holders of *the* warrants or bonds, if their addresses *are* known, of the number of warrants or bonds and the date on which payment will be made."

Section 13. Section 7-12-4255, MCA, is amended to read:

"7-12-4255. Contents of notice of hearing — protest. (1) The notice shall state the substance of the petition and the time and place for hearing and that any *interested* person or *any person* whose rights may be affected by the issuance or sale of *the* bonds or the levy of *the* special assessment, may, on or before the day fixed for *the* hearing *on the* petition, answer *the* petition and may appear at *the* hearing and contest the granting of the prayer of *the* petition and the entry of any order of confirmation pursuant thereto.

(2) Any person *eligible* to appear may enter his appearance in *the* proceedings and answer the petition and contest the granting of the prayer of *the* petition, and all provisions of the code of civil procedure shall be applicable to *the* proceedings."

Section 14. Section 7-12-4258, MCA, is amended to read:

"7-12-4258. Cost of court proceedings. The cost of *the court* proceedings *may be* apportioned between the parties *at* the discretion of the court."

Section 15. Section 7-12-4324, MCA, is amended to read:

"7-12-4324. Assessment of costs — frontage option. (1) The city council shall assess the cost of *the* improvements against the entire district, each lot or parcel of land within *the* district bordering or abutting upon the streets whereon or wherein the improvement has been made *to bear costs* in proportion to the lineal feet abutting or bordering the *streets*.

(2) The council, in its discretion, *may* pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district."

Section 16. Section 7-12-4337, MCA, is amended to read:

"7-12-4337. Incorporation of procedures to correct errors and omissions. All remedies, provisions, and means provided by existing

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laws or by the ordinances of any city availing itself of the provisions of this part *which are* for the correction of errors or omissions in the adoption of any resolution or proceeding or in the levy of any assessment or for the collection thereof, for the enforcement of any such levy by *the* sale of the property against which *the* assessment *is* made, or for the redemption of *the* property from such sale or *which are* otherwise applicable to the administration of this part *are* available in the administration *of this part as if* such remedies, provisions, and means *were contained in this part.*"

Section 17. Section 7-12-4426, MCA, is amended to read:

"7-12-4426. Notice of resolution for assessment of sprinkling costs. (1) A notice, signed by the city clerk, stating that the resolution levying *a* special assessment to defray the cost of sprinkling in the several districts is on file in his office and subject to inspection for a period of 5 days, shall be published at least once in a newspaper published in *the* city or town.

(2) *The* notice shall state the time and place at which objections to the final adoption of *the* resolution will be heard by the council. The time for *the* hearing shall be not less than 5 days after the publication of *the* notice."

Section 18. Section 7-12-4503, MCA, is amended to read:

"7-12-4503. Protest to abandonment of district. Unless 40% of the property owners owning property abutting *the* district file written protests against *the* abandonment *by* the date set for the passage of *the* resolution of abandonment, *the* council shall pass a resolution declaring *the* district abandoned."

Section 19. Section 7-13-155, MCA, is amended to read:

"7-13-155. Limitation on repayment of loan to reserve fund. Nothing in 7-13-151 through 7-13-156 *permits* the repayment of any loan to the reserve fund at any time unless all interest theretofore accrued on the bonds has been fully paid and all principal theretofore agreed to be paid in accordance with such redemption schedule as may be provided in the resolution or resolutions authorizing such bonds *has been paid.*"

Section 20. Section 7-13-214, MCA, is amended to read:

"7-13-214. Composition of board of directors. (1) The board shall consist of not less than five members.

(2) (a) The board shall consist of one county commissioner, one member from each incorporated city or town that is included in the district, and one member of the county or city-county board of health.

(b) The rest of the board shall consist of interested citizens, distributed equally throughout the district.

(3) In those counties where full-time city-county health departments exist, the city-county board of health may be designated as the board of directors for the refuse disposal district."

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Section 21. Section 7-13-241, MCA, is amended to read:

"7-13-241. Creation of joint refuse disposal districts. (1) Joint refuse disposal districts are districts which encompass two or more counties or parts thereof.

(2) A joint refuse disposal district may be created in the following manner:

(a) The commissioners of each county affected will create the district following the procedure as prescribed under 7-13-203 through 7-13-212.

(b) The commissioners shall appoint a joint board of directors composed of at least five members."

Section 22. Section 7-13-2220, MCA, is amended to read:

"7-13-2220. Right-of-way across state lands. The right-of-way is given, dedicated, and set apart to locate, construct, and maintain *district* works over and through any lands which are the property of this state, and *the district has the same rights and privileges relating to the right-of-way as are* granted to municipalities."

Section 23. Section 7-13-2223, MCA, is amended to read:

"7-13-2223. Effect of informalities. (1) No informality in conducting district elections to fill a vacancy or *informality in an appointment* by a mayor *invalidates the election or appointment.*

(2) No informality in any proceeding or informality in the conduct of any election not substantially affecting adversely the legal rights of any citizen *may* invalidate the incorporation of any district.

(3) No irregularities or informalities in conducting an election on the question of incurring bonded indebtedness *may* invalidate the *election* if the election *is* otherwise fairly conducted."

Section 24. Section 7-13-2261, MCA, is amended to read:

"7-13-2261. Recall of officers. Every incumbent of an elective office, whether elected by popular vote for a full term, elected by the board of directors to fill a vacancy, appointed by a mayor or *the* board of county commissioners for a full term, is subject to recall by the voters of any district organized under the provisions of this part and part 23 in accordance with the recall provisions *of Title 2, chapter 16, part 6.*"

Section 25. Section 7-13-4304, MCA, is amended to read:

"7-13-4304. Authority to charge for services. (1) The governing body of *a* municipality *operating a municipal water or sewer system* shall fix and establish, by ordinance or resolution, and collect rates, rentals, and charges for the services, facilities, and benefits directly or indirectly afforded by the system, *taking into account services provided and benefits received.*

(2) Sewer charges may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The charges may be

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fixed on the basis of water consumption or any other equitable basis the governing body *considers* appropriate. The rates for charges may be fixed in advance or otherwise and shall be uniform for like services in all parts of the municipality. If the governing body determines that the sewage treatment *or* storm water disposal prevents pollution of sources of water supply, the sewer charges may be established as a surcharge on the water bills of water consumers or on any other equitable basis of measuring the use and benefits of *the* facilities and services.

(3) An original charge for the connecting sewerline between the lot line and the sewer main may be assessed when *the* connecting sewerline is installed.

(4) *The* water and sewer rates, charges, or rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered."

Approved March 23, 1979.

CHAPTER NO. 252

AN ACT TO GENERALLY REVISE AND CLARIFY THE LOCAL GOVERNMENT LAWS RELATING TO FINANCIAL ADMINISTRATION AND TAXATION; REPEALING SECTION 7-6-4433, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-106, MCA, is amended to read:

"7-6-106. Political subdivisions to receive county warrants for share of in-lieu payments. (1) After apportioning any payment to the several accounts as provided in 7-6-105, the county treasurer shall prepare in duplicate a complete itemized statement, one copy of which shall be filed with the board of county commissioners and the other of which shall be filed with the county clerk.

(2) The board shall, by appropriate resolution, order warrants drawn on the county *treasury* to the order of each political subdivision named in the itemized statement and in the amount of the political subdivision's share in the payment. The county clerk shall draw and sign *the* warrants, which shall also be signed by the chairman of the board.

(3) (a) Except as provided in subsection (3)(b), whenever such warrant is presented to the county treasurer, he shall debit the proper account in the fund and shall pay the amount of such warrant in full, without deduction, to the political subdivision presenting the same.

(b) The county treasurer *may* not honor such warrant unless it is endorsed by the president, chairman, or other presiding officer of the governing body of *the* political subdivision. The endorsement of any warrant by *the* presiding officer of the governing body of a political subdivision as provided in this section *constitutes* an approval of the agreement under which the payment was received. If any governing body of a political subdivision *refuses* to receive any warrant delivered pursuant to this section,

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the amount of the warrant shall be refunded to the United States by the county."

Section 2. Section 7-6-207, MCA, is amended to read:

"7-6-207. Deposit security. (1) *The* local governing body may require security only for *that* portion of *the* deposits *which* is not guaranteed or insured according to law. *The* security shall consist of those enumerated in 17-6-103 *or cashier's checks issued to the depository institution by any federal reserve bank.*

(2) When negotiable securities are furnished, such securities may be placed in trust. The trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer or town clerk, his successors, and the state of Montana and the form of receipt and the trustee have been approved by the department of community affairs. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It *is* the duty of the appropriate governing body, upon the acceptance and approval of any of the above-mentioned bonds or securities, to make a complete minute entry of *the* acceptance and approval upon the record of their proceedings, and *the* bonds and securities shall be reapproved at least quarter-annually thereafter."

Section 3. Section 7-6-2112, MCA, is amended to read:

"7-6-2112. Treasurer's reports to county commissioners. (1) Each county treasurer must make a detailed *monthly* report *to* the board of county commissioners of his county, of all money received by him and the disbursement thereof and of all debts due to and from the county and of all other proceedings in his office, so that the receipts into the treasury and the amount of disbursements, together with the debts due to and from the county, *appear* clearly and distinctly.

(2) On the first Monday of January, April, July, and October of each year the county treasurer must settle with the board of county commissioners for all money collected, and on *those* days *the treasurer* must deliver to *the* board affidavits verifying the reconcilement of the balance on hand in the county treasury. After the approval of *the* statements and the accompanying affidavits, one copy of *the quarterly* report shall be filed with the county clerk of *the* county and one copy shall be retained by the county treasurer."

Section 4. Section 7-6-2201, MCA, is amended to read:

"7-6-2201. Fiscal year for counties. The fiscal year for county purposes commences on July 1 of each year and ends on June 30 of *the following* year."

Section 5. Section 7-6-2202, MCA, is amended to read:

"7-6-2202. Duties of county clerk related to finance. (1) The county clerk must draw warrants on the county *treasury* in favor of all persons entitled thereto in payment:

(a) of all claims and demands chargeable against the county which have been legally examined, allowed, and ordered paid by the board of county commissioners;

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(b) for all debts and demands against the county when the amounts are fixed by law and are not directed to be audited by some other person or tribunal.

(2) *The county clerk* must keep accounts current with the treasurer. When any person deposits with the county treasurer any money paid into the treasury, the county clerk shall be furnished by the treasurer with a duplicate of the receipt issued to *the* person, which duplicate receipt shall be filed in the office of the county clerk, and *the* county clerk shall charge the treasurer with the amount thereof.

(3) *The county clerk* must make the annual statement as prescribed in 7-6-2203."

Section 6. Section 7-6-2221, MCA, is amended to read:

"7-6-2221. Limitations on capital improvement fund. The capital improvement fund *may* not exceed at any time a competent engineering estimate of the cost of the adopted capital improvement program. *Money deposited in the fund must be expended within a 10-year period.*"

Section 7. Section 7-6-2302, MCA, is amended to read:

"7-6-2302. Role of department of community affairs. The department of community affairs shall make rules and classifications and prescribe forms necessary to carry out the provisions of this part, to define what expenditures are chargeable to each budget account, and to establish accounting and cost systems necessary to provide accurate budget information."

Section 8. Section 7-6-2316, MCA, is amended to read:

"7-6-2316. Notice of hearing on preliminary budget. (1) The board of county commissioners shall then have a notice published stating that:

(a) the board has completed its preliminary county budget for the current fiscal year;

(b) the budget is open to inspection in the office of the county clerk and recorder;

(c) the board will meet on the Wednesday before the second Monday in August to fix the final budget and make appropriations, stating the time and place of the meeting; and

(d) any taxpayer *or resident of the county* may appear and be heard for or against any part of the budget.

(2) The notice shall be published at least one time in a newspaper of general circulation in the county."

Section 9. Section 7-6-2317, MCA, is amended to read:

"7-6-2317. Hearing on preliminary budget. (1) On the Wednesday before the second Monday in August, the county commissioners shall meet at the time and place designated in the notice provided for in

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7-6-2316, at which time any taxpayer *or resident of the county* may appear and be heard for or against any part of the budget.

(2) The hearing shall be continued from day to day and shall be concluded and the budget approved and adopted on the second Monday in August, before the fixing of the tax levies by the board."

Section 10. Section 7-6-2342, MCA, is amended to read:

"7-6-2342. Procedure to make expenditures and incur liabilities in case of other emergencies. (1) In a public emergency other than *those* described in 7-6-2341 and which could not reasonably have been foreseen at the time of making the budget, the board of county commissioners, by unanimous vote of the members present at any meeting (the time and place of which all the commissioners shall have had reasonable notice), shall adopt and enter upon their minutes a resolution stating the facts constituting the emergency and the estimated amount of money required to meet *the* emergency.

(2) The board shall publish the *resolution*, together with a notice that a public hearing will be held *on the resolution* at the time and place designated *in the notice*, once in the official newspaper of the county and if there *is* none, then in a newspaper of general circulation in the county. The hearing *may* not be less than 1 week after the date of publication.

(3) Any taxpayer *or resident of the county* may appear at the hearing and be heard for or against the expenditure of money for *the* alleged emergency.

(4) (a) Upon the conclusion of *the* hearing, if the commissioners approve *the* emergency expenditure, they shall make and enter upon their official minutes, by unanimous vote of all of the members of the board present at *the* meeting, an order setting forth the facts constituting *the* emergency, together with the amount of expenditure authorized therefor by them. Subject to the limitations of subsection (4)(b), the order *is* lawful authorization for them to expend such amount, but no more, for such purpose.

(b) No expenditure *may* be made or liability incurred pursuant to *the* order until 5 days, exclusive of the day of entry of *the* order, *elapse*."

Section 11. Section 7-6-2343, MCA, is amended to read:

"7-6-2343. Appeal of order for certain emergency expenditures. (1) During the 5-day period provided by 7-6-2342(4)(b), any taxpayer or *resident* of *the* county feeling aggrieved by the order issued pursuant to 7-6-2342(4) may appeal therefrom to the district court for such county by filing with the clerk of *the* court a verified petition, a copy of which *has* theretofore been served upon the county clerk and recorder of *the* county as the clerk of the board of county commissioners. *The* petition shall set forth in detail the objections of the petitioner to *the* order, giving reasons why the emergency does not exist.

(2) Until final determination of the matter by the court, the service and filing of *the* petition *operates* to suspend *the* emergency order and the authority to make any expenditure or incur any liability thereunder.

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(3) Upon the filing of *the* petition, the court shall immediately fix a time for hearing *the* petition, which *time* shall be at the earliest convenient time. At *the* hearing the court shall hear the matter de novo and may take such testimony as it *considers* necessary. *The court's* proceedings shall be summary and informal, and its determination as to whether an emergency such as is contemplated within the meaning and provisions of this part exists or not and whether the expenditure authorized by *the* order is excessive or not *is* final."

Section 12. Section 7-6-2344, MCA, is amended to read:

"7-6-2344. Limitation on amount of emergency expenditures and liabilities — election. (1) Unless the excess above the sums listed in subsections (1)(a), (1)(b), and (1)(c) *is* first authorized by a majority of the *electors* of *the* county, voting at a general or special election, the aggregate total of all expenditures made or liabilities incurred in any fiscal year to meet emergencies, other than *those* caused by fire, flood, explosion, earthquake, epidemic, riot, or insurrection, *may* not exceed:

(a) $25,000 in counties of *class* 1, 2, 3, *or* 4;

(b) $15,000 in counties of *class* 5 *or* 6; and

(c) $7,500 in counties of class 7.

(2) The question of authorizing *the* excess expenditures shall be submitted in the following form, inserting in the ballot the amount of the excess proposed to be authorized and a description of the emergency to be met:

Shall the board of county commissioners of .... County, Montana, be authorized to make additional expenditures and incur additional liabilities in the amount of $.... over and above the sum of $.... to meet an emergency caused by .....

☐ YES

☐ NO

(3) Notice of *the* election shall be given by posting notice thereof at least 15 days before *the* election in three public places in each voting precinct within the county and by publishing *the* notice for not less than 10 days before the date of *the* election.

(4) The total of all emergency budgets and appropriations made therein in any one year to be paid from the county poor fund *may* not exceed the amount which would be produced by a mill levy equal to the difference between the mills levied in that year and the maximum mill levy authorized by law to be made for such fund, computed against the taxable value of the property subject to such levy as shown by the last completed assessment roll of the county."

Section 13. Section 7-6-2401, MCA, is amended to read:

"7-6-2401. Creation of office of county auditor. (1) Except as provided in subsection (2), the office of county auditor *exists* in all counties of the first, second, third, *or* fourth *class*.

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(2) The provisions of this part *do* not apply to counties having a population of less than 15,000 persons according to the *most recent* federal census."

Section 14. Section 7-6-2402, MCA, is amended to read:

"7-6-2402. Optional election for county auditor. There may be elected in each county of the classes named in 7-6-2401 some person to serve as county auditor."

Section 15. Section 7-6-2403, MCA, is amended to read:

"7-6-2403. Qualifications of county auditor. No person *is* eligible to *serve in* the office of county auditor of any county who *is not of voting age* and who *has* not been a resident of the county for which he *is* elected or appointed for at least 2 years preceding his election *or appointment*."

Section 16. Section 7-6-2406, MCA, is amended to read:

"7-6-2406. Compensation of auditor. The county auditor *receives* the annual compensation provided by law, payable monthly by warrants drawn on the treasury of the county, and shall receive no other compensation or emolument whatsoever for any service rendered or performed by him, except actual expenses for living and traveling whenever the duties of his office require his presence at any place in the county other than the county seat, and then only after the *travel* has been ordered and advised by the board of county commissioners."

Section 17. Section 7-6-2409, MCA, is amended to read:

"7-6-2409. Examination of county books and accounts. (1) It *is* the duty of the county auditor to *examine* the books and accounts of the county treasurer, the county clerk and recorder, the sheriff, the clerk of the district court, and all other county and township officers within 15 days *prior to the first* regular session of the board of county commissioners *in March, June, September, and December of each year* unless a longer time *is* granted *to the auditor* by the board.

(2) *The quarterly* report shall contain a full and complete statement of the money received and disbursed by each of the officers since the last examination and report. For the purpose of this section, the county auditor *has* free access to all books and papers in each of *the* offices."

Section 18. Section 7-6-2421, MCA, is amended to read:

"7-6-2421. Presentation of claims against county. (1) No account *may* be allowed by the board unless the same is made out in separate items, with the nature of each item stated. If the claim is for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such services must be stated. No account must be necessarily passed upon by the board unless made out as prescribed in this section and filed by the clerk prior to the session at which it is asked to be heard.

(2) Claims against the county shall contain the following statement: "I certify that this claim is correct and just in all respects and that payment or credit has not been received." Claims need not be verified by affidavit.

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(3) Every claim against the county, except claims arising from injury to a person or property, which are limited under provisions of Title 2, chapter 9, parts 1 through 3, as amended, must be presented within 1 year after the last item accrued.

(4) No county officer *may*, except for his own service, present any claim, account, or demand for allowance against the county or in any way advocate the relief asked on the claim or demand made by another.

(5) *Money* deposited in the county treasury pursuant to former section 16-2616, R.C.M. 1947, *and not otherwise disposed of shall be transferred by the county treasurer to the state treasurer for deposit in the agency fund provided for in Title 72, chapter 14, part 2. The county treasurer may deduct the fees and expenses of the coroner and the county prior to transferring the money.*"

Section 19. Section 7-6-2422, MCA, is amended to read:

"**7-6-2422. Opposition to claims.** Any *resident or* taxpayer of the county may appear before the board and oppose the allowance of any claim or demand made against the county."

Section 20. Section 7-6-2424, MCA, is amended to read:

"**7-6-2424. Appeal of decision concerning claim.** (1) Whenever a claim against a county is disallowed in whole or in part or *whenever* any taxpayer *or resident* of the county is not satisfied with any allowance made by the board, the claimant, taxpayer, *or resident* may appeal from the decision of the board to the district court for the county by causing a written notice of appeal to be served on the clerk of the board within 30 days after the making of the decision or allowance and executing a bond to the county, with surety to be approved by the clerk of the board, conditioned to prosecute *the* appeal to effect and to pay all costs that may be adjudged against the appellant.

(2) The clerk of the board, upon an appeal being taken, must immediately give notice thereof to the county attorney and must make out a return of the proceedings in the matter before the board, with its decision thereon, and file the same, together with the bond and all the papers therein in his possession, with the clerk of the district court.

(3) *The* appeal must be entered, tried, and determined the same as appeals from justices' courts, and costs are awarded in like manner."

Section 21. Section 7-6-2428, MCA, is amended to read:

"**7-6-2428. Procedure to collect charges when criminal case is removed.** (1) The district court of the county to which *a criminal* action is removed must certify the amount of costs allowed and certified by the court to the board of county commissioners of *the* county *of the district court*. Such board shall audit the same and draw its warrants therefor upon the *treasury* of the county from which *the* action was removed. *The* board *drawing the warrants* shall forward to *the* treasurer and board of the county from which *the* action was transferred a certified copy of the total amount allowed by the court, giving each item as certified to them by the clerk of the district court and the court.

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(2) The board receiving *the* certified copy of *the* costs allowed shall enter the same in its books as a charge against the *treasury* of its county. The county treasurer of the county from which *the* action was removed must, immediately upon presentation, pay *the warrants* out of the general fund of *that* county, or if at the time of presentation, there is not sufficient money in the general fund to pay the same, he must endorse upon *the warrants* "Not paid for want of funds", and *the warrants* must be registered and draw interest at the same rate and be paid in the same manner as though it had been drawn by the board of the county where the indictment was found or information filed."

Section 22. Section 7-6-2430, MCA, is amended to read:

"7-6-2430. Accounts to be examined, settled, and allowed. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, at the regular meetings of the board, to examine, settle, and allow all accounts legally chargeable against the county, except salaries of officers, and order warrants to be drawn on the county *treasury* therefor and provide for the issuing of the same."

Section 23. Section 7-6-2601, MCA, is amended to read:

"7-6-2601. Details related to county warrants. (1) Warrants issued pursuant to 7-6-2202(1) shall be signed by the county clerk and the chairman of the board of county commissioners, except warrants drawn on the redemption fund.

(2) All warrants issued by the county clerk during each year, commencing with the first Monday in January, must be numbered consecutively. The number, date, and amount of each and the name of the person to whom payable and the purpose for which drawn must be stated thereon; and *the warrants* must, at the time they are issued, be registered by him.

(3) Warrants drawn by order of the board on the county *treasury* for the current expenses during each year must specify the liability for which they are drawn and when *the liability* accrued."

Section 24. Section 7-6-2607, MCA, is amended to read:

"7-6-2607. Examination and processing of warrants. (1) The board, at its annual March session or *more often* if necessary, must examine the county warrants returned by the county treasurer by comparing each warrant with the record of warrants issued in the county clerk's office.

(2) The board must cause to be canceled all county warrants that have remained uncalled for 1 year or more in the county clerk's office, *these warrants* to be canceled in the same manner as other county warrants. At the same time, the county treasurer must deliver to the board all warrants or vouchers that *are* in *the treasurer's* possession for money disbursed by him as treasurer and the clerk must receipt for the same.

(3) The board must cause to be entered on *the* record *of warrants*, opposite to the entry of each warrant issued, the date when the *warrant* was canceled and must make a list of the *canceled* warrants, specifying the

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number, date, amount, and the person to whom the same was payable, and *must cause* the *list to be entered* on the minutes of the board."

Section 25. Section 7-6-2801, MCA, is amended to read:

"7-6-2801. Management of school funds. The county treasurer must:

(1) keep all school money in a separate fund and keep a separate account of its disbursement to the several school districts which are entitled to receive it, according to the apportionment of the county superintendent of schools;

(2) notify the county superintendent of the amount of the county school fund in the county treasury subject to apportionment, whenever required, and inform him of the amount of school money belonging to any other fund subject to apportionment, or as otherwise provided by law;

(3) pay all warrants drawn on county or district school money, in accordance with the provisions of law, whenever such warrants are countersigned by the district clerk and properly endorsed by the holders;

(4) make, annually, during the month of September, a financial report for the preceding year ending August 31 to the county superintendent, in such form as *is* required by him."

Section 26. Section 7-6-4101, MCA, is amended to read:

"7-6-4101. Fiscal year for municipalities. The fiscal year of cities and towns commences on July 1 of each year and ends on June 30 of *the following* year."

Section 27. Section 7-6-4113, MCA, is amended to read:

"7-6-4113. Filing of annual financial statement. (1) The city or town clerk must, not later than August 31 following the close of each fiscal year, transmit one copy of the statement to the department of community affairs and must present the other copy to the city or town council or commission at its first regular meeting in September.

(2) If a city or town clerk fails to file a copy of the statement with the department within the time specified, the department, without delay, shall examine the books, records, and accounts of the city or town. The department shall make from its examination a statement of the financial condition of the city or town for the preceding fiscal year in the manner it should have been made by the city or town clerk. The examination shall be considered a special *audit* under the provisions of subsections (4) and (5) of 2-7-503, and all of the provisions of subsections (4) and (5) of 2-7-503 apply to it."

Section 28. Section 7-6-4121, MCA, is amended to read:

"7-6-4121. Authorization to conduct municipal business on a cash basis. (1) In case the total indebtedness of a city or town has reached 11% of the total taxable value of the property of the city or town subject to taxation, as ascertained by the last assessment for state and

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county taxes, the city or town may conduct its affairs and business on a cash basis as provided by subsection (2).

(2) (a) *Whenever a city or town is conducting* its business affairs on a cash basis, the reasonable and necessary current expenses of the city or town *may be paid* out of the cash in the city or town treasury and derived from its current revenues, under such restrictions and regulations as the city or town council may by ordinance prescribe.

(b) In the event that payment *is* made in advance, the city or town *may* require a cash deposit as collateral security and indemnity, equal in amount to such payment, and may hold the same as a special deposit with the city treasurer or town clerk, in package form, as a pledge for the fulfillment and performance of the contract or obligation for which *the* advance *is* made.

(c) Before the payment of the current expenses mentioned above, the city or town council shall first set apart sufficient money to pay the interest upon its legal, valid, and outstanding bonded indebtedness and any sinking funds therein provided for and shall be authorized to pay all valid claims against funds raised by tax especially authorized by law for the purpose of paying such claims."

Section 29. Section 7-6-4227, MCA, is amended to read:

"7-6-4227. Notice of hearing on preliminary budget. (1) The council shall then cause a notice to be published stating that:

(a) *the* council has completed its preliminary municipal budget for the current fiscal year;

(b) *the* budget has been placed on file and is open to inspection in the office of the clerk of the municipality;

(c) *the* council will meet on the Wednesday immediately preceding the second Monday in August for the purpose of fixing the final budget and making appropriations, designating the time and place when and where such meeting will be held; and

(d) any taxpayer *or resident* may appear *at the meeting* and be heard for or against any part of *the* budget.

(2) *The* notice shall be published at least one time in the official newspaper of the municipality or, if there *is* none, then in a newspaper of general circulation in the county in which the municipality is situated."

Section 30. Section 7-6-4228, MCA, is amended to read:

"7-6-4228. Hearing on preliminary budget. (1) On the Wednesday preceding the second Monday in August, the council shall meet at the time and place designated in the notice provided in 7-6-4227, at which time any taxpayer *or resident* may appear and be heard for or against any part of the budget. The council may call in the official in charge of an office, department, service, or institution, at the time the estimates for their respective offices are under consideration, for examination concerning the estimates. The official shall be called in by the council, upon the

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request of a taxpayer *or resident*, for questioning upon the estimates either by the council, taxpayer, *or resident*.

(2) The hearing shall be continued from day to day and shall be concluded and the budget finally approved and adopted on the second Monday in August, prior to the fixing of the tax levies by the council."

Section 31. Section 7-6-4232, MCA, is amended to read:

"7-6-4232. Fixing of tax levy. (1) On the second Monday in August and after the approval and adoption of the final budget, the council shall fix the tax levy for each fund at a rate, not exceeding limits prescribed by law, which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for that fund during the current fiscal year. The taxable valuation of the city for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund, and each tax levy shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to raise the amount set out in the budget.

(2) If the council considers that a levy made for a bond sinking or interest fund will not provide a sufficient amount to pay all bond *principal* and interest becoming due during the current fiscal year or within 6 months after the current fiscal year because of anticipated tax delinquency, the council may fix the levy at a rate it considers necessary to raise the amount for making the payments of principal and interest over and above the anticipated tax delinquency.

(3) Each levy shall be made in the manner provided by 15-10-201."

Section 32. Section 7-6-4252, MCA, is amended to read:

"7-6-4252. Procedure to make expenditures and incur liabilities in case of other emergencies. (1) In a public emergency other than *those* described in 7-6-4251 and which could not reasonably have been foreseen at the time of making the budget, the council, by unanimous vote of the members present at any meeting (the time and place of which all of the members shall have had reasonable notice), shall adopt and enter upon their minutes a resolution stating the facts constituting the emergency, the estimated amount of money required to meet *the* emergency, and the fund against which emergency warrants shall be drawn.

(2) The council shall publish the resolution, together with a notice that a public hearing will be held *on the resolution* at the time and place designated *in the notice*, once in the official newspaper of the municipality and, if there *is* none, then in a newspaper of general circulation in the county in which the municipality is situated. The hearing *may* not be less than 1 week after the date of publication.

(3) Any taxpayer *or resident of the municipality* may appear at the hearing and be heard for or against the expenditure of money for *the* alleged emergency.

(4) (a) Upon the conclusion of *the* hearing, if the council *approves the* emergency expenditure, it shall make and enter upon its official minutes, by unanimous vote of all of the members of the council present at *the*

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meeting, an order setting forth the facts constituting *the* emergency, together with the amount of expenditure authorized therefor by them and the fund against which emergency warrants shall be drawn. Subject to the limitations of subsection (4)(b), the order *is* lawful authorization for them to expend such amount, but no more, for such purpose.

(b) No expenditure *may* be made or liability incurred pursuant to *the* order until 5 days, exclusive of the day of entry of *the* order, *elapse*."

Section 33. Section 7-6-4253, MCA, is amended to read:

"7-6-4253. Appeal of order for certain emergency expenditures. (1) During the 5-day period provided by 7-6-4252(4)(b), any taxpayer or *resident* of *the* municipality feeling aggrieved by the order issued pursuant to 7-6-4252(4) may appeal therefrom to the district court for the county in which the municipality is situated by filing with the clerk of *the* court a verified petition, a copy of which *has* theretofore been served upon the clerk of *the* municipality. *The* petition shall set forth in detail the objections of the petitioner to *the* order, giving reasons why the emergency does not exist.

(2) Until final determination of the matter by the court, the service and filing of *the* petition *operates* to suspend *the* emergency order and the authority to make any expenditure or incur any liability thereunder.

(3) Upon the filing of *the* petition, the court shall immediately fix a time for hearing *the* petition, which *time* shall be at the earliest convenient time. At *the* hearing the court shall hear the matter de novo and may take such testimony as it *considers* necessary. *The court's* proceedings shall be summary and informal, and its determination as to whether an emergency such as is contemplated within the meaning and provisions of this part exists or not and whether the expenditure authorized by *the* order is excessive or not *is* final."

Section 34. Section 7-6-4302, MCA, is amended to read:

"7-6-4302. Payment of claims by warrant. Except as provided in 7-6-4121, all accounts and demands against a city or town must be submitted to the council and, if found correct, must be allowed and an order must be made that the demand be paid. *The* mayor must draw a warrant upon the *treasury* in favor of the owner, specifying for what purpose and by what authority it is issued and out of what funds it is to be paid. The city treasurer or town clerk must pay the *warrant* out of the proper fund."

Section 35. Section 7-6-4402, MCA, is amended to read:

"7-6-4402. Tax-related duties of city treasurer. It *is* the duty of the city treasurer to perform such duties in the collection of taxes, *license fees*, or assessments as are prescribed by law or ordinance."

Section 36. Section 7-6-4404, MCA, is amended to read:

"7-6-4404. Tax-related duties of town clerk. It *is* the duty of the town clerk to perform such duties in the collection of taxes, *license fees*, or assessments as are prescribed by law or ordinance."

Section 37. Section 7-6-4414, MCA, is amended to read:

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"7-6-4414. Sales for delinquent taxes when county collects municipal tax. (1) All publications *of* sales for delinquent taxes shall include city or town taxes. *There is only* one sale for each piece of property. The sale shall cover the aggregate of city or town, county, and state taxes, with the penalties, interest, and cost of advertising provided by law.

(2) All money received from sales and redemptions, after *a* deed *is* given by the county treasurer as provided by law, shall be credited to the state, county, and city or town pro rata in the same proportions as provided in 15-18-108."

Section 38. Section 7-6-4431, MCA, is amended to read:

"7-6-4431. Authorization to exceed maximum mill levy — election required. (1) Subject to the conditions of subsection (2), whenever the council of any city or town *considers* it necessary to raise money by taxation, in excess of the levy allowed by law, for any purpose for which *the* city or town is authorized to expend money raised by taxation in *the* city or town, *the council* shall submit the question of such additional levy to the *registered* voters of *the* city or town, either at the regular annual election held in *the* city or town or at a special election called for that purpose by the council of *the* city or town. If the majority voting on the question are in favor of *an* additional levy, the city or town council shall so certify and such additional levy shall be made by the city or town council for that year.

(2) Such additional levy *may* not exceed 5 mills."

Section 39. Section 7-6-4438, MCA, is amended to read:

"7-6-4438. Tax levy and expenditures for municipal and administrative purposes when limits on municipal indebtedness exceeded. (1) All taxes levied and collected for municipal and administrative purposes by any city or town in which the indebtedness equals or exceeds the limit allowed *by* statute may be used in payment of current expenses during the fiscal year for which the taxes were levied, as if a special levy had been made for each of the purposes. The council of any such city or town may designate the amount of the general levy applicable to each of the purposes. The amount so designated constitutes a special fund for the special purpose of paying the expenses incurred for the purpose. The expenses shall be payable out of the fund and not otherwise.

(2) However, the aggregate of all taxes authorized for general municipal and administrative purposes may not exceed *1.5%* annually of the taxable value of all property subject to taxation in *the* city or town.

(3) Any city, the indebtedness of which equals or exceeds *the* limit *allowed by statute, may* levy and collect special taxes for municipal and administrative purposes, and the city council in making *special levies* shall designate the amount thereof for each of *the* purposes, and each tax, when collected, *constitutes* a fund out of which the expenses incurred for the purpose for which *the* tax was levied shall be paid. The expenses incurred for any *particular* purpose shall be paid out of the fund provided therefor and not otherwise."

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Section 40. Section 7-6-4501, MCA, is amended to read:

"7-6-4501. Interest on unpaid warrants. When any warrant drawn upon the *treasury* of a city or town and pursuant to any ordinance or resolution or direction of the council of *the* city or town is presented to the city treasurer or town clerk for payment and the same is not paid for want of funds, *the city* treasurer *or town clerk* must endorse thereon "Not paid for want of funds", annexing the date of presentation, and signing his name thereto. From that time until *the* warrant is called for payment, the warrant *bears* interest at a rate fixed by ordinance."

Section 41. Section 7-6-4603, MCA, is amended to read:

"7-6-4603. Investment of municipal money in city or town warrants. (1) Except as provided in 7-7-4102, whenever the city or town has, under its control and in any fund, any money for which there is no immediate demand and which, in the judgment of the city or town council, it would be advantageous to invest in city or town warrants, the city or town council *may* direct the city treasurer or town clerk to purchase legally issued city or town general obligation warrants of the same city or town thereafter issued against funds in which there is not sufficient funds to pay such city or town warrants at the time of issuance.

(2) (a) In case of such purchase, the city or town council shall designate the fund or funds to be invested and shall fix the amount thereof and shall also designate the city or town warrants which are to be purchased by such funds. The city or town clerk shall thereupon cause to be attached to or stamped, written, or printed upon the warrants ordered to be purchased a notice to the effect that the city or town will exercise its preference right to purchase such warrant.

(b) The city treasurer or town clerk shall thereafter, when such city or town warrant is presented to him, purchase the same out of the proper fund as designated by the city or town council. The warrant so purchased shall be registered as other city or town warrants and bear interest as provided by law.

(3) When the designated amounts have been invested, the city treasurer shall notify the city clerk."

Section 42. **Repealer.** Section 7-6-4433, MCA, is repealed.

Approved March 23, 1979.

CHAPTER NO. 253

AN ACT TO GENERALLY REVISE AND CLARIFY THE LOCAL GOVERNMENT LAWS RELATING TO TRANSPORTATION; TO HOUSING AND CONSTRUCTION; AND TO CULTURE, SOCIAL SERVICES, AND RECREATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-2307, MCA, is amended to read:

"7-14-2307. Payment of claims upon presentation of superintendent's certificate. Upon the presentation of any certificate

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issued by the superintendent and verification of it by the holder as in other cases of claims against the county, the board of county commissioners shall *have* a warrant *issued* for the amount of the certificate, drawn on the *treasury* against the county road fund."

Section 2. Section 7-14-2308, MCA, is amended to read:

"7-14-2308. Superintendent's report. *At least once each year and more often if required by the board of county commissioners, the superintendent shall file a report with the board detailing the activities and expenditures of his office and containing any other information the board requires.* At the first monthly or quarterly meeting held after filing of *a* superintendent's report, the board of county commissioners shall examine it."

Section 3. Section 7-14-2511, MCA, is amended to read:

"7-14-2511. Creation of county motor vehicle fund. *When* collected by the treasurer of the county in which *a* motor vehicle is registered *, all license and registration fees for which there is no specific provision as to disposition of the fee* shall be credited to the county motor vehicle fund."

Section 4. Section 7-14-2702, MCA, is amended to read:

"7-14-2702. Petition for opening or improving road. (1) A petition for laying out, opening, constructing, or improving a county road may be presented to the board by the owners of two-thirds of the lineal feet of land fronting on the proposed or existing road *or by two-thirds of the residents of the proposed district.* If any land *is* in the name of a deceased person or *a* person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian *is* equivalent to the signature of the owner.

(2) The petition must set forth:

(a) that the petitioners are *qualified to sign the petition* and that they desire the petitioned action;

(b) the kind and nature of the improvement desired;

(c) the mode of payment of the assessments to be levied for defraying the cost thereof, whether immediate payment or by payment in installments;

(d) the portion of the costs which the district, if formed, will assume and pay."

Section 5. Section 7-14-2705, MCA, is amended to read:

"7-14-2705. Meeting between county road superintendent, residents, and owners of land. (1) After receipt of the petition and passage of the resolution, the board shall make an order fixing a time and place in the vicinity of the road for a meeting between the county road superintendent or his deputy, all owners upon whose lands special assessments will be levied, *and all residents within the proposed district.*

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(2) *All* owners of land fronting on the road or land within 2 miles on either side of it upon which special assessments will be levied *and all residents within the proposed district* may meet with the superintendent or his duly appointed deputy."

Section 6. Section 7-14-2707, MCA, is amended to read:

"7-14-2707. Meeting procedure — election of committee of supervisors. (1) The superintendent or his deputy, or in their absence one of the landowners *or residents* present, shall preside. Those present shall elect three as a committee of supervisors; at least one of them shall be a petitioner.

(2) A majority of the owners *and residents* present and voting shall be sufficient for election. The presiding officer shall certify to the board the names of the owners elected to the committee.

(3) Those elected shall qualify immediately by taking an oath that they are owners of land benefited by the improvements and to be included within the local *improvement* district *or residents within the proposed district*. They shall take an oath that they will fully, impartially, and faithfully perform their duties as supervisors. The superintendent or his deputy may administer the oath, or it may be administered by anyone so authorized by law."

Section 7. Section 7-14-2711, MCA, is amended to read:

"7-14-2711. Division of local improvement district into parts. (1) The boundaries of assessment *districts within a local improvement district are* as follows:

(a) The lands extending from the center of the road one-half mile on each side thereof (measuring 1 mile in width) constitute Part One of the district.

(b) The lands embraced within an area 1 mile wide on each side of Part One constitute Part Two of the district.

(c) The lands embraced within an area 1 mile wide on either side of Part Two constitute Part Three of the district.

(2) Each of the parts *extends* the full length of the proposed road and 1 mile beyond the terminus unless the committee otherwise *provides*."

Section 8. Section 7-14-2821, MCA, is amended to read:

"7-14-2821. Permission to operate ferry between counties. (1) When authority to erect and keep a ferry over waters dividing two counties is desired, application must be made to the board of commissioners of *the* county situated on the left bank descending *the* river, creek, or slough.

(2) The board may not grant authority to erect a toll ferry until the notice of the intended application *is* given as required in 7-14-2822.

(3) After notice is given, *an* application must be made in writing, under oath, to the board of the proper county. *The applications must contain*

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a description of the proposed ferry landings; the names of the owners, if known, of the proposed landings; and a statement that notice of the application has been served at least 10 days prior to the date of application on those landowners who are not parties to the application."

Section 9. Section 7-14-2824, MCA, is amended to read:

"**7-14-2824. Preference for landowner.** The owner of the land on either *bank* of the waters to be crossed, *with* the owner of the land on the left bank descending *given preference* over the owner of the land on the right bank, is entitled to preference in procuring authority to construct a ferry. *Whenever the owners of the banks do not* apply for such authority within a reasonable time after the necessity therefor arises, the board of commissioners may grant authority to another."

Section 10. Section 7-14-4109, MCA, is amended to read:

"**7-14-4109. Power to order certain improvements without creation of special improvement district.** (1) Without the formation of a special improvement district, the city council may order sidewalks, curbs, *or* gutters constructed in front of any lot or parcel of land and may order alley approaches constructed or replaced adjacent to any lot or parcel of land.

(2) Whenever the council *orders* any such sidewalk, curb, *or* gutter constructed or any such alley approach constructed or replaced, *the* order shall be entered upon the minutes of the council and shall name the street along which *the* sidewalk, curb, *or* gutter is to be constructed or along which *the* alley approach is to be constructed or replaced.

(3) After the making of such order, written notice thereof shall be given the owner or agent *of the owner* of such property or the owners or agents of all adjacent owners having access to their properties by *the* alley approach, as appropriate, in such manner as the council may direct.

(4) If the owner or agent *of the owner* of such lot or parcel of land or if the owners or agents of all adjacent owners having access to their property by *the* alley approach fail or neglect for a period of 30 days after the date of service of *the* notice to cause such sidewalk, curb, *or* gutter to be constructed or to cause such alley approaches to be constructed or replaced, the city may construct or cause *the* sidewalk, curb, *or* gutter to be constructed or may construct or cause *the* alley approach to be constructed and shall assess the cost thereof, including engineering costs and the costs enumerated in 7-12-4121 and 7-12-4169, against the property in front of which the same is constructed or against the lots or parcels of land having access via the constructed alley approaches. *The collection of the assessed costs shall be as provided in 7-12-4181 through 7-12-4191.*

(5) (a) When any sidewalk, curb, *or* gutter or alley approach is constructed by or under direction of the city council, payment for the construction shall be made by special warrants in such form as may be prescribed by ordinance *and* drawn against a fund to be known as the special sidewalk, curb, and gutter fund or the special alley approach fund, as appropriate, and the council may provide for the payment of interest annually.

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(b) The warrants drawn on the special alley approach fund shall bear interest at *a* rate of up to 6% a year."

Section 11. Section 7-14-4302, MCA, is amended to read:

"7-14-4302. Regulation of lighting for railway right-of-way — crossings. (1) The city or town council *may* require the lighting of any railroad track or route within a city or town, the cars of which are propelled by *steam* or otherwise, and fix and determine the number, style, and size of lampposts, burners, lamps, and all other fixtures and apparatus necessary for such lighting and the points of location of the lampposts.

(2) The city or town council *may*:

(a) require the construction of crossings on the line of any railroad track or route within the city or town, the cars of which are propelled by *steam* or otherwise, where the track intersects or crosses any street, alley, or public highway or runs along the same; and

(b) fix and determine the size, kind, *and grade* of *the* crossing.

(3) In case the owner of such railroad fails to comply with *the* requirements, the council may cause the same to be done. The council may assess the expense thereof against *the* owner, and the *expense* constitutes a lien on any property belonging to *the* owner within *the* city or town and may be collected as other taxes."

Section 12. Section 7-14-4404, MCA, is amended to read:

"7-14-4404. Tax levy for contracts to operate bus service. For the purpose of raising the necessary money to defray the cost of the transportation service authorized by 7-14-4401(2) pursuant to such contract, lease, or lease and operating agreement with such independent carrier or carriers, the city or town council *may* annually levy a tax on the taxable value of all taxable property within the limits of *the* city or town. Whenever the council of *the* city or town *considers* it necessary to raise money by taxation for such purpose in excess of the levy now allowed by law, the council of *the* city or town shall in the manner prescribed by law submit the question of such additional levy to the *qualified electors* of *the* city or town, either at the regular annual election held in *the* city or town or at a special election called for that purpose by the council of *the* city or town. *The* additional levy in excess of the levy now allowed by law *may* not exceed 1 ½ mills."

Section 13. Section 7-14-4716, MCA, is amended to read:

"7-14-4716. Procedure to issue bonds. (1) When the governing body determines that improvement bonds *are to* be issued, it shall so declare in the resolution of intention for the work and shall specify the rate of interest which *the bonds will* bear. A description of the bonds, *including the manner of repayment,* shall be inserted in all notices of the proceedings required to be published or posted. A like description of the bonds shall be included in the warrant.

(2) All other proceedings for the work up to and including the approval of the assessment by the governing body and including delivery of the

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assessment to the contractor, demand of payment of the several assessments, and the return and record thereof shall be in all respects as provided in this part and parts 41 and 42 of chapter 12."

Section 14. Section 7-14-4734, MCA, is amended to read:

"7-14-4734. Expense estimate — assessments and tax levy. (1) The governing body shall:

(a) make annual statements and estimates of the expenses of the district which shall be provided for by the levy and collection of ad valorem taxes upon the assessed value of all the real and personal property in the district;

(b) publish notice thereof; and

(c) have hearings thereon and adopt *an ordinance thereon* at the times and in the manner provided for incorporated cities and towns by the applicable portions of 7-12-4175.

(2) The governing body, on or before the second Monday in August of each year, shall fix, levy, and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, are applicable to the district taxes provided for under this section.

(3) No assessment for district purposes against the property within such district *may* exceed 12 mills upon each dollar of taxable valuation in any tax year."

Section 15. Section 7-15-2114, MCA, is amended to read:

"7-15-2114. Certain laws controlling. Insofar as the provisions of *this part* are inconsistent with the provisions of any other law, the provisions of *this part are* controlling."

Section 16. Section 7-15-4207, MCA, is amended to read:

"7-15-4207. Prohibition against discrimination. For all of the purposes of this part and part 43, no person may be subjected to discrimination because of *sex,* race, creed, *religion, age, physical or mental handicap,* color, or national origin."

Section 17. Section 7-15-4238, MCA, is amended to read:

"7-15-4238. Employment of necessary staff. The urban renewal agency or department or officers exercising urban renewal project powers shall be *supplied* with the necessary technical experts and such other agents and employees, permanent and temporary, as *are required.*"

Section 18. Section 7-15-4302, MCA, is amended to read:

"7-15-4302. Authorization to issue general obligation bonds. (1) For the purpose of 7-15-4267 or for the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project of a municipality, *the* municipality, in addition to any authority to issue bonds pursuant to 7-15-4301, may issue and sell its general obligation bonds.

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(2) Any bonds issued pursuant to this section shall be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality for public purposes generally.

(3) Aiding in the planning, undertaking, or carrying out of an approved urban renewal project *is considered* a single purpose for the issuance of general obligation bonds, and the proceeds of *the* bonds authorized for any such project may be used to finance the exercise of any and all powers conferred upon the municipality by this part and part 42 which are necessary or proper to complete *the* project in accordance with the approved plan and any modification thereof duly adopted by the local governing body."

Section 19. Section 7-15-4322, MCA, is amended to read:

"7-15-4322. Details relating to urban renewal bonds. (1) Bonds issued under 7-15-4301 may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates not exceeding 9% a year, be in such denomination or denominations, be in such form (either coupon or registered), carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place or places, be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics as may be provided by the resolution, ordinance, or trust indenture or mortgage authorized pursuant thereto.

(2) (a) *The* bonds may be sold at not less than 98% of par at public or private sale or may be exchanged for other bonds on the basis of par.

(b) *The* bonds may be sold to the federal government at private sale at not less than par, and *if* less than all of the authorized principal amount of *the* bonds is sold to the federal government, the balance may be sold at public or private sale at not less than 98% of par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government."

Section 20. Section 7-15-4402, MCA, is amended to read:

"7-15-4402. Definitions. *As used* in this part or part 45, unless the context *clearly indicates otherwise, the following definitions apply*:

(1) "Authority" or "housing authority" *means* a public body and a body corporate and politic organized in accordance with the provisions of this part for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(2) "Bonds" *means* any bonds, interim certificates, notes, debentures, or other obligations of the authority issued pursuant to this part or part 45.

(3) "City" *means* any city which is or is about to be included in the territorial boundaries of an authority.

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(4) "City clerk" and "mayor" mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor.

(5) "Commissioner" *means* one of the members of an authority appointed in accordance with the provisions of this part.

(6) "Community facilities" *means* real and personal property and buildings and equipment for recreational or social assemblies and for educational, health, or welfare purposes and necessary utilities, when designed primarily for the benefit and use of the housing authority and/or the occupants of the dwelling accommodations.

(7) "Contract" *means* any agreement of an authority with or for the benefit of an obligee, whether contained in a resolution, trust indenture, mortgage, lease, bond, or other instrument.

(8) "Council" *means* the legislative body, council, board of commissioners, board of trustees, or other body charged with governing *a* city.

(9) "Elderly families" *means* families the head of which (or his spouse) is 60 years of age or over and who otherwise qualify as persons of low income within the meaning of the definition set forth in subsection (16).

(10) "Federal government" *means* the United States or any agency or instrumentality, corporate or otherwise, of the United States.

(11) "Government" *means* the state and federal governments and any subdivision, agency, or instrumentality, corporate or otherwise, of either.

(12) (a) "Housing project" *means* all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking:

(i) to demolish, clear, remove, alter, or repair unsanitary or unsafe housing; and/or

(ii) to provide safe and sanitary dwelling accommodations for persons of low income.

(b) The term "housing project" may also be applied to the planning of the buildings and improvements; the acquisition of property; the demolition of existing structures; the construction, reconstruction, alteration, and repair of the improvements; and all other work in connection therewith.

(13) "Mortgage" *means* deeds of trust, mortgages, building and loan contracts, or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof.

(14) "Municipality" *means* any city, town, or incorporated village which is located within the territorial boundaries of an authority.

(15) "Obligee of the authority" or "obligee" *means* any bondholder, trustee for any bondholder, any lessor demising property to the authority used in connection with a housing project or any assignee or assignees of

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such lessor's interest or any part thereof, and the United States when it is a party to any contract with the authority.

(16) "Persons of low income" *means* persons or families who lack the amount of income which is necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings without overcrowding.

(17) "Real property" *means* lands, lands under water, structures, and any and all easements, franchises, and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise.

(18) "State" *means* the state of Montana.

(19) "Trust indenture" *means* instruments pledging the revenues of real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof."

Section 21. Section 7-15-4417, MCA, is amended to read:

"7-15-4417. Initial funding of housing authority. Immediately after the incorporation of *a* housing authority, the council or other governing body of *a* first- or second-class city included within the territorial boundaries of *the* authority:

(1) shall make an estimate of the amount of money necessary for the administrative expenses and overhead of the housing authority during the first year following the incorporation of *the* housing authority;

(2) shall appropriate such amount to the authority out of any money in the city treasury not appropriated to some other purpose; and

(3) shall cause the money so appropriated to be paid the authority as a donation."

Section 22. Section 7-15-4418, MCA, is amended to read:

"7-15-4418. Interim funding of housing authority. In addition to the power granted in 7-15-4417, any municipality located in whole or in part within the boundaries of a housing authority *may*, annually and from time to time, make donations or advances to the authority of such sums as the municipality in its discretion may determine."

Section 23. Section 7-15-4419, MCA, is amended to read:

"7-15-4419. Authority to reimburse municipality for loans. The authority, when it has money available therefor, shall reimburse *a* municipality for all advances made to it by way of loan."

Section 24. Section 7-15-4528, MCA, is amended to read:

"7-15-4528. Use of bond trustee. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of *the* bonds and/or obligations, the authority *may:*

(1) vest in a trustee the right to enforce any covenant made to secure *the payment of the bonds and/or obligations;*

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(2) provide for the powers and duties of *the* trustee *and* limit *his* liabilities; and

(3) provide the terms and conditions upon which the trustee or *a designated proportion of* the holders of bonds may enforce any covenant."

Section 25. Section 7-16-2324, MCA, is amended to read:

"7-16-2324. Sale, lease, or exchange of dedicated park lands. (1) For the purposes of this section and part 25 of chapter 8, lands dedicated to the public use for park or playground purposes under 76-3-606 and 76-3-607 or a similar statute or pursuant to any instrument not specifically conveying land to a governmental unit other than a county are *considered* county lands.

(2) A county may not sell, lease, or exchange lands dedicated for park or playground purposes except as provided under this section and part 25 of chapter 8.

(3) Prior to selling, leasing, or exchanging any county land dedicated to public use for park or playground purposes, a county shall:

(a) compile an inventory of all public parks and playgrounds within the county;

(b) prepare a comprehensive plan for the provision of outdoor recreation and open space within the county;

(c) determine that the proposed sale, lease, or exchange furthers or is consistent with the county's outdoor recreation and open space comprehensive plan;

(d) publish notice of intention to sell, lease, or dispose of such lands, giving the people of the county opportunity to be heard regarding such action;

(e) if the land is within an incorporated city or town, secure the approval of the governing body thereof for the action; and

(f) comply with any other applicable requirements under part 25 of chapter 8.

(4) Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to public use for park or playground purposes shall be paid into the park fund and used in the manner prescribed in 76-3-606 and 76-3-607 for cash received in lieu of dedication."

Section 26. Section 7-16-2326, MCA, is amended to read:

"7-16-2326. Discrimination in employment prohibited. No contract of employment may be entered into except in compliance with *federal and state statutes, orders, and rules* providing that there *may* be no discrimination in employment."

Section 27. Section 7-16-2331, MCA, is amended to read:

"7-16-2331. Disbursement of money. All money paid out by the park commissioners under the provisions of this part shall be by warrant

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drawn upon the county *treasury*, which may be signed by the secretary and countersigned by the president or, in his absence, by the vice-president of the board of park commissioners. Upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum is in attendance and voting and with due notice and report being made to the board of county commissioners, payments so authorized may be made by warrant drawn upon the county *treasury*, signed by the chairman of the board of county commissioners and countersigned by the county clerk and recorder."

Section 28. Section 7-16-4104, MCA, is amended to read:

"7-16-4104. Authorization for municipal indebtedness for various cultural, social, and recreational purposes. (1) A city or town council or commission *may* contract an indebtedness on behalf of *the* city or town, upon the credit thereof, by borrowing money or issuing bonds:

(a) for the purpose of purchasing and improving lands for public parks and grounds;

(b) for procuring by purchase, construction, or otherwise swimming pools, athletic fields, skating rinks, playgrounds, museums, a golf course, a site and building for a civic center, a youth center, or combination thereof; and

(c) for furnishing and equipping the same.

(2) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, *may* not at any time exceed 3% of the value of the taxable property of the city or town as ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness. No money *may* be borrowed on bonds issued for the purchase of lands and improving *the* same for any such purpose until the proposition has been submitted to the vote of *the* qualified *electors of* the city or town and a majority vote is cast in favor thereof."

Section 29. Section 7-16-4107, MCA, is amended to read:

"7-16-4107. Use of park funds for public recreation. *(1)* Any city or town, including any board of park commissioners, may expend funds from the band fund and the park fund of *the* city or town for the purpose of operating a program of public recreation and playgrounds and *for this purpose may* acquire, equip, and maintain land, buildings, and other recreation facilities.

(2) Any school district may cooperate in such program."

Section 30. Section 7-16-4111, MCA, is amended to read:

"7-16-4111. Financing of public baths. To defray the cost and expense of maintaining the public bathing place authorized by 7-16-4110, *a* city or town *may* contract an indebtedness upon behalf of *the* city or town and upon the credit thereof by borrowing money or issuing bonds. No money may be borrowed and no bonds may be issued until the proposition has been submitted to the vote of the *qualified electors* of the city or town and a majority vote *is* cast therefor."

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Section 31. Section 7-16-4203, MCA, is amended to read:

"7-16-4203. Qualifications of park commissioners. The six persons to be so appointed shall have the same qualifications for the office of park commissioner as are required by 7-4-4301 for the office of mayor."

Section 32. Section 7-16-4228, MCA, is amended to read:

"7-16-4228. Disbursement of money. All money paid out by the park commissioners under the provisions of this part shall be by warrant drawn upon the city *treasury*, which shall be signed by the city clerk and countersigned by the president or, in his absence, by the vice-president of the board of park commissioners."

Approved March 23, 1979.

CHAPTER NO. 254

AN ACT TO COMPENSATE RETIRED JUDGES AND JUSTICES FOR TEMPORARY SERVICE; AMENDING SECTION 19-5-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-5-103, MCA, is amended to read:

"19-5-103. Call of retired judge for duty. (1) Every judge or justice receiving retirement pay under the provisions of this chapter shall, if physically and mentally able, be subject to call by the supreme court or the chief justice thereof to aid and assist the supreme court or any district court under such directions as the supreme court may give, including the examination of the facts and cases before the court, the examination of authorities cited, and the preparation of opinions for and on behalf of the court. The opinions, when and if and to the extent approved by the court, may by the court be ordered to constitute the opinion of such court. Such court and such retired judge or justice may, subject to any rule which the supreme court may adopt, perform any and all duties preliminary to the final disposition of cases insofar as not inconsistent with the constitution of the state.

(2) Such retired judge or justice, when called to service as herein provided, shall be reimbursed for his actual expenses, if any, in responding to such call. *In addition, for each day of temporary service a retired justice or judge is entitled to receive compensation in an amount equal to one-twentieth of the monthly salary then currently applicable to the judicial position in which the temporary service is rendered minus an amount equal to one-twentieth of the monthly retirement allowance the retired justice or judge is receiving for each day of service rendered."*

Approved March 23, 1979.

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CHAPTER NO. 255

AN ACT TO REGULATE THE TRAPPING OF PREDATORS AND NONGAME WILDLIFE BY NONRESIDENTS; AMENDING SECTION 87-2-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-103, MCA, is amended to read:

"87-2-103. License required. It is unlawful for any person to:

(1) pursue, hunt, trap, take, shoot, or kill or attempt to trap, take, shoot, or kill any game animal, any game bird, or any fur-bearing animal or take, kill, trap, or fish for any fish within this state or have, keep, or possess within this state any game animal, game bird, fur-bearing animal, game fish, or parts thereof, except as herein provided or as provided by the department; or

(2) pursue, hunt, trap, take, shoot, or kill or attempt to trap, take, shoot, or kill any game animal, game bird, or fur-bearing animal or take, kill, trap, or fish for any fish, except at the places and during the periods and in the manner herein defined or as defined by the department; or

(3) pursue, hunt, trap, take, shoot, or kill or attempt to trap, take, shoot, or kill any game animal, game bird, or fur-bearing animal or take, kill, trap, or fish for any fish within this state or have, keep, possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts thereof without first having obtained a proper license or permit from the department to do so; *or*

(4) trap or snare or attempt to trap or snare predatory animals or nongame wildlife without a license as prescribed in [section 2] if that person is not a resident as defined in 87-2-102."

Section 2. **Class C-2—nonresident trapper's license.** (1) Any person not a resident as defined in 87-2-102, upon making application to the department and paying a fee of $250 to the department, is entitled to a nonresident trapper's license that authorizes the holder to trap and snare predatory animals and nongame wildlife within the state. Such trapping or snaring is permitted only after October 15 of each license year, in such manner as may be lawful under the laws of the state and the rules of the commission, and at such places as may be designated in the license.

(2) Any person not a resident whose state of residence does not sell nonresident trapper's licenses to Montanans may not be issued a Class C-2 license under subsection (1).

Section 3. **Permission of landowner required.** Every holder of a Class C-2 trapper's license shall obtain written permission from the landowner, lessee, or his agent before trapping or snaring predatory animals or nongame wildlife on private property.

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Section 4. **Codification.** Sections 2 and 3 are intended to be codified as an integral part of Title 87, chapter 2, part 6, and the provisions contained in Title 87, chapter 2, part 6, apply to sections 2 and 3.

Approved March 23, 1979.

CHAPTER NO. 256

AN ACT TO CLARIFY THE LOCAL GOVERNMENT LAWS RELATING TO THE ADMINISTRATION AND INVESTMENT OF MONEY IN SINKING FUNDS FOR LOCAL GOVERNMENT GENERAL OBLIGATION BONDS; AMENDING SECTIONS 7-7-123, 7-7-124, 7-7-2261, 7-7-2270, 7-7-4261, AND 7-7-4270, MCA, AND REPEALING SECTIONS 7-7-2271 AND 7-7-4271, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-123, MCA, is amended to read:

"7-7-123. Investment of sinking funds of local governments. (1) (a) *Except as provided in 7-7-124 and whenever outstanding bonds cannot be purchased pursuant to 7-7-2270 or 7-7-4270, the* board of county commissioners of a county and the council or commission of a city or town shall invest so much of the bond sinking funds of the county, city, or town as is not needed for the payment of bonds or interest coupons in *general obligation bonds or securities of the* United States; state bonds or securities; time or savings deposits; county, city, or school district bonds; county or city warrants; or other bonds or securities which are supported by general taxation, except irrigation district bonds and special improvement district or maintenance district bonds or warrants. All those investments must first be approved by the department of community affairs.

(b) All those bonds, securities, or time or savings deposits must be due and payable at least 60 days before the obligations for the payment of which the sinking fund was established are due and payable.

(2) The bonds, securities, and any time or savings deposits in which any sinking funds are invested shall be kept in the custody of the county or city treasurer or town clerk and held by him for the benefit of the county, city, or town. The treasurer shall properly protect the bonds, securities, and any time or savings deposits by insurance, the use of safety deposit boxes, or other means, the expense of which is a proper charge against the county, city, or town.

(3) All money derived from interest on sinking fund investments as authorized by this section shall be credited by the treasurer of the county or city or the town clerk to the sinking fund for which the investment was made."

Section 2. Section 7-7-124, MCA, is amended to read:

"7-7-124. Limitation on investment of sinking funds. If any of the bonds for which the sinking fund was established are not yet due but

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are then redeemable under optional provisions, the *money in the* sinking *fund is* not subject to investment but shall be used and applied in payment and redemption of the bonds."

Section 3. Section 7-7-2261, MCA, is amended to read:

"7-7-2261. Maintenance of accounts for bond issues. (1) The county treasurer of each county shall keep in his books a special and separate sinking fund account for each series or issue of outstanding bonds issued by his county. Each such fund must at all times show the exact condition thereof.

(2) All taxes collected for interest and principal on county bonds shall be placed to the credit of the sinking fund for which the *taxes* were levied.

(3) Interest from investment of money *in a* sinking fund *account* may, in the discretion of the board of county commissioners, be used as it accrues to fulfill or complete the specific project for which the bonds were issued.

(4) The sinking fund shall be administered as provided in 7-7-123, 7-7-124, and 7-7-2270."

Section 4. Section 7-7-2270, MCA, is amended to read:

"7-7-2270. Authority to purchase outstanding bonds. Whenever there is available money in any sinking fund over and above the amount required for payment of *the* principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more outstanding bonds of the issue or series to which *the* sinking fund belongs and whenever such bonds are not held by the state of Montana and are not *subject to redemption*, the county treasurer, at the direction of the board of county commissioners, shall purchase such bonds if this can be done at not more than par and accrued interest or at such reasonable premium as the board may feel justified in paying, not in any case exceeding 5%."

Section 5. Section 7-7-4261, MCA, is amended to read:

"7-7-4261. Maintenance of accounts for bond issues. (1) The city treasurer or town clerk shall keep in his books a special and separate sinking fund account for each issue or series of outstanding bonds issued by his city or town. Each such fund must at all times show the exact condition thereof.

(2) All taxes collected for interest and principal on city or town bonds shall be placed to the credit of the sinking fund for which the *taxes* were levied.

(3) The sinking fund shall be administered as provided in 7-7-123, 7-7-124, and 7-7-4270."

Section 6. Section 7-7-4270, MCA, is amended to read:

"7-7-4270. Authority to buy outstanding bonds. Whenever there is available money in any sinking fund over and above the amount required for payment of principal and interest becoming due on the next

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interest payment date and sufficient to pay and redeem one or more outstanding bonds of the issue or series to which *the* sinking fund belongs and whenever such bonds are not held by the state and are not subject to redemption, the city treasurer or town clerk, at the direction of the city or town council, shall purchase such bonds if this can be done at not more than par and accrued interest or at such reasonable premium as the council may feel justified in paying, not, in any case, exceeding 5%."

Section 7. **Repealer.** Sections 7-7-2271 and 7-7-4271, MCA, are repealed.

Approved March 23, 1979.

CHAPTER NO. 257

AN ACT REQUIRING RECIPIENTS OF PUBLIC ASSISTANCE TO REPORT INCOME NOT PREVIOUSLY DECLARED; REQUIRING RECIPIENTS TO REPAY THE STATE FOR ASSISTANCE OVERPAYMENTS; PROVIDING A CIVIL PENALTY WHEN FRAUDULENT MEANS ARE USED TO OBTAIN ASSISTANCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Recipients to report income not previously declared.** Recipients of public assistance shall notify the department of social and rehabilitation services within 10 days of the receipt of any income or resources not previously declared to the department. Failure of the department to verify information provided by the recipient does not absolve the recipient from his obligation to provide accurate information to the department.

Section 2. **Overpayment of assistance — civil penalty when fraud.** (1) If, due to department error, a recipient receives public assistance for which he is not eligible, the portion of payment that he is not entitled to receive shall be returned at the discretion of the department.

(2) If a person obtains any part of an assistance payment through fraudulent means as specified in 53-2-107, 125% of the amount of assistance to which the person was not entitled shall be repaid and, until fully paid, is a debt due the state.

Approved March 23, 1979.

CHAPTER NO. 258

AN ACT TO CHANGE THE MAXIMUM LEVY USED TO SUPPORT COUNTY LIVESTOCK PROTECTIVE COMMITTEES OR DISTRICT CATTLE PROTECTIVE COMMITTEES FROM 25 CENTS TO 50 CENTS PER HEAD; AMENDING SECTIONS 81-6-104, 81-6-204, AND 81-6-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-6-104, MCA, is amended to read:

"81-6-104. Tax levy — special fund. Said county livestock protective committee may recommend to the board of county commissioners the

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levy of a tax in an amount not to exceed *50* cents per head on all assessable cattle in the county on January 1, and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property and when collected to be deposited by the county treasurer in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part."

Section 2. Section 81-6-204, MCA, is amended to read:

"81-6-204. Tax levy — deposit of proceeds. Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed *50* cents per head on all assessable cattle in the district on January 1, and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property and when collected to be deposited in the county treasury of one of the counties in the district, to be selected by the district cattle protective committee, in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part."

Section 3. Section 81-6-209, MCA, is amended to read:

"81-6-209. Tax levy — deposit of proceeds. Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed *50* cents per head on all assessable cattle in the district on January 1, and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property and when collected to be deposited in the county treasury in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part."

Approved March 23, 1979.

CHAPTER NO. 259

AN ACT TO REVISE THE FORMULA FOR COMPUTING BASE RENTAL IN FIXING ANNUAL GRAZING RENTALS ON STATE LANDS; AMENDING SECTION 77-6-507, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-6-507, MCA, is amended to read:

"77-6-507. Formula for fixing annual rental. (1) In this section:

(a) "animal unit" means one cow, one horse, five sheep, or five goats;

(b) "animal-unit-month carrying capacity" means that amount of natural feed necessary for the complete subsistence of one animal unit for one month.

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(2) The board shall establish the per annum rental rate per section of all grazing lands which are the property of the state upon the animal-unit-month basis as provided in this section.

(3) In fixing the minimum annual rental per section, the following formula shall be used:

(a) The base rental shall be computed by multiplying *six* times the average price per pound of beef cattle on the farm in Montana for the previous year times the animal-unit-month carrying capacity of the land.

(b) The minimum annual rental for grazing lands with an annual carrying capacity of more than 14 and less than 20 animal units per section is the base rental.

(c) The minimum annual rental for grazing lands with an annual carrying capacity of more than 19 animal units per section is 10 cents more than the base rental.

(d) The minimum annual rental for grazing lands with an annual carrying capacity of less than 15 animal units per section is 10 cents less than the base rental.

(4) The carrying capacity of the land to be used in the above formula shall be in accordance with the determinations of the department made under 77-6-201.

(5) The average price per pound of beef cattle on the farm in Montana shall be taken from statistics published by the United States department of agriculture current at the time of computation of the rental or from other reliable sources current at such time."

Approved March 23, 1979.

CHAPTER NO. 260

AN ACT TO ALLOW ANY INDIVIDUAL, PARTNERSHIP, CORPORATION, OR ASSOCIATION TO USE AN ASSUMED BUSINESS NAME AND TO PROVIDE REGULATIONS FOR THE REGISTRATION OF AN ASSUMED BUSINESS NAME; REPEALING SECTIONS 30-13-111 AND 35-11-101 THROUGH 35-11-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Assumed business name" means any business name other than the full, true, and correct name of a person.

(2) "Person" means any individual, partnership, corporation, or other association.

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Section 2. **Registration of assumed business name similar to reserved or registered name or mark prohibited.** When an application for registration or amendment to the registration of an assumed business name contains an assumed business name which is the same as or deceptively similar to an assumed business name already registered or to any corporate name, limited partnership, trademark, or service mark registered with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

Section 3. **Application for registration of assumed business name.** All persons transacting business in this state under an assumed business name shall execute, verify, and file with the secretary of state, on forms furnished by the secretary of state, an application for registration of the assumed business name, including but not limited to the following information:

(1) the name and address, including the street name and number, of applicant;

(2) the complete name of proposed assumed business name;

(3) date of first use, in commerce, of assumed business name;

(4) description of business transacted under such name; and

(5) the name of county or counties in which business is being transacted.

Section 4. **Filing application for registration — issuance of certificate.** (1) Duplicate originals of application for registration of assumed business name shall be delivered to the secretary of state. If the secretary of state finds the application complies with the provisions of [this act], he shall, when all fees have been paid as provided in [this act]:

(a) endorse on each of the duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of the duplicate originals in his office; and

(c) issue a certificate of registration, to which he shall affix the other original.

(2) The certificate of registration, together with the duplicate original of the application for registration of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant.

(3) The registration of an assumed business name remains in effect until canceled.

Section 5. **When registration of assumed business name by foreign corporation prohibited.** No foreign corporation which does not have an effective certificate of authority to transact business in this state, may register an assumed business name as provided for in [this act].

Section 6. **Term and renewal of assumed business name registration.** (1) Registration of an assumed business name is effective for a term of 5 years from the date of registration. Upon application for renewal

of registration on forms furnished by the secretary of state, the registration may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of registration of an assumed business name, the secretary of state shall notify the applicant of record of the pending expiration by addressing a notice to the last-known address of such applicant.

(3) If the applicant or person in whose name an assumed business name is registered fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of such registration, the secretary of state shall cancel the registration.

Section 7. **Application for renewal of assumed business name.** Duplicate originals of application for renewal of registration of an assumed business name shall be executed, verified, and delivered to the secretary of state. The application shall include but not be limited to the following information:

(1) the complete assumed business name;

(2) the name and address, including street name and number, if any, of applicant;

(3) description of business transacted; and

(4) the name of the county or counties in which business is being transacted.

Section 8. **Filing of application for renewal of registration of assumed business name — issuance of certificate thereon.** (1) If the secretary of state finds the application complies with the provisions of [this act], he shall, when all fees have been paid as provided in [this act]:

(a) endorse on each of the duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of the duplicate originals in his office; and

(c) issue a certificate of renewal, to which he shall affix the other duplicate original.

(2) The certificate of renewal, together with the duplicate original of application for renewal of registration of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant.

Section 9. **Amendment.** An amendment to registration of an assumed business name shall be filed with the secretary of state within 60 days after any one of the following events occurs:

(1) there is a change in the name or identity of the person or persons transacting or having interest in the business for which the name is registered;

(2) there is a change in the identity of the county or counties in which the name is or is intended to be used;

(3) a person having an interest in the business with a registered assumed business name withdraws from the business or dies; or

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(4) the registrant wishes to change the name of a registered assumed business name.

Section 10. **Filing amendment to registration of assumed business name — issuance of certificate thereon.** (1) Duplicate originals of amendment to the registration of an assumed business name, executed and verified on forms furnished by the secretary of state, shall be delivered to the secretary of state. The application for amended registration of an assumed business name shall include but not be limited to the following information:

(a) complete assumed business name prior to adoption of amendment;

(b) complete new assumed business name, if applicable;

(c) name and address of the registrant, including street name and number of the business office;

(d) if the name of any person having an interest in the business with a registered assumed business name is to be changed, the new name of the person having an interest in the business with such registered assumed business name;

(e) the name of the county or counties in which the name is being used;

(f) if there is a change in the identity of the county or counties or addition of a county or counties in which the assumed business name is being used or is to be used, the name(s) of the new county or counties;

(g) if a person or persons having an interest in a business with a registered assumed name withdraws or dies, a statement of such fact; and

(h) a statement that the amended registration of assumed business name supersedes the original registration and all amendments thereto.

(2) If the secretary of state finds that the application for amended registration of assumed business name complies with [this act], he shall, when all fees have been paid as provided in [this act]:

(a) endorse on each of the duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of the duplicate originals in his office; and

(c) issue a certificate of amendment, to which he shall affix the other duplicate original.

(3) The certificate of amendment, together with the duplicate original of the amendment affixed thereto by the secretary of state, shall be returned to the registrant.

(4) The failure of the registrant of an assumed business name to comply with the requirements of this section shall result in the cancellation by the secretary of state of the registration.

Section 11. **Reservation of proposed assumed business name.** Any authorized person who has not commenced business but intends to

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commence business may reserve an assumed business name which is not in conflict with the provisions of [section 2] for a term of 120 days by delivering to the secretary of state, on forms furnished by the secretary of state, an application for reservation of an assumed business name, including but not limited to the following information:

(a) the complete assumed business name to be reserved;

(b) the name and address, including street name and number, if any, of applicant;

(c) the date applicant intends to commence business;

(d) description of business applicant intends to transact; and

(e) the county or counties in which applicant intends to conduct business.

Section 12. **Filing application for reservation of assumed business name — issuance of certificate thereon.** (1) Duplicate originals of application for reservation of an assumed business name, duly executed and verified by the applicant, shall be delivered to the secretary of state. If the secretary of state finds the application complies with the provisions of [this act], he shall, when all fees have been paid as provided in [this act]:

(a) endorse on each of the duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of the duplicate originals in his office;

(c) issue a certificate of reservation, to which he shall affix the other duplicate original.

(2) The certificate of reservation, together with the duplicate original of application for reservation of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant.

Section 13. **Voluntary cancellation of registration of assumed business name.** (1) When the registrant of record of a registered assumed business name wishes to cancel such registration, he shall deliver to the secretary of state an executed and verified original affidavit of cancellation of registration of an assumed business name, which shall include but not be limited to the following information:

(a) complete name of the registered assumed business name to be canceled; and

(b) name and address, including the street name and number, if any, of the registrant of record.

(2) If the secretary of state finds the affidavit complies with the provisions of this section, he shall file it in his office and mail a letter of acknowledgment of such filing to the registrant of record.

Section 14. **Cancellation of registration of assumed business name upon dissolution of domestic corporation — withdrawal or**

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revocation of foreign corporation's authority to transact business. (1) If the only party of interest of an assumed business name is a domestic corporation which has been dissolved, the secretary of state shall cancel the registration.

(2) If the only party of interest of an assumed business name is a foreign corporation whose authority to transact business in this state has been withdrawn or revoked, the secretary of state shall cancel the registration.

Section 15. **Effect of failing to file application for registration of assumed business name.** No person or persons conducting or transacting business in this state without an effective certificate of registration of an assumed business name or having any interest therein may maintain any suit or action in any of the courts of this state under such name.

Section 16. **Evidentiary effect of certificates and documents of secretary of state.** All certificates issued by the secretary of state in accordance with the provisions of [this act] and all copies of documents filed in his office in accordance with the provisions of [this act] when certified by him shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated therein.

Section 17. **Fees for filing documents and issuing certificates.** The secretary of state shall collect for:

(1) filing application for registration of assumed business name and issuing certificate thereon, $15;

(2) filing application for renewal of registration of assumed business name and issuing certificate thereon, $10;

(3) filing amendment to registration of assumed business name and issuing certificate thereon, $10;

(4) filing application for reservation of assumed business name and issuing certificate thereon, $15; and

(5) filing any other instrument not provided for in this section, $5.

Section 18. **Repealer.** Sections 30-13-111 and 35-11-101 through 35-11-103, MCA, are repealed.

Approved March 23, 1979.

CHAPTER NO. 261

AN ACT TO PUNISH THE COMMISSION OF AN ASSAULT UPON A YOUTH LESS THAN 14 YEARS OLD BY AN ADULT UNDER CERTAIN CIRCUMSTANCES BY IMPRISONMENT IN THE STATE PRISON FOR A TERM NOT TO EXCEED 5 YEARS; AMENDING SECTION 45-5-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-201, MCA, is amended to read:

"45-5-201. Assault. (1) A person commits the offense of assault if he:

(a) purposely or knowingly causes bodily injury to another;

(b) negligently causes bodily injury to another with a weapon;

(c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in another. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused shall be presumed in any case in which a person knowingly points a firearm at or in the direction of another, whether or not the offender believes the firearm to be loaded.

(2) *Except as provided in subsection (3), a* person convicted of assault shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(3) If the victim is less than 14 years old and the offender is 18 or more years old, the offender, upon conviction under subsection (1)(a), shall be imprisoned in the state prison for a term not to exceed 5 years."

Approved March 26, 1979.

CHAPTER NO. 262

AN ACT TO GENERALLY REVISE AND CLARIFY THE LOCAL GOVERNMENT LAWS RELATING TO ALTERNATIVE FORMS OF LOCAL GOVERNMENT; REPEALING SECTIONS 11-3221 THROUGH 11-3227 AND 11-3541 THROUGH 11-3547, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-3-101, MCA, is amended to read:

"7-3-101. Compliance with constitution. (1) The purpose of parts 1 through 7 is to comply with Article XI, section 3(1), of the Montana constitution, which provides: "The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question."

(2) Parts 1 through 7 establish the alternative forms of government for cities, towns, counties, and consolidated governments. These parts shall be liberally construed to facilitate the adoption of a form of local government."

Section 2. Section 7-3-1101, MCA, is amended to read:

"7-3-1101. City-county consolidation authorized. (1) A county and a city or town within the county may unite to form a single unit of local government under the provisions of this part.

(2) An alternative form of government, including a charter form, for a consolidated unit of government may be submitted to the voters only by

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those study commissions that have cooperated *in the formulation of the plan*. A majority vote by each of the affected study commissions is required for the submission of an alternative form of government for a consolidated unit of local government. The affected study commissions submitting a consolidated form shall issue a single joint report and proposal.

(3) An alternative form of government for a consolidated unit of local government does not need to include more than one municipality. A municipality may not be included unless the local government study commission of that municipality participates in the cooperative study and unless its study commission by a majority vote approves the proposed alternative plan for the consolidated government.

(4) This part shall not apply to excluded municipalities, school districts, conservancy districts, drainage districts, irrigation districts, soil and water conservation districts, or livestock districts."

Section 3. Section 7-3-1204, MCA, is amended to read:

"7-3-1204. Petition for city-county consolidated government — election required. (1) The question of the abandonment and termination of the separate corporate existence and government of a county and of each city and town therein and the consolidation and merging of the existence and government of *the* county and each of the cities and towns therein into one municipal corporation and government under the provisions of this part and part 13 shall be submitted to the qualified electors of *the* county if a petition is filed in the office of the county clerk of *the* county, signed by at least 20% of the electors of *the* county whose names appear on the official register of voters of the county on the date of the filing of *the* petition, requesting that such question be submitted to the qualified electors of the county.

(2) *The* petition shall be substantially in the form and shall be signed, verified, and filed in the manner prescribed in this part for initiative *and* referendum petitions and shall designate therein the name by which *the* consolidated government is to be known, which must be either that of the county or of some one of the cities or towns therein."

Section 4. Section 7-3-1209, MCA, is amended to read:

"7-3-1209. Resolution declaring creation of consolidated government. (1) At the first meeting of the commission whose members are first elected under the provisions of this part, *the* commission shall adopt a resolution reciting the filing of the petition provided for in 7-3-1204, the ordering and holding of a special election as requested in *the* petition, the result of *the* election and the holding of the special election for and the election of the members of the first commission, and the name and designation of the consolidated municipality. *This* resolution must be in duplicate and signed by all of the members of the commission and also entered at length on the journal of the commission. One copy of *the resolution* must be filed in the office of the clerk of the commission, and the other copy must be transmitted to and filed in the office of the secretary of state.

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(2) Immediately upon the adoption of *the* resolution by the commission, the separate corporate existence of the county and of each city and town therein *is considered* to be consolidated and merged into one municipal corporation under the name selected, designated, and adopted as provided in this part, and *the* consolidated municipality *is considered* to have succeeded to and to possess and own all of the property and assets of every kind and description and shall, *except* as otherwise provided, become responsible for all of the obligations and liabilities of the county, cities, and towns consolidated and merged."

Section 5. Section 7-3-1214, MCA, is amended to read:

"7-3-1214. Consolidated municipality commission. (1) Except as otherwise provided in this part or part 13, all powers of the consolidated municipality *are* vested in a commission. For the purpose of determining the number of members composing *the* commission, consolidated municipalities organized under the provisions of this part and part 13 shall be classified and all of the provisions of 7-1-2111 and 7-1-2112 *govern and control* the classification of *the* consolidated municipalities.

(2) (a) In consolidated municipalities of the first class, *the* commission shall consist of seven members.

(b) In consolidated municipalities of the second class, third class, *or* fourth class, *the* commission shall consist of five members.

(c) In consolidated municipalities of the fifth class, sixth class, *or* seventh class, *the* commission shall consist of three members."

Section 6. Section 7-3-1215, MCA, is amended to read:

"7-3-1215. Qualifications for commission. (1) Members of the commission must be qualified electors of the consolidated municipality and *may* not hold any other public office except that of notary public or member of the state militia.

(2) A member of the commission ceasing to possess any of the qualifications specified in this section shall immediately forfeit his office."

Section 7. Section 7-3-1218, MCA, is amended to read:

"7-3-1218. Meetings of commission. (1) (a) Except as provided in subsection (1)(b), at 2 p.m. on *July 1* following a regular municipal election, the commission shall meet at the courthouse in the consolidated municipality and the newly elected members shall assume the duties of office.

(b) The first meeting of *the* commission after the special election at which the first members of the commission are elected shall be held at 2 p.m. on the first day of the third month following *the* special election, and at *this* meeting the members of *the* commission shall determine by lot the members whose terms will expire on June 30 in the first year following such special election and the members whose terms will expire on *June 30* in the third year following such election.

(2) Thereafter the commission shall meet at such times as may be prescribed by ordinance or resolution, but not less frequently than once in

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each month. Special meetings shall be called by the clerk of the commission upon written request of the president, the manager, or a majority of the members of the commission. *A* notice *of a meeting* shall state the subject to be considered at the meeting, and no other subject shall be considered at *the* meeting.

(3) All meetings of the commission and of committees thereof shall be open to the public, and the rules of the commission shall provide that citizens of the municipality shall have a reasonable opportunity to be heard at any meeting in regard to any matter considered thereat."

Section 8. Section 7-3-1225, MCA, is amended to read:

"7-3-1225. Vote required on certain measures. No measure making or amending a grant, renewal, or extension of a franchise or other special privilege *may* be passed without first submitting the application therefor to the *qualified electors* in the manner provided by 7-5-4321 and 7-5-4322."

Section 9. Section 7-3-1233, MCA, is amended to read:

"7-3-1233. Details relating to initiative and referendum petitions. (1) The signatures to initiative *or* referendum petitions need not all be appended to one paper, but to each separate petition paper there shall be attached an affidavit of the circulator thereof as provided by this section. Each signer of any such petition paper shall sign his name in ink or indelible pencil and shall indicate after his name his place of residence by street and number or other description sufficient to identify the place. There shall appear on each petition paper the names and addresses of five electors of the municipality who, as a committee of the petitioners, shall be regarded as responsible for the circulation and filing of the petition. The affidavit attached to the petition paper shall be as follows:

State of Montana, city and county of ...., ..., being duly sworn, deposes and says that he is the circulator of the foregoing paper and that the signatures appended thereto were made in his presence and are the genuine signatures of the persons whose names they purport to be.

Signed .....

Subscribed and sworn to before me this .... day of ...., 19...

.....
Notary public for the state of Montana
Residing at ....., Montana
My commission expires .....

(2) All petition papers comprising an initiative *or* referendum petition shall be assembled and filed with the clerk as one instrument. Within 10 days after a petition is filed, the clerk shall determine whether it is signed by a sufficient number of electors and shall attach thereto a certificate showing the result of his examination. If he *certifies* that the petition is insufficient, he shall set forth in his certificate the particulars in which it is defective and shall at once notify the committee of the petitioners of his findings.

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(3) An initiative *or* referendum petition may be amended at any time within 10 days after the making of a certificate of insufficiency by the clerk, by filing a supplementary petition upon additional papers signed and filed as provided in case of an original petition. The clerk shall, within 5 days after such amendment is filed, make examination of the amended petition, and if his certificate *shows* the petition still to be insufficient, he shall file it in his office and notify the committee of the petitioners of his findings and no further action shall be had on such insufficient petition. The finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose."

Section 10. Section 7-3-1248, MCA, is amended to read:

"7-3-1248. Departments of consolidated municipality. (1) (a) In consolidated municipalities of the first, second, third, *or* fourth *class*, there shall be a department of finance, a police department, a department of public works, a department of health, a fire department, and such other departments and offices as may be established by ordinance.

(b) In consolidated municipalities of the fifth, sixth, *or* seventh *class*, there shall be a department of finance, a police department, a department of public works, a department of health, and such other departments and offices as may be established by ordinance.

(2) The commission may change or abolish any department or office established by ordinance and may prescribe, combine, distribute, or discontinue the functions and duties thereof. Additional functions and duties may be by ordinance assigned to departments and offices created by this part or part 13, but no function or duty assigned by this part or part 13 to any such department or office shall be discontinued or assigned to any other department or office. If the manager so recommends and the commission so authorizes, the manager may appoint one person to act as the head of two or more departments or offices, but the department of law *may* not thus be joined with any other department, nor *may* the manager be authorized to act as head of the department of finance or of any office therein other than of purchasing agent or assessor."

Section 11. Section 7-3-1272, MCA, is amended to read:

"7-3-1272. Procedure for primary election. (1) A municipal primary election for the choice of members of the commission shall be held on the last Tuesday in April in each year in which members of the commission are to be elected.

(2) All candidates for the commission receiving a majority of the votes cast at the municipal primary election shall be *considered* and declared elected to the commission. If candidates equal to the number of members of the commission to be elected do not receive a majority of the votes cast at such primary election, a municipal *general* election shall be held on the first Tuesday in June next following the election."

Section 12. Section 7-3-1331, MCA, is amended to read:

"7-3-1331. Department of public works. (1) The department of public works *is* in *the* charge of a director, who shall manage and have

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charge of the construction, repair, improvement, and maintenance of all public buildings; of roads, streets, alleys, sidewalks, bridges, viaducts, and other public ways; of sewers, drains, ditches, culverts, streams, and watercourses; and of boulevards, parks, playgrounds, cemeteries, and other public places and grounds dedicated to public use. He shall manage and control all public cemeteries, crematories, market places or houses, garbage and sewage disposal plants and farms, and all public utilities belonging to the municipality or any subdivision thereof and shall have charge of the enforcement of the obligations to the municipality of all privately owned or operated public utilities enforceable by the municipality. He shall have charge of the cleaning, sprinkling, and lighting of the streets and the collection and disposal of garbage and waste. He shall also be responsible for the making and preservation of all surveys, maps, plans, drawings, and estimates for such public work and for the preservation of contracts, papers, plans, tools, and appliances belonging to the municipality and pertaining to the functions of the department.

(2) The director of public works shall have the qualifications prescribed by law for county surveyors, and in addition to the duties required by this part or part 12 and by the ordinances of the municipality, he shall have the powers and shall, either in person or by a deputy having the qualifications prescribed by law for county surveyors, perform the duties required of county surveyors by the laws of the state."

Section 13. Section 7-3-1341, MCA, is amended to read:

"7-3-1341. Department of law. (1) The department of law *is* in *the* charge of a director to be appointed by the commission without definite term, who shall be a resident and elector of the municipality and who shall possess all of the qualifications required of county attorneys.

(2) He shall have all the powers and, either personally or by such assistants as he may designate, shall perform all the duties that are prescribed for county attorneys, city attorneys, and public administrators, and in addition thereto, he shall be chief legal adviser of and attorney and counsel for the municipality and of all departments and offices thereof and shall perform such other duties as may be required by the commission.

(3) He shall qualify by taking the oath of office prescribed by the constitution and giving a bond in the amount required of a public administrator in a county of the same class. He shall receive from the state as part of his salary the same amount which is paid by the state to county attorneys in counties of the same class, and the remainder of his salary shall be paid by the municipality. For all purposes in connection with criminal prosecutions he shall be known and designated as "county attorney of the city and county of ....."."

Section 14. Section 7-3-1342, MCA, is amended to read:

"7-3-1342. City court. (1) A city court is established in and for each municipality, with the jurisdiction, powers, and duties within the municipality provided by general law for city courts in cities and towns and for justices of the peace.

(2) *The commission shall by ordinance determine the number of judges required for operation of the city court. City court judges are to*

be elected every 4 years in a nonpartisan election held in conjunction with the regularly scheduled general election. The term of office for city judge is 4 years.

(3) The qualifications to hold the office of city judge shall be set by ordinance by the commission. The ordinance shall be consistent with any rules adopted by the Montana supreme court on city judge qualifications.

(4) Whenever a vacancy occurs in the office of city judge, the commission shall appoint a qualified individual to serve for the remainder of the term. The compensation of the city judge or judges shall be fixed by the commission."

Section 15. Section 7-3-1343, MCA, is amended to read:

"7-3-1343. Police department. (1) The police department *is* in *the* charge of a director, who shall be chief of the police force of the municipality. The director shall have the powers and perform the duties conferred on and required of sheriffs.

(2) Officers and patrolmen of the police department, subordinate to the director, have the powers and duties conferred on and required of police officers and patrolmen in cities and towns by the laws of this state and such powers and duties as may be conferred and required by the ordinances of the municipality. Police officers and patrolmen have the powers and duties conferred on and required of deputy sheriffs by the general laws of the state.

(3) For the purpose of serving and making return on all criminal and civil process, executing judgments, decrees, and orders of court, and making sales thereunder and returns thereof, the director shall be known and designated as Sheriff of the city and county of ...., and each police officer and patrolman shall be known and designated as deputy sheriff."

Section 16. Section 7-3-1345, MCA, is amended to read:

"7-3-1345. Fire department. (1) The fire department of the municipality *is* in *the* charge of a director, who shall be chief thereof and who shall manage and control the department in the manner prescribed by the ordinances of the municipality.

(2) (a) Notwithstanding any other provision of law, the adoption of a consolidated county municipal government shall have no effect on the existence, rights, or duties of any voluntary fire department or fire district created and legally in existence pursuant to the provisions of parts 21 and 23 of chapter 33.

(b) Nothing in this part or part 12 shall be construed to prohibit the creation of voluntary fire departments or fire districts pursuant to the provisions of parts 21 and 23 of chapter 33 within consolidated county municipalities.

(c) Voluntary fire departments or fire districts within consolidated county municipalities *may* only be organized, created, supported, financed, dissolved, and managed and their boundaries *may* only be changed pursuant to the provisions of parts 21 and 23 of chapter 33. These organizations may enter mutual aid agreements as provided by 7-33-2108."

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Section 17. Section 7-3-2104, MCA, is amended to read:

"7-3-2104. Notice of election. It *is* the duty of the board of county commissioners to publish a notice of the referendum in a daily *newspaper* twice a week for a period of 3 consecutive weeks or, in case there is no daily *newspaper* of wide circulation in the county, then in a weekly *newspaper* for 4 consecutive weeks."

Section 18. Section 7-3-2109, MCA, is amended to read:

"7-3-2109. Provisions for board elected at large. (1) Under all optional forms of county government whereby the entire board of county commissioners is elected at large, there shall be a board of county commissioners who shall have the qualifications and shall be nominated and elected as provided by general law except as otherwise provided for in this section.

(2) If the electors of a county approve a proposition to adopt an optional form of county government under this part and thereby adopt a different size board, the change in membership shall be effected as follows:

(a) Whenever the number of members of the board is increased, there shall be elected at the next regular state election following the adoption of such provision a sufficient number of county commissioners to bring the total membership of the board up to the number fixed.

(b) Whenever the number of members of the board is decreased, the optional number of county commissioners adopted under this part shall be effective as to the commissioner with the least time left on his term on the first Monday in January following the next regular state election and, as to the other half of the decrease, on the first Monday in January 2 years later. The latter decrease in board size shall also be determined by the least time left on his term and, should two commissioners have the same amount of term left to serve, then by lot.

(3) The term of office of county commissioners *is* 6 years except as provided in this *section.* If the optional form as adopted provides for no change in size of the board of county commissioners, county commissioners shall continue to be elected for 6-year terms.

(4) If the first election under an optional form of county government provided for in this part occurs in a year in which one county commissioner is to be elected under the former law and the optional form as adopted provides for an expansion of the board to five commissioners, there shall be elected for staggered *terms* two commissioners for a 6-year term and one commissioner for a 4-year term as provided in this part."

Section 19. Section 7-3-4224, MCA, is amended to read:

"7-3-4224. Petition for initiative. (1) Any proposed ordinance may be submitted to the council by petition signed by electors of the city equal in number to the percentage hereinafter required.

(2) If the petition accompanying the proposed ordinance *is* signed by 25% *or more* of the entire number of persons registered to vote at the preceding general election and contains a request that the said ordinance be

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submitted to a vote of the people if not passed by the council, *the* council shall either:

(a) pass *the* ordinance without alteration within *60* days after *receipt of the* petition; or

(b) call a special election, unless a general municipal election is fixed by law within 30 days thereafter, and at *the* special or general municipal election, if one is so fixed, *the proposed* ordinance shall be submitted to the vote of the electors of such city.

(3) If the petition is signed by *at least* 10% *but not* more than 25% of the electors, as above defined, then the council shall within *60* days pass *the* ordinance without change or submit the same at the next general city election occurring after *receipt of the* petition."

Section 20. Section 7-3-4227, MCA, is amended to read:

"7-3-4227. Abandonment of commission form. (1) Any city which *has* operated for more than 1 year under the provisions of this part may abandon such organization and accept the provisions of the general law of the state applicable to cities of its population.

(2) Upon the petition of not less than 10% of the electors of *the* city registered for the preceding general election, the following proposition shall be placed upon the ballot at the next regular city election, provided the petition *is* filed at least 60 days prior to the date of *the* election:

"Shall the city of (name of city) abandon its organization under chapter 57 of the acts of the twelfth legislative assembly and become a city under the general law governing cities of like population or, if formerly organized under special charter, resume *the* special charter?"

(3) If the majority of the votes cast at such election *is* in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general law of the state for cities of like population, and upon the qualification of *these* officers, *the* city shall become a city under *the* general law of the state, but *this* change *may* not in any manner or degree affect the property, rights, or liabilities of any nature of *the* city but shall merely extend to each change in its form of government.

(4) Whenever the form of government of any city is determined by a vote of the people under the provision of this section, the same question *may* not be submitted again for a period of 2 years, and any ordinance adopted by a vote of the people shall not be repealed or the same question submitted for a period of 2 years."

Section 21. Section 7-3-4233, MCA, is amended to read:

"7-3-4233. Statement and petition of candidacy. (1) Any qualified elector of *the* city desiring to become a candidate for mayor or councilman shall, at least 10 days prior to *the* primary election, file with the city clerk a statement of candidacy and shall at the same time file the petition of at least 25 qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and

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residence, with street number, of each of the persons so signing the petition.

(2) The statement shall be in substantially the following form:

State of Montana)
)ss.
County of .....)

I, ..., being first duly sworn, say that I reside at .... street, city of ...., county of ...., state of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of (mayor or councilman) to be voted upon at the primary election to be held on the .... Monday of ...., 19..; and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed) .....

Subscribed and sworn to (or affirmed) before me by .... on this .... day of ...., 19...

(Signed) .....

(3) The petition shall be in substantially the following form:

The undersigned, duly qualified electors of the city of .... and residing at the places set opposite our respective names, do hereby request that the name of (name of candidate) be placed in the ballot as a candidate for nomination for (name of office) at the primary election to be held in such city on the .... Monday of ...., 19... We further state that we know him/her to be a qualified elector of said city and a person of good moral character and qualified, in our judgment, for the duties of such office.

Names of qualifying electors	Number	Street
.....		
.....		

(4) Each signer of a nomination paper *may* sign but one such nomination paper for the same office, except *whenever* more than one officer is to be elected to the same office, in which case he may sign as many nomination papers as there are officers to be elected; and only one candidate shall be petitioned for or nominated in the same nomination paper."

Section 22. Section 7-3-4333, MCA, is amended to read:

"7-3-4333. Special provisions for election on question related to expenditures. *Whenever* a petition *is* filed requiring that a measure passed by the commission providing for an expenditure of money, a bond issue, or a public improvement be submitted to a vote of the electors, all steps preliminary to such expenditure, actual issuance of the bonds, or actual execution of the contract for such improvement may be taken prior to the election. *Any* qualified electors of *the* city or town *may* vote at such election."

Section 23. Section 7-3-4352, MCA, is amended to read:

"7-3-4352. Election and campaign practices. (1) Any person who *agrees* to perform any services in the interest of any candidate for any

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office provided in this part or part 44, in consideration of any money or other valuable thing for such services, *is punishable* by a fine not exceeding $300 or *by imprisonment* in the county jail *for a period* not exceeding 30 days or by both such fine and imprisonment.

(2) Any person offering to give a bribe, either in money or other consideration, to any elector for the purpose of influencing his vote at any election provided in this part or part 44 or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person who agrees, by promise or written statement, that he will do or will not do any particular act for the purpose of influencing the vote of any elector at any election provided in this part or part 44; any person making false answer to any of the provisions of this part or part 44 relative to his qualifications to vote at such election; any person willfully voting or offering to vote at such election who has not met the residency requirement of the state of Montana or is not a citizen of the United States or *knows* himself not to be a qualified elector of such precinct where he offers to vote; or any person knowingly procuring, aiding, or abetting any violation hereof *is* guilty of a misdemeanor and upon conviction *is punishable by a fine* of not less than $100 or more than $500 or *by imprisonment* in the county jail *for a period* not less than 10 or more than 90 days or by both such fine and imprisonment."

Section 24. Section 7-3-4365, MCA, is amended to read:

"7-3-4365. Investigations by commission. (1) The commission or any committee thereof duly authorized by the commission to do so may investigate the financial transactions of any office or department of the municipal government and the official acts of any municipal official and by similar investigations may secure information upon any matter.

(2) In conducting such investigations, the commission or any committee thereof may compel the attendance of witnesses and the production of books, papers, and other evidence and for that purpose may issue subpoenas or attachments, which shall be signed by the presiding officer of the commission or the chairman of such committee, as the case may be, and which may be served and executed by any officer authorized by law to serve subpoenas or other process. No witness *may* be excused from testifying touching his knowledge of the matter under investigation in any such inquiry, but such testimony *may* not be used against him in any criminal prosecution except for perjury committed upon such inquiry."

Section 25. Section 7-3-4366, MCA, is amended to read:

"7-3-4366. Investigatory powers of city manager. The city manager may, without notice, cause the affairs of any department or the conduct of any officer or employee to be examined. Any person appointed by the city manager to examine the affairs of any department or the conduct of any officer or employee *has* the same power to compel the attendance of witnesses and the production of books and papers and other evidence as is conferred upon the commission by this part."

Section 26. Section 7-3-4445, MCA, is amended to read:

"7-3-4445. Subdivided lands. *Subdivisions in the municipality must conform to the provisions of Title 76, chapter 3."*

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Section 27. Section 7-3-4448, MCA, is amended to read:

"7-3-4448. Vacating or changing name of street. (1) The commission, in vacating any street or part of a street or changing the name of any street, may include in one ordinance the change of name or the vacation or narrowing of more than one street, alley, or avenue. Before vacating any street or part thereof or narrowing any street, the commission shall first pass a resolution declaring its intention to do so.

(2) The city manager shall *serve* notice of *the* resolution, in the manner that service of summons is required to be made in civil actions, upon all persons whose property abuts upon the portion of the street affected by the proposed vacation or narrowing and *shall publish notice* once in one daily newspaper of general circulation in the municipality if there *is one or* if not, once in one weekly newspaper of like circulation. *The* notice shall state the time and place at which *objections* will be heard.

(3) Unless *at least* 51% of the affected property owners object to the proposed vacation or narrowing, the commission may by ordinance declare such vacation or narrowing. *The* order of the commission vacating or narrowing a street or alley which has been dedicated to public use by the proprietor, to the extent that it is vacated or narrowed, *operates* as a revocation of the acceptance thereof by the commission, but the right-of-way and easement therein of any lot owner *is* not impaired thereby."

Section 28. **Repealer.** Sections 11-3221 through 11-3227 and 11-3541 through 11-3547, R.C.M. 1947, are repealed.

Approved March 26, 1979.

CHAPTER NO. 263

AN ACT TO GENERALLY REVISE AND CLARIFY THE LOCAL GOVERNMENT LAWS RELATING TO GENERAL EMERGENCY AND PROTECTIVE SERVICES, TO LAW ENFORCEMENT, TO FIRE PROTECTION, AND TO CEMETERY SERVICES; REPEALING SECTIONS 11-1935 AND 11-2009, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-31-110, MCA, is amended to read:

"7-31-110. Effect of election. (1) If a majority of the votes cast were for the contract and bonds, then *the* contract *is* in full force and effect and the bonds shall be issued and disposed of in the manner provided in this part.

(2) If there was a tie *vote* or a majority of *the* votes were cast against the contract and bonds, then the contract and *surety* bond given for its fulfillment *are* void and *the* bonds shall *not* be issued."

Section 2. Section 7-32-2103, MCA, is amended to read:

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"**7-32-2103. Limitation on number of deputy sheriffs.** The whole number of deputies allowed the sheriff is one undersheriff and, in addition, not to exceed the following number of deputies:

(1) six in counties of the first, second, *or* third *class*;

(2) two in counties of the fourth class;

(3) one in counties of the fifth, sixth, *or* seventh *class*."

Section 3. Section 7-32-2121, MCA, is amended to read:

"**7-32-2121. Duties of sheriff.** The sheriff must:

(1) preserve the peace;

(2) arrest and take before the nearest magistrate for examination all persons who attempt to commit or have committed a public offense;

(3) prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;

(4) perform *the* duties of *a* humane officer within the county with reference to the protection of dumb animals;

(5) attend all courts, except *municipal, justices'*, and city courts, at their respective terms or sessions held within the county and obey their lawful orders and directions;

(6) command the aid of as many inhabitants of *the* county as *are* necessary in the execution of *the sheriff's* duties;

(7) take charge of and keep the county jail and the prisoners therein;

(8) endorse upon all notices and process the year, month, day, hour, and minute of reception and issue therefor to the person delivering them, on payment of fees, a certificate showing the names of the parties, *the* title of *the* paper, and *the* time of reception;

(9) serve all process or notices in the manner prescribed by law;

(10) certify in writing upon the process or notices the manner and time of service or, if he fails to make service, the reasons of this failure, and return the *papers* without delay; *and*

(11) perform such other duties as are required by law."

Section 4. Section 7-32-2123, MCA, is amended to read:

"**7-32-2123. Appointment of deputy sheriff to act as jailer.** The sheriff may appoint two deputies in counties of the first, second, *or* third *class* and one deputy in *counties of* the fourth, fifth, sixth, *or* seventh *class* who shall act as jailer and receive the same salary as other deputy sheriffs."

Section 5. Section 7-32-2132, MCA, is amended to read:

"**7-32-2132. Liability for escape in civil actions.** (1) A sheriff who *fails to prevent* the escape or rescue of a person arrested in a civil

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action without the consent or connivance of the party in whose behalf the arrest or imprisonment was made is liable as follows:

(a) When the arrest is upon an order to hold *for* bail or upon a surrender in exoneration of bail before judgment, *the sheriff* is liable to the plaintiff *for the* bail.

(b) When the arrest is on an execution or commitment to enforce the payment of money, *the sheriff* is liable for the amount expressed in the execution or commitment.

(c) When the arrest is on an execution or commitment other than to enforce the payment of money, *the sheriff* is liable for the actual damages sustained.

(2) Upon being sued for damages for an escape or rescue, *the sheriff* may introduce evidence in mitigation or exculpation.

(3) An action *may not* be maintained against a sheriff for a rescue or for an escape of a person arrested upon an execution or commitment if, after his rescue or escape and before the commencement of the action, the prisoner returns to the jail or is retaken by the sheriff."

Section 6. Section 7-32-2143, MCA, is amended to read:

"7-32-2143. Mileage and expenses of sheriff in general. (1) Except as provided in 7-32-2144 and 7-32-2145, in addition to the fees specified in 7-32-2141 and 7-32-2142, the sheriff shall receive for each mile actually traveled in serving any writ, process, order, or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail only his actual expenses when such travel is made by railroad or airline; and when travel is other than by railroad or airline, he shall receive a mileage allowance as provided in 2-18-503 for each mile actually traveled by him both going and returning and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail. He shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and *feeding* such persons during such transportation. *Whenever* more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, *only* one mileage *may* be charged.

(2) No mileage *may* be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county shall be paid over to the county treasurer and deposited in the county general fund.

(3) (a) No mileage *may* be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice, or paper when the same accompanies the summons and the service thereof may be made at the time of the service of the summons, *except* for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time or when any paper or papers are served on more than one person on the same trip,

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only one mileage *may* be allowed or charged; and in the service of subpoenas, *only* one mileage *may* be charged when the persons named therein live in the same place or in the same direction; but mileage *may* be charged for the longest distance actually traveled. Any writ, order, or other paper for service must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed only from such place to the place of service. When two or more officers travel in the same automobile in the discharge of any duty, *only* one mileage *may* be allowed.

(b) When any sheriff or constable serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service, and no mileage in any case *may* be allowed for less than 1 mile actually traveled."

Section 7. Section 7-32-2144, MCA, is amended to read:

"7-32-2144. Mileage and expenses of sheriff for delivery of prisoners and mentally ill persons. (1) *A sheriff* delivering prisoners at the state prison or *a juvenile correctional facility* or mentally ill persons at the *Warm Springs* state hospital *or other mental health facility receives* actual expenses necessarily incurred in their transportation. The expenses include the expenses of the sheriff in going to and returning from *the* institution. *The sheriff* shall take vouchers for every item of *expense.* The amount of these expenses, as shown by the vouchers when *presented* by *the* sheriff, shall be audited and allowed by the department of administration or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties. In determining the actual expense if travel is by a privately owned vehicle, the mileage rate shall be allowed as provided in subsection (2). No other or further compensation *may* be received by sheriffs for such expenses.

(2) *Unless otherwise provided, while* in the discharge of his duties, both civil and criminal, the sheriff *receives* a mileage allowance as provided in 2-18-503. The sheriff shall also be reimbursed for actual and necessarily incurred expenses for transporting, lodging, and *feeding* persons ordered by the court as provided in 2-18-501 through 2-18-503. The county *is* not liable for and the board of county commissioners *may* not pay for any claim of the sheriff or other officer for any other expenses incurred in travel or for subsistence in cases where mileage is allowed under this section, the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work."

Section 8. Section 7-32-4112, MCA, is amended to read:

"7-32-4112. Qualifications of policemen. (1) The members of the police department on the active list of any city at the time of their appointment under this part *may* not be less than 18 years of age or more than 35 years of age, but this restriction *does* not apply to any member of any police department *as of July 2, 1973,* to honorably discharged persons who served in the armed forces of the United States in time of war, providing such time of service *is* not less than 3 months, *or to applicants for reinstatement under 7-32-4110.*

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(2) A police officer must be a citizen of the United States and meet the minimum qualifying standards for employment promulgated by the board of crime control."

Section 9. Section 7-32-4116, MCA, is amended to read:

"7-32-4116. Minimum wage of police in first- and second-class cities. (1) Each duly confirmed member of a police department of cities of the first and second class of Montana is entitled to a minimum wage for a daily service of 8 hours' work of at least $750 per month for the first year of service and thereafter at least $750 a month plus 1% of the minimum base monthly salary of $750 for each additional year of service up to and including the 20th year of additional service.

(2) This section *applies* to cities and towns not of the first class which have elected to come under the provisions of *Chapter 120, Laws of 1929, as amended, or Chapter 335, Laws of 1974, as amended.*"

Section 10. Section 7-32-4303, MCA, is amended to read:

"7-32-4303. Control of shoplifting. The city or town council *may* define shoplifting as *provided in 46-6-501* and punish persons found guilty thereof."

Section 11. Section 7-33-2312, MCA, is amended to read:

"7-33-2312. Organization of fire company. (1) Every fire company *organized pursuant to 7-33-2312* must choose or elect a foreman, who is the presiding officer, a secretary, and *a* treasurer and may establish and adopt bylaws and regulations and impose penalties, not exceeding $5 or expulsion for each offense.

(2) Every regularly organized fire department may adopt a department seal, *stating* the name of the particular fire department to which it belongs. . *The seal is* under the control of and for the use of the secretary and *shall* be affixed by him to exempt certificates, certificates of active membership, and such other documents as the bylaws may provide. The secretary of every department having a seal must take the constitutional oath of office and give such bond as the bylaws provide for the faithful performance of his duties."

Section 12. Section 7-33-4102, MCA, is amended to read:

"7-33-4102. Applicability of part. (1) The provisions of this part govern and control fire departments in every city or town organized under whatever form of municipal government except where this part is in conflict with the commission form of government provided for in part 42 of chapter 3.

(2) *Whenever* the provisions of this part conflict with the provisions of *chapter 3,* part 42, pertaining to the commission form of government, the provisions pertaining to the commission form of government prevail."

Section 13. Section 7-35-2122, MCA, is amended to read:

"7-35-2122. County tax levy. The board of county commissioners must, annually at the time of levying county taxes, fix and levy upon all

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property within *the* cemetery district *an amount* sufficient to raise the amount certified by the board of cemetery trustees to be raised by a tax on the property of *the* district. The tax *may* not exceed 4 mills on each dollar of taxable valuation on the property of *the* district."

Section 14. Section 7-35-4104, MCA, is amended to read:

"7-35-4104. Cemeteries on public lands. Incorporated cities or towns and, for unincorporated towns or villages, the board of county commissioners of the county may survey, lay out, and dedicate *a portion* of the public lands situated in or near *the* city, town, or village, not exceeding 5 acres, for cemetery and burial purposes. The survey and description thereof, together with a certified copy of the order constituting the *land as* a cemetery, must be recorded in the office of the county clerk of the county in which the *land* is located."

Section 15. **Repealer.** Sections 11-1935 and 11-2009, R.C.M. 1947, are repealed.

Approved March 26, 1979.

CHAPTER NO. 264

AN ACT TO PROVIDE THAT THE OFFICERS OF A BANK MAY CLOSE THE BANK'S OFFICES ON ANY DAY WHEN THE FEDERAL RESERVE BANK OF MINNEAPOLIS IS NOT OPEN FOR BUSINESS; TO PROVIDE THAT SUCH A CLOSING CONSTITUTES A BANK HOLIDAY; AMENDING SECTIONS 32-1-481 AND 32-1-563, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-481, MCA, is amended to read:

"32-1-481. Bank holidays. (1) Whenever any bank in the state of Montana elects to remain closed and refrains from the transaction of business on Saturday, pursuant to authority for permissive closing on Saturdays by virtue of the laws of the state, legal holidays for such bank during the year of such election are hereby limited to the following holidays:

(a) Each Sunday;

(b) New Year's Day, January 1;

(c) Memorial Day, the last Monday in May;

(d) Independence Day, July 4;

(e) Labor Day, the first Monday in September;

(f) Thanksgiving Day, the fourth Thursday in November;

(g) Christmas Day, December 25;

(h) On such days as banks are closed in accordance with 32-1-561 to 32-1-565, *as amended.*

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(2) Any bank practicing Saturday closing in compliance with law may remain closed and refrain from the transaction of business on Saturdays, notwithstanding that a Saturday may coincide with a legal holiday other than one of the holidays designated above for banks practicing Saturday closing in compliance with law, and provided further that it shall be optional for any bank, whether practicing Saturday closing or not, to observe as a holiday and to be closed on any day upon which a general election is held throughout the state of Montana and on Veterans' Day, November 11, and on any local holiday which historically or traditionally or by proclamation of a local executive official or governing body is established as a day upon which businesses are generally closed in the community in which the bank is located."

Section 2. Section 32-1-563, MCA, is amended to read:

"32-1-563. Powers of officers. (1) When the officers of a bank are of the opinion that an emergency exists or is impending which affects or may affect any of a bank's offices, they may, in the reasonable and proper exercise of their discretion, determine not to open any of those offices on any banking day or, if having opened, to close any of those offices during the continuation of the emergency, even if the department has not issued and does not issue a proclamation of emergency. An office so closed shall remain closed until the officers determine that the emergency has ended and for a further time thereafter as may reasonably be required to reopen. However, in no case shall an office remain closed for more than 48 consecutive hours, excluding other legal holidays, without requesting the approval of the department.

(2) The officers of a bank may close any of the bank's offices on any day:

(a) designated by proclamation of the president of the United States or the governor of this state as a day of mourning, rejoicing, or other special observance; *or*

(b) that the federal reserve bank of Minneapolis is not open for business."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 26, 1979.

CHAPTER NO. 265

AN ACT TO EXEMPT PUBLICATION OF THE MONTANA CODE ANNOTATED FROM THE LAW ON IN-STATE PREFERENCE FOR PRINTERS; AMENDING SECTIONS 18-7-101 THROUGH 18-7-103, MCA, AND SECTION 3, CHAPTER 1, LAWS OF 1979; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-7-101, MCA, is amended to read:

"18-7-101. Power to contract for printing. (1) The department has exclusive power, subject to the approval of the governor, to contract

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for all printing for any purpose used by the state in any state office (elective or appointive), agency, or institution except the printing of the decisions of the supreme court as provided in Title 3, chapter 2, part 6, *and the printing of the Montana Code Annotated provided for in 1-11-301.*

(2) The department shall supervise and attend to all public printing of the state as provided in this chapter and shall prevent duplication and unnecessary printing.

(3) All forms, blanks, and documents printed for distribution to the state agencies and institutions shall be serially numbered and indexed by the department and sample copies of each permanently retained, and the department shall from time to time furnish to the public general information as to the nature, description, and official numbers of such reports as are available for public distribution.

(4) Unless otherwise provided by law, the department, in letting contracts as provided in this chapter, for the printing, binding, and publishing of all laws, journals, and reports of the state agencies and institutions may determine the quantity, quality, style, and grade of all such printing, binding, and publishing."

Section 2. Section 18-7-102, MCA, is amended to read:

"18-7-102. Montana printers preferred. (1) The department of administration shall, as occasion may require, call for bids for the printing and/or the binding of all decisions of the supreme court of Montana *and* all session laws, resolutions, and memorials.

(2) All contracts for the printing and/or binding thereof shall be let to contractors, publishers, or printers actually doing business within the state of Montana, and all labor on or connected with such printing and/or binding shall be performed within the state of Montana, and no such printing or binding shall be done or performed without the state of Montana; provided, however, that nothing herein contained shall prevent the receipt of bids from contractors, publishers, or printers doing business outside of Montana. In the event that the bids for such printing and/or binding from contractors, publishers, or printers actually doing business within the state of Montana are in excess of 10% of the bids received for such printing and/or binding from contractors, printers, or publishers doing business outside the state of Montana, contracts on such bids may be let or awarded to contractors, publishers, or printers outside the state of Montana and the labor thereon performed outside of Montana."

Section 3. Section 18-7-103, MCA, is amended to read:

"18-7-103. State printing — lowest bidder — resident preference. All printing for which the state of Montana is chargeable, including reports of state officers, state boards, pamphlets, blanks, letterheads, envelopes, and printed matter of every kind and description, except *the Montana Code Annotated and* certificates of appointment and election to office, must be printed within the state of Montana by a responsible bidder if his bid is not more than 2% higher than the bid of the lowest bidder who is a nonresident of this state, unless local facilities for production of a particular sort of printed matter are not available."

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Section 4. Section 3, Chapter 1, Laws of 1979, is amended to read:

"Section 3. Section 1-11-301, MCA, is amended to read:

1-11-301. Publication and sale of Montana Code Annotated. (1) The legislative council with the advice of the code commissioner shall decide on the quantity, quality, style, format, and grade of all publications prior to having the code commissioner *call for bids for the printing and binding and* contract for their publication. The code commissioner shall follow the requirements of state law relating to contracts and bids, except as herein provided.

(2) The methods of sale to the public of the Montana Code Annotated and supplements or other subsequent and ancillary publications thereto may be included as an alternative specification and bid and as a part of a contract to be let by bids by the code commissioner.

(3) The sales price to the public shall be fixed by the legislative council but may not exceed the cost price plus 20%. All revenues generated from the sale of the Montana Code Annotated or ancillary publications shall be deposited in the revolving fund, from which fund appropriations may be made for the use of the office and facilities of the legislative council under this chapter.

(4) Sets of the Montana Code Annotated purchased by the state or local governmental agencies that are supported by public funds shall be for the cost price of the sets."

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 26, 1979.

CHAPTER NO. 266

AN ACT TO GENERALLY AND SUBSTANTIVELY REVISE AND CLARIFY THE LAWS RELATING TO LAND RESOURCES AND USE; REVISING THE PROCEDURE TO ISSUE BONDS FOR WATER CONSERVATION AND FLOOD CONTROL PROJECTS; PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-1-103, MCA, is amended to read:

"76-1-103. Definitions. As used in this chapter, the following definitions apply:

(1) "City" includes incorporated cities and towns.

(2) "City council" means the chief legislative body of a city or incorporated town.

(3) "Governing body" or "governing bodies" means the governing body of any governmental unit represented on a planning board.

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(4) "Master plan" means a comprehensive development plan or any of its parts such as a plan of land use and zoning, of thoroughfares, of sanitation, of recreation, and of other related matters.

(5) "Mayor" means mayor of a city.

(6) "Person" means any individual, firm, or corporation.

(7) "Planning board" means a city planning board, *a county planning board* or a joint city-county planning board.

(8) "Plat" means a subdivision of land into lots, streets, and areas, marked upon the earth and represented on paper, and includes *replats* or amended plats.

(9) "Public place" means any tract owned by the state or its subdivisions.

(10) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

(11) "Units of government" means any federal, state, *or* regional *unit of government or any* county, city, or town.

(12) "Utility" means any facility used in rendering service which the public has a right to demand."

Section 2. Section 76-1-223, MCA, is amended to read:

"76-1-223. County representative for city planning board. As soon as a city council has enacted an ordinance creating a city planning board, the board of county commissioners of the county wherein the city is located shall within 45 days designate a representative of the county to the mayor of the city for appointment *to* the city planning board. This representative may be a member of the board of county commissioners or an officeholder or employee of the county. In the event of the failure of the county to so designate such member, the mayor may appoint a person of his own choosing and at his sole discretion as a representative of the county."

Section 3. Section 76-1-224, MCA, is amended to read:

"76-1-224. Citizen members of city planning board. (1) The citizen members shall:

(a) be qualified by knowledge and experience in matters pertaining to the development of the city; *and*

(b) hold no other office in the city government.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the *city*."

Section 4. Section 76-1-403, MCA, is amended to read:

"76-1-403. Tax levy by county for certain county planning districts authorized. When a county planning board has been established, the board of county commissioners may create a planning district

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which shall include that property which lies outside the limits of the jurisdictional area as established pursuant to 76-1-504 through 76-1-507 or as modified pursuant to 76-1-501 through 76-1-503 in counties where a city-county planning board has been established as well as that property which lies outside the limits of any incorporated cities and towns. The board of county commissioners may levy on all property located within such planning district a tax not to exceed *the maximum levy authorized by 76-1-405* for planning board purposes, under procedures set forth in Title 7, chapter 6, part 23."

Section 5. Section 76-1-406, MCA, is amended to read:

"76-1-406. Tax levy by municipalities authorized. The governing body of any city or town represented upon a planning board may levy a tax upon the property located within such city or town for planning board purposes, under procedures set forth in Title 7, chapter 6, part 42, provided such tax shall not exceed the maximum levy authorized in 76-1-407."

Section 6. Section 76-1-409, MCA, is amended to read:

"76-1-409. Acceptance and administration of government funds and services. Upon approval of the governing bodies represented on the board, a planning board may accept, receive, and expend funds, grants, and services from the federal government or its agencies and instrumentalities, *from* state or local *governments or their* agencies and instrumentalities, or from civic sources; *may* contract with respect thereto; and *may* provide such information and reports as may be necessary to secure such financial aid."

Section 7. Section 76-2-211, MCA, is amended to read:

"76-2-211. Violations and penalties. A violation of this part or any resolution adopted pursuant thereto is a misdemeanor and shall be punishable by a fine not exceeding $500 or imprisonment in the county jail not exceeding 6 months or both."

Section 8. Section 76-2-308, MCA, is amended to read:

"76-2-308. Enforcement of zoning regulations and ordinances. (1) The city or town council or other legislative body may provide by ordinance for the enforcement of this part and of any regulation or ordinance made thereunder.

(2) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises."

Section 9. Section 76-2-315, MCA, is amended to read:

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"**76-2-315. Violations and penalties.** (1) A violation of this part or of such ordinance or regulation made pursuant to 76-2-308(1) is a misdemeanor, and such city or town council or other legislative body may provide for the punishment thereof by fine or imprisonment or both.

(2) It is also empowered to provide civil penalties for such violation."

Section 10. Section 76-3-202, MCA, is amended to read:

"**76-3-202. Exemption for structures on complying subdivided lands.** Where required by this chapter, *when* the land upon which an improvement is situated has been subdivided in compliance with this chapter, the sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this chapter."

Section 11. Section 76-3-405, MCA, is amended to read:

"**76-3-405. Administration of oaths by registered land surveyor.** (1) Every registered land surveyor may administer and certify oaths when:

(a) it becomes necessary to take testimony for the identification of old corners or reestablishment of lost or obliterated corners;

(b) a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated;

(c) the importance of the survey makes it desirable to administer an oath to his assistants for the faithful performance of their duty.

(2) A record of oaths shall be preserved as part of the field notes of the survey and noted on the certificate of survey filed under *76-3-404*."

Section 12. Section 76-4-1115, MCA, is amended to read:

"**76-4-1115. Misdemeanors enumerated.** The following acts are misdemeanors:

(1) the willful violation of or failure to comply with any of the provisions of this part;

(2) the willful violation, failure, omission, or neglect to obey, observe, or comply with any order, permit, decision, demand, or requirement of the board;

(3) the offering for sale or lease as an agent, salesman, or broker for a subdivider, developer, or owner of subdivided lands or a subdivision, wherever situated, which is being offered for sale outside the state of Montana without first complying with the provisions of this part."

Section 13. Section 76-4-1117, MCA, is amended to read:

"**76-4-1117. Accrual of cause of action.** (1) For the purpose of calculating the period of any applicable statute of limitations in any action or proceeding, either civil or criminal, involving any violation of this part, the cause of action shall be *considered* to have accrued not earlier than the

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time of recording with the county clerk and recorder of the county in which the property *was* sold or leased in violation of this part, which *recording* describes a lot or parcel so wrongfully sold or leased.

(2) This section does not prohibit the maintenance of such action at any time during the recording of such instruments."

Section 14. Section 76-4-1245, MCA, is amended to read:

"76-4-1245. Penalties. Any person who violates any provision of this part or who willfully violates any rule adopted under it or any person who willfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact may be fined not less than $1,000 or more than $5,000 or may be imprisoned for not more than 2 years, or both."

Section 15. Section 76-5-1117, MCA, is amended to read:

"76-5-1117. Bonds authorized — procedure. Cities, towns, and counties are authorized to contract indebtedness and to issue special improvement district or rural improvement district bonds to provide funds for the payment of the cost of improvements contemplated by this part by following the procedures *established for the issuance of such bonds under the provisions of Title 7, chapter 12, part 42, as to cities and towns and Title 7, chapter 12, part 21, as to counties. Payment and security for the bonds shall be provided by following the following procedures*:

(1) Tax assessments for the payment of *the* bonds shall be levied in accordance with Title 7, chapter 12, parts 41 and 42 and Title 7, chapter 12, part 21 as to cities and counties, respectively.

(2) A revolving fund, to be pledged for the security of the bonds, must be established pursuant to the provisions of Title 7, chapter 12, part 42, as to cities and towns, and Title 7, chapter 12, part 21, as to counties, by the governing body authorizing the issuance of the bonds."

Section 16. Section 76-6-203, MCA, is amended to read:

"76-6-203. Types of permissible easements. Easements or restrictions under this chapter may prohibit or limit any or all of the following:

(1) structures—construction or placing of buildings, camping trailers, housetrailers, mobile homes, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

(2) landfill—dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;

(3) vegetation—removal or destruction of trees, shrubs, or other vegetation;

(4) loam, gravel, etc.—excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance;

(5) surface use—surface use except for such purposes permitting the land or water area to remain predominantly in its existing condition;

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(6) acts detrimental to conservation—activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat and preservation;

(7) subdivision of land—subdivision of land as defined in 76-3-103, 76-3-104, and 76-3-202;

(8) other acts—other acts or uses detrimental to such retention of land or water areas in their existing conditions."

Section 17. Section 76-15-311, MCA, is amended to read:

"76-15-311. Governing body of district. (1) If there are no incorporated municipalities within the boundaries of the district, the governing body of *the* district shall consist of five elected *supervisors.*

(2) If there are incorporated municipalities within the boundaries of the district, the governing body of the district shall consist of seven supervisors as follows:

(a) The board of supervisors, in addition to five elected supervisors, shall consist of two appointed supervisors, making a total of seven supervisors in such districts. The two appointed supervisors must be residents of municipalities within the district. The legislative bodies of the incorporated municipalities within the district shall appoint the two additional supervisors after consultation with the elected supervisors. The term of office of the appointed supervisors shall be 3 years.

(b) Where there are more than two incorporated municipalities within a district, the two appointed supervisors shall represent all the municipalities and urban interests in the district and no municipality shall have more than one appointed supervisor residing therein."

Section 18. Section 76-15-321, MCA, is amended to read:

"76-15-321. Rulemaking authority. A conservation district and the supervisors thereof shall have the power to make and from time to time amend and repeal rules to carry into effect *the* purposes and powers *of this chapter.*"

Section 19. Section 76-15-528, MCA, is amended to read:

"76-15-528. Lien for special assessments. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this chapter, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien against the property upon which such assessment is levied *from* the date *on which* such assessment *is levied. This* lien can only be extinguished by payment of such assessment with all penalties, costs, and interest."

Section 20. Section 76-15-611, MCA, is amended to read:

"76-15-611. Federal authority unaffected. (1) The provisions of this *part do* not apply to the government of the United States or any department, bureau, or agency thereof, except to such extent as the government of the United States or any department, bureau, or agency thereof may desire to take advantage of its provisions. *It is an* express

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purpose and intent of this *part* to aid but not to interfere with the government of the United States or any department, bureau, or agency thereof in any undertaking over which such federal authority desires to exercise full supervision and control.

(2) The provisions of this *part may* not be construed to impair, limit, or repeal any right whatsoever which the government of the United States or any department, bureau, or agency thereof has to full and complete jurisdiction, management, or control over projects over which such federal authority desires to exercise such rights. *It is a* purpose of this *part* expressly to subordinate any power of jurisdiction and to never interfere directly with such federal authority."

Section 21. Section 76-15-722, MCA, is amended to read:

"76-15-722. Operation of board of adjustment. (1) The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with this chapter and with *the* ordinance *establishing the board of adjustment.*

(2) The board shall annually elect a chairman from among its members. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two members of the board constitute a quorum. The chairman or in his absence such other member of the board as he may designate to serve as acting chairman may administer oaths and compel the attendance of witnesses.

(3) All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record."

Section 22. Section 76-15-725, MCA, is amended to read:

"76-15-725. Board decision. (1) If, upon the facts presented at the hearing, the board determines that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land use regulations upon the lands of the petitioner, it shall make and record that determination and shall make and record findings of fact as to the specific conditions which establish the great practical difficulties or unnecessary hardship.

(2) Upon the basis of the findings and determination, the board may order a variance from the terms of the land use regulations in their application to the lands of the petitioner that will relieve the great practical difficulties or unnecessary hardship; will not be contrary to the public interest; and *will be* such that the spirit of the land use regulations is observed, the public health, safety, and welfare *is* secured, and substantial justice *is* done."

Section 23. Section 76-16-306, MCA, is amended to read:

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"**76-16-306. Management of grazing lands.** A state district may:

(1) manage and control the use of its range and agricultural lands acquired under 76-16-305(2). This power includes the right to determine the size of preferences and permit according to a fixed method which shall be stated in the bylaws and which shall take into consideration the rating of dependent commensurate property and the carrying capacity of the range and may be subject to reservations, regulations, and limitations under the terms of agreements between the state district and any agency of the United States. The state district may also allot range to members or nonmembers and decrease or increase the size of permits if the range carrying capacity changes.

(2) undertake reseeding and other approved conservation and improvement practices of depleted range areas or *abandoned* farm lands and enter into cooperative agreements with the federal government or any other person for the reseeding or conservation and improvement practices;

(3) employ and discharge employees, riders, and other persons necessary to properly manage the state district."

Section 24. Section 76-16-406, MCA, is amended to read:

"**76-16-406. Transfer of preferences.** (1) Upon application by a permittee, the state district with the approval of the department may allow a preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property of sufficient commensurability; however, in any transfer of preference from dependent commensurate or commensurate property controlled but not owned by the applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the preference appurtenant thereto for 5 consecutive years and must have established and maintained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer.

(2) In addition, the transfer may not interfere with the stability of livestock operations or with proper range management and may not affect adversely the established local economy. A transfer may not be allowed without the written consent of the owner or owners of the dependent commensurate or commensurate property from which the transfer is to be made and *the owner or owners of any encumbrances on the property. A* transfer is not effective until approved by the department.

(3) All expenses involved under the application shall be borne by the applicant."

Section 25. **Effective date.** This act is effective on passage and approval.

Approved March 26, 1979.

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CHAPTER NO. 267

AN ACT TO PROVIDE THAT UNRELATED BUSINESS INCOME OF EXEMPT CORPORATIONS, AS DEFINED BY THE INTERNAL REVENUE CODE, SHALL BE TAXED AS ANY OTHER CORPORATE INCOME; AMENDING SECTION 15-31-102, MCA, AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-102, MCA, is amended to read:

"15-31-102. Organizations exempt from tax. (1) *Except as provided in subsection (3), there* shall not be taxed under this title any income received by any:

(a) labor, agricultural, or horticultural organization;

(b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;

(c) cemetery company owned and operated exclusively for the benefit of its members;

(d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e) business league, chamber of commerce, or board of trade not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;

(f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

(i) any cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;

(j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the

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entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title.

(2) In determining the license fee to be paid under this part, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) Any unrelated business income, as defined by section 512 of the Internal Revenue Code, 1954, as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than $100 shall be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section must file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue."

Section 2. **Effective date.** This act is effective for tax years beginning on or after December 31, 1978.

Approved March 26, 1979.

CHAPTER NO. 268

AN ACT TO CREATE A REVENUE OVERSIGHT COMMITTEE AND TO PRESCRIBE ITS FUNCTIONS; AMENDING SECTIONS 2-4-306 AND 2-4-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** In [sections 1 through 10 of this act] "committee" means the revenue oversight committee created in [section 2].

Section 2. **Revenue oversight committee — appointment and composition.** (1) There is a revenue oversight committee.

(2) The committee consists of:

(a) six members of the senate appointed by the committee on committees in consultation with the chairman of the senate taxation committee and the minority leader of the senate;

(b) six members of the house of representatives appointed by the speaker in consultation with the chairman of the house taxation committee and the minority leader of the house.

(3) No more than three members from each house may be of the same political party.

(4) Members must be appointed before the 90th legislative day of a regular session.

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Section 3. **Term of office.** Appointments to the committee are for 2 years. A member of the committee serves until his term of office as a legislator is ended or his successor is appointed, whichever occurs first.

Section 4. **Vacancies.** (1) A vacancy occurring during a legislative session must be filled in the same manner as the original appointment.

(2) A vacancy occurring when the legislature is not in session must be filled by the selection of a member of the appropriate house and political party by the remaining members of the committee.

(3) An appointment to the committee under this section is for the unexpired term of the original member.

Section 5. **Officers.** The committee shall elect one of its members as chairman and may elect other officers it considers necessary.

Section 6. **Meetings and compensation.** (1) The committee shall meet as often as may be necessary during and between legislative sessions.

(2) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

Section 7. **Powers and duties of the committee — duty to review revenue rules — legislative oversight of the department of revenue — committee reports.** (1) The committee shall review all proposed rules of the department of revenue filed with the secretary of state.

(2) The committee may:

(a) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit the recommendations to the department of revenue whenever a rulemaking hearing will not be held in accordance with the provisions of 2-4-302 through 2-4-305;

(b) prepare recommendations for the adoption, amendment, or rejection of a rule and submit oral or written testimony at a rulemaking hearing;

(c) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(d) recommend to the legislature the repeal, amendment, or adoption of a rule as provided in 2-4-412.

(3) The committee shall exercise legislative oversight of the department of revenue, including without limitation the review of:

(a) proposed budgets;

(b) proposed legislation;

(c) pending litigation; and

(d) major contracts and personnel actions of the department.

(4) The committee may investigate and issue reports on any matter concerning taxation or the department of revenue.

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Section 8. **Biennial critique.** The committee shall prepare a biennial critique of the department of revenue's activities that the department shall publish as an appendix to the biennial report of the department.

Section 9. **Legislative intent — poll.** (1) If the legislature is not in session, the committee may poll the members of the legislature by mail to determine whether a proposed rule of the department of revenue is consistent with the intent of the legislature.

(2) If 20 or more legislators object in writing to any rule of the department of revenue, the committee shall poll the members of the legislature.

(3) The poll shall include an opportunity for the department of revenue to present a written justification for the rule to the members of the legislature.

Section 10. **Evidentiary value of legislative poll.** (1) The results of a poll conducted by the committee are admissible in a court proceeding involving the validity of a rule.

(2) If the results of the poll show that the majority of the members of both houses find a rule contrary to the intent of the legislature, the rule shall be conclusively presumed to be contrary to the legislative intent in a court proceeding involving its validity.

Section 11. Section 2-4-402, MCA, is amended to read:

"2-4-402. Powers of the committee — duty to review rules. (1) The committee shall review all proposed rules filed with the secretary of state.

(2) Rules proposed by the department of revenue may be reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act.

(3) The committee may:

(a) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule when a rulemaking hearing will not be held in accordance with the provisions of 2-4-302 through 2-4-305;

(b) prepare recommendations for the adoption, amendment, or rejection of a rule and submit oral or written testimony at a rulemaking hearing;

(c) require that a rulemaking hearing be held in accordance with the provision of 2-4-302 through 2-4-305."

Section 12. Section 2-4-306, MCA, is amended to read:

"2-4-306. Filing, format, and effective date — dissemination of emergency rules. (1) Each agency shall file with the secretary of state a copy of each rule adopted by it.

(2) The secretary of state may prescribe a format, style, and arrangement for rules which are filed pursuant to this chapter and may refuse to accept the filing of any rule that is not in compliance therewith. He shall

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keep and maintain a permanent register of all rules filed, including superseded and repealed rules, which shall be open to public inspection and shall provide copies of any rule upon request of any person or agency. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing such copies.

(3) In the event that the administrative code committee has conducted a poll of the legislature in accordance with 2-4-403 *or the revenue oversight committee has conducted a poll in accordance with [section 9],* the results of the poll shall be published with the rule.

(4) Each rule shall become effective after publication in the register as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date shall be the effective date;

(b) subject to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon filing with the secretary of state or at a stated date following publication in the register if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them."

Section 13. **Effective date.** This act is effective on its passage and approval.

Approved March 26, 1979.

CHAPTER NO. 269

AN ACT MAKING THE PROCEDURE FOR FILLING TRUSTEE VACANCIES IN THIRD-CLASS SCHOOL DISTRICTS UNIFORM WITH OTHER SCHOOL DISTRICTS AND REQUIRING VACANCIES TO BE FILLED WITHIN 60 DAYS; AMENDING SECTIONS 20-3-205 AND 20-3-309, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-205, MCA, is amended to read:

"20-3-205. Powers and duties. The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in his county in accordance with the provisions of 20-3-307;

(3) register the teacher certificate or emergency authorization of employment of any person employed in the county as a teacher, principal, or district superintendent in accordance with the provisions of 20-4-202;

(4) act on each tuition application submitted to him in accordance with the provisions of 20-5-301, 20-5-302, 20-5-304, and 20-5-311 and transmit the tuition information required by 20-5-312;

(5) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(6) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(7) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of 20-6-103;

(8) fulfill all responsibilities assigned to him under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(9) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(11) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(12) complete the budgets, compute the budgeted revenues and tax levies, give notices of the budget meetings, file final and emergency budgets, and fulfill such other responsibilities assigned to him under the provisions of this title regulating school budgeting systems;

(13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14) quarterly, unless otherwise provided by law, order the county treasurer to apportion state moneys, county school moneys, and any other school moneys subject to apportionment in accordance with the provisions of 20-9-212, 20-9-334, 20-9-347, 20-9-351, 20-10-145, or 20-10-146;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the provisions of 20-9-348 and the other general fund revenue provisions of the general fund part of this title;

(17) compute the revenues and the district and county levy requirements for each fund included on each district's final budget and report such computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

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(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts which do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal moneys for indigent children for school food services in accordance with the provisions of 20-10-205;

(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24) keep a record of his official acts, preserve all reports submitted to him under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender such records, books, supplies, and equipment to his successor;

(25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts shall be discussed."

Section 2. Section 20-3-309, MCA, is amended to read:

"20-3-309. Filling vacated trustee position — appointee qualification and term of office. (1) Whenever a trustee position becomes vacant in any district, the remaining members of the trustees shall declare such position vacant and they shall appoint, in writing *within 60 days*, a competent person as a successor. The trustees shall notify the appointee and the county superintendent of such appointment. *If the trustees do not make the appointment within such 60-day period, the county superintendent shall appoint, in writing, a competent person as a successor and notify such person of his appointment.*

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(2) Any person who has been appointed to a trustee position shall qualify by completing and filing an oath of office with the county superintendent within 15 days after receiving notice of his appointment. Failure to file the oath of office shall constitute a continuation of the trustee position vacancy which shall be filled under the provisions of this section.

(3) Any person assuming a trustee position under the provisions of this section shall serve until the next regular school election and his successor has qualified."

Approved March 26, 1979.

CHAPTER NO. 270

AN ACT AUTHORIZING THE BOARD OF PUBLIC EDUCATION TO ACCREDIT NONPUBLIC SECONDARY SCHOOLS; AMENDING SECTION 20-7-102, MCA; AND PROVIDING FOR AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-102, MCA, is amended to read:

"20-7-102. Accreditation of schools. *(1)* Every school year the conditions under which each elementary school, middle school, junior high school, and high school operates shall be reviewed by the superintendent of public instruction to determine each school's compliance with the standards of accreditation. The accreditation status of every school shall then be established by the board of public education upon the recommendation of the superintendent of public instruction, and notification of such status for the applicable school year shall be given to each district.

(2) A nonpublic high school may, through its governing body, request that the board of public education accredit the school. Nonpublic high schools may be accredited in the same manner as provided in subsection (1)."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 26, 1979.

CHAPTER NO. 271

AN ACT RELATING TO COLLECTIVE BARGAINING OF PUBLIC EMPLOYEES; EXCEPTING CONFIDENTIAL EMPLOYEES FROM THE DEFINITION OF A PUBLIC EMPLOYEE; RESTRICTING LABOR ORGANIZATIONS REPRESENTING EMPLOYEES OF THE BOARD OF PERSONNEL APPEALS TO UNAFFILIATED LABOR ORGANIZATIONS; AMENDING SECTION 39-31-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-31-103, MCA, is amended to read:

"39-31-103. Definitions. When used in this chapter, the following definitions apply:

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(1) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees.

(2) "Public employee" means a person employed by a public employer in any capacity, except elected officials, persons directly appointed by the governor, supervisory employees, management officials, *and confidential employees,* as defined in subsections (3), (4), *and (12)* below, or members *of* any state board or commission who serve the state intermittently, school district clerks and school administrators, registered professional nurses performing service for health care facilities, professional engineers and engineers-in-training, and includes any individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.

(3) "Supervisory employee" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(4) "Management officials" means representatives of management having authority to act for the agency on any matters relating to the implementation of agency policy.

(5) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(6) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

(7) "Board" means the board of personnel appeals provided for in 2-15-1705.

(8) "Person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(9) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402.

(10) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand *in* the proximate relation of employer and employee.

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(11) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.

(12) "Confidential employee" means any person found by the board to be a confidential labor relations employee and any person employed in the personnel division, department of administration, who acts with discretionary authority in the creation or revision of state classification specifications."

Section 2. **Labor organizations representing employees of the board to be unaffiliated.** A labor organization representing employees of the board may not affiliate or associate itself with a labor organization that represents any employees other than employees of the board. The board may not certify a labor organization as the exclusive representative of the employees of the board if, at the time of certification or thereafter, the labor organization is associated or affiliated with a labor organization that represents employees other than employees of the board.

Section 3. **Codification.** It is intended that section 2 be codified as an integral part of Title 39, chapter 31, part 2; and the provisions of Title 39, chapter 31, apply to section 2.

Approved March 26, 1979.

CHAPTER NO. 272

AN ACT TO REVISE THE LAWS RELATING TO APPRENTICESHIP PROGRAMS, REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO PROVIDE ASSISTANCE IN DEVELOPING ON-THE-JOB TRAINING PROGRAMS WHEN APPRENTICESHIP PROGRAMS DO NOT EXIST AND TO PERFORM DUTIES REQUIRED BY FEDERAL REGULATIONS WHEN CONSISTENT WITH STATE LAW; REDUCING THE HOURLY EMPLOYMENT REQUIREMENTS, CHANGING THE INSTRUCTIONAL PROVISIONS, AND ADDING A PROVISION ON APPRENTICE:JOURNEYMAN RATIOS IN APPRENTICESHIP AGREEMENTS; AND PERMITTING CREDIT FOR PRIOR TRAINING OR EXPERIENCE OF APPRENTICES; AMENDING SECTIONS 39-6-101 AND 39-6-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-6-101, MCA, is amended to read:

"39-6-101. Duties of department. (1) The department of labor and industry shall:

(a) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this chapter;

(b) register such apprenticeship agreements as are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this chapter;

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(c) keep a record of apprenticeship agreements and, upon performance thereof, issue certificates of completion of apprenticeship;

(d) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; *and*

(e) provide assistance for the development of on-the-job training programs in nonapprenticeable occupations;

(f) establish standards for apprenticeship agreements in conformity with the provisions of this chapter;

(g) issue such rules as may be necessary to carry out the intent and purposes of this chapter; and

(h) perform such other duties as *may be required by federal regulations, provided that such federal regulations are not in conflict with this chapter.*

(2) Not less than once every 2 years, the department shall make a report through the governor of its activities and findings to the legislature, which shall be made available to the public."

Section 2. Section 39-6-106, MCA, is amended to read:

"39-6-106. Standards for apprenticeship agreements. *(1)* Standards for apprenticeship agreements are as follows:

(a) a statement of the trade or craft to be taught and the required hours for completion of apprenticeship, which shall be not less than *2,000* hours of reasonably continuous employment;

(b) a statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process;

(c) a statement of the number of hours to be spent by the apprentice in related and supplemental instruction, which *is recommended to* be 144 hours per year;

(d) a statement that apprentices shall be not less than 16 years of age;

(e) a statement of the progressively increasing scale of wages to be paid the apprentice;

(f) provision for a period of probation during which the department of labor and industry shall be directed to terminate an apprenticeship agreement at the request in writing of any party thereto. After the probationary period, the department shall be empowered to terminate the registration of an apprentice upon agreement of the parties.

(g) provision that the services of the department may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure;

(h) provision that if an employer is unable to fulfill his obligation under the apprenticeship agreement, he may transfer the obligation to

another employer if the other employer has been approved as a training facility;

(i) provision for the specification of the ratio of apprentices to journeymen. The department will continue to honor and recognize ratio provisions as established in existing labor/management bargaining agreements or as established by an industry practice.

(j) such additional standards as may be prescribed in accordance with the provisions of this chapter.

(2) An apprentice who, prior to entering into an agreement, has had training or experience in the trade or craft in which he is employed as an apprentice may be granted full or partial credit for the training or experience on the recommendation of the employer or the joint apprenticeship committee and with the approval of the department."

Approved March 26, 1979.

CHAPTER NO. 273

AN ACT ALLOWING TRUSTEES OF ANY SCHOOL DISTRICT OR COMMUNITY COLLEGE TO HIRE LEGAL COUNSEL AT THEIR DISCRETION TO PERFORM LEGAL SERVICES IN CONNECTION WITH SCHOOL OR COMMUNITY COLLEGE BOARD BUSINESS; AMENDING SECTION 20-1-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-1-204, MCA, is amended to read:

"20-1-204. County attorney's duties. Upon request of the county superintendent or the trustees of any school district or community college district, the county attorney shall be their legal adviser and shall prosecute and defend all suits to which such persons, in their capacity as public officials, may be a party; however, the trustees of any school district or community college district may, *in their discretion,* employ any other attorney licensed in Montana to perform any legal services in connection with school or community college board business."

Approved March 26, 1979.

CHAPTER NO. 274

AN ACT TO AMEND SECTION 45-5-304, MCA, TO PROVIDE THAT A PERSON DOES NOT COMMIT THE OFFENSE OF CUSTODIAL INTERFERENCE IF HE VOLUNTARILY RETURNS AN INDIVIDUAL TAKEN, ENTICED, OR WITHHELD FROM LAWFUL CUSTODY TO LAWFUL CUSTODY PRIOR TO ARRAIGNMENT OR, IN CERTAIN CASES, PRIOR TO ARREST.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-304, MCA, is amended to read:

"45-5-304. Custodial interference. (1) A person commits the offense of custodial interference if, knowing that he has no legal right to

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do so, he takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution.

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years.

(3) *A person who has not left the state does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to arraignment.* A person *who has left the state* does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to *arrest.*"

Approved March 26, 1979.

CHAPTER NO. 275

AN ACT TO SPECIFICALLY INCLUDE DISTRICT COURT JUDGES IN THE COUNTY BUDGET LAW; AMENDING SECTION 7-6-2324, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2324, MCA, is amended to read:

"7-6-2324. Limitations on appropriations after budget adopted. (1) The estimates of expenditures, itemized and classified as required in 7-6-2313 and 7-6-2314 and as finally fixed and adopted by said board of county commissioners shall constitute the appropriations for the county for the fiscal year intended to be covered thereby.

(2) Except as provided in *3-5-404,* 7-6-2325, and 7-31-2101, the county commissioners and every other county official, *including judges of the district court,* shall be limited in the making of expenditures or incurring of liabilities to the amount of such detailed appropriations and classifications, respectively."

Approved March 26, 1979.

CHAPTER NO. 276

AN ACT TO EMPOWER THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO IMPOSE SANCTIONS ON AND RECOVER PAYMENTS FROM PROVIDERS WHO ENGAGE IN FRAUDULENT, ABUSIVE, OR IMPROPER ACTIVITIES; AMENDING SECTION 53-6-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-111, MCA, is amended to read:

"53-6-111. Department charged with general administration of medical assistance — adoption of rules to punish fraud. *(1)*

The department of social and rehabilitation services is hereby authorized and empowered to administer and supervise a vendor payment program of medical assistance under the powers, duties, and functions provided in chapter 2 of this title, as amended, and as contemplated by the provisions of Title XIX of the federal Social Security Act.

(2) The department shall adopt rules establishing a system of penalties and sanctions applicable to providers of medical assistance services and supplies who engage in fraudulent, abusive, or improper activities. The department shall define by rule those activities which are fraudulent, abusive, or improper.

(3) The penalties or sanctions imposed include but are not limited to:

(a) required courses of education in the rules governing the medicaid program;

(b) withholding of payments to offset previous improper payments to a provider;

(c) suspension of payments to a provider pending resolution of a dispute involving fraudulent, abusive, or improper activities;

(d) suspension of participation in the program for a specified period of time; and

(e) permanent termination of participation in the medical assistance program.

(4) The department is entitled to recover from a provider all amounts paid as a result of fraudulent, abusive, or improper activities, together with interest at the rate set by 15-30-142 for tax deficiencies from the date of such payment.

(5) In all cases in which a penalty or sanction may be imposed, a provider is entitled to a hearing under the provisions of Title 2, chapter 4, part 6."

Approved March 26, 1979.

CHAPTER NO. 277

AN ACT CREATING INFORMAL CONTESTED CASE PROCEEDINGS; PROVIDING FOR JOINT WAIVING OF FORMAL PROCEEDINGS; PROVIDING FOR JOINT WAIVING OF ADMINISTRATIVE PROCEEDINGS; RESTRICTING MODIFICATION BY THE AGENCY OF THE PROPOSAL FOR DECISION; AND AMENDING SECTIONS 2-4-601, 2-4-603, AND 2-4-621, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-601, MCA, is amended to read:

"2-4-601. Notice. (1) In a contested case, all parties *must* be afforded an opportunity for hearing after reasonable notice.

(2) The notice *must* include:

(a) a statement of the time, place, and nature of the hearing;

(b) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(c) a reference to the particular sections of the statutes and rules involved;

(d) a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement *must* be furnished.

(e) a statement that a formal proceeding may be waived pursuant to 2-4-603."

Section 2. Section 2-4-603, MCA, is amended to read:

"2-4-603. Informal disposition and hearings — waiver of administrative proceedings. *(1)* Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(2) Except as otherwise provided, parties to a contested case may jointly waive in writing a formal proceeding under this part. The parties may then utilize informal proceedings under [section 3]. Parties to contested case proceedings held under Title 37 or under any other provision relating to licensure to pursue a profession or occupation may not waive formal proceedings.

(3) If a contested case does not involve a disputed issue of material fact, parties may jointly stipulate in writing to waive contested case proceedings and may directly petition the district court for judicial review pursuant to 2-4-702. The petition shall contain an agreed statement of facts and a statement of the legal issues or contentions of the parties upon which the court, together with the additions it may consider necessary to fully present the issues, may make its decision."

Section 3. **Informal proceedings.** (1) In proceedings under this section, the agency shall, in accordance with procedures adopted under 2-4-201:

(a) give affected persons or parties or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing examiner:

(i) written or oral evidence in opposition to the agency's action or refusal to act;

(ii) a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction; or

(iii) other written or oral evidence relating to the contested case;

(b) if the objections of the persons or parties are overruled, provide a written explanation within 7 days.

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(2) The record must consist of:

(a) the notice and summary of grounds of the opposition;

(b) evidence offered or considered;

(c) any objections and rulings thereon;

(d) all matters placed on the record after ex parte communication pursuant to 2-4-613;

(e) a recording of any hearing held, together with a statement of the substance of the evidence received or considered, the written or oral statements of the parties or other persons, and the proceedings. A party may object in writing to the statement or may order at his cost a transcription of the recording, or both. Objections shall become a part of the record.

(3) Agencies shall give effect to the rules of privilege recognized by law.

(4) In agency proceedings under this section, irrelevant, immaterial, or unduly repetitious evidence must be excluded but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not such evidence is admissible in a trial in the courts of Montana. Any part of the evidence may be received in written form, and all testimony of parties and witnesses must be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient in itself to support a finding unless it is admissible over objection in civil actions.

(5) A party may petition for review of an informal agency decision pursuant to part 7 of this chapter.

Section 4. Section 2-4-621, MCA, is amended to read:

"2-4-621. When absent members render decision — proposal for decision and opportunity to submit findings and conclusions — modification by agency. (1) When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision.

(2) The proposal for decision *must* contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing unless he becomes unavailable to the agency.

(3) The agency may adopt the proposal for decision as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which

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the findings were based did not comply with essential requirements of law. The agency may accept or reduce the recommended penalty in a proposal for decision but may not increase it without a review of the complete record.

(4) A hearing officer who is a member of an agency adjudicative body may participate in the formulation of the agency's final order, provided he has completed all his duties as hearing officer."

Section 5. **Codification.** Section 3 is intended to be codified as an integral part of Title 2, chapter 4, and the provisions contained in Title 2, chapter 4, apply to section 3.

Approved March 26, 1979.

CHAPTER NO. 278

AN ACT TO REQUIRE SUPPLIERS OF FRESH MEAT TO LABEL FOREIGN MEAT AND TO RAISE THE PENALTY FOR FAILURE TO PROPERLY LABEL FOREIGN MEAT OR PROVIDE REQUIRED INFORMATION; AND REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO REPORT ON ENFORCEMENT EFFORTS TO THE LEGISLATURE; AMENDING SECTIONS 50-35-103 AND 50-35-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-35-103, MCA, is amended to read:

"**50-35-103. Labeling requirement for foreign meat.** On meat produced outside the United States of America, the store *or supplier of fresh meat* shall place the words "FOREIGN MEAT" or "MEAT FROM (country of origin)" in prominent letters upon the package in which such meat is sold to the consumer *or store*. If the country of origin of foreign meat is unknown, the words "COUNTRY OF ORIGIN UNKNOWN" shall be placed upon the package in like manner."

Section 2. Section 50-35-104, MCA, is amended to read:

"**50-35-104. Penalty.** A person in charge of a grocery store or similar establishment or a supplier of fresh meat who *knowingly* fails to comply with the provisions of this chapter by willfully failing to label foreign meat or provide information under the provisions of this chapter commits a misdemeanor and upon conviction shall be fined not less than *$200* or more than *$500*."

Section 3. **Biennial report.** The department of health and environmental sciences shall report to the legislature on all efforts taken to enforce compliance with the provisions of [this act] at the beginning of each regular legislative session.

Approved March 26, 1979.

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CHAPTER NO. 279

AN ACT TO ESTABLISH CERTAIN REQUIREMENTS FOR SCHOOL DISTRICT FACSIMILE SIGNATURE MACHINES AND THEIR HANDLING; AMENDING SECTION 20-9-221, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-221, MCA, is amended to read:

"20-9-221. Procedure for issuance of warrants. (1) The trustees of each district shall issue all warrants, and the warrants shall identify:

(a) the budgeted fund or nonbudgeted fund on which the warrant is drawn;

(b) the appropriation item of the budgeted fund or the type of expenditure for a nonbudgeted fund on which the warrant is drawn; and

(c) the warrant as an emergency warrant if it is drawn on an emergency budget.

(2) Any warrant issued by a district shall be countersigned by the chairman of the trustees and the clerk of the district before the warrant shall be negotiable. Facsimile signatures may be used in accordance with the provisions of 2-16-114. *A* facsimile signature device *used under authority of this section: (a) must not be available to the other countersigner of the warrant, or (b) the device must have a nonresettable metering control that can provide a positive reconciliation between the number of warrants issued and the number of signatures applied. Either split signature plates or a double signature plate may be used according to the requirements of the district. The signature plates and the device keys must be kept secure by the district clerk under the supervision of the board of trustees of the district.*

(3) The trustees shall issue warrants in single copy or in triplicate copy. When the warrants are issued in single copy, the trustees shall immediately provide a listing of the issued warrants on a fund-by-fund basis to the county treasurer and retain a copy of the listing in the district accounting records. When the warrants are issued in triplicate, the original copy of the warrant shall be delivered to the payee, the duplicate shall be sent immediately to the county treasurer, and the triplicate shall be retained by the district for accounting record purposes. The duplicate and triplicate copies shall be identified on the face of the warrant as "Not Negotiable—Copy of Original".

(4) However, the trustees may elect to issue warrants in payment of wages and salaries on a direct deposit basis to the employee's account in a local bank, provided the consent of the employee has been obtained and the employee is given an itemized statement of payroll deductions for each pay period."

Approved March 26, 1979.

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CHAPTER NO. 280

AN ACT TO REVISE AND CLARIFY THE MANNER OF FUNDING FOR THE OFFICE OF THE CONSUMER COUNSEL; AMENDING SECTIONS 69-1-223 AND 69-1-224, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-1-223, MCA, is amended to read:

"69-1-223. Funding of office of consumer counsel. (1) There is an account in the earmarked revenue fund to which all fees collected hereunder shall be deposited and from which all appropriations to the office of the consumer counsel shall be paid. *An appropriation to the office of the consumer counsel may consist of a base appropriation for regular operating expenses and a contingency appropriation for expenses due to an unanticipated caseload.*

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall:

(a) within 90 days after the close of each calendar quarter, file with the department of public service regulation and the department of revenue a statement, in such form as the commission may determine, showing the gross operating revenue from all activities regulated by the commission within the state for that calendar quarter of operation or portion thereof; and

(b) at that time pay to the department of revenue a fee based on a *percentage* of the gross operating revenue reported, as determined by the department of revenue under 69-1-224.

(3) The amount of money which may be raised by the fee on the regulated companies during a fiscal year may not be increased from the amount appropriated, including both base and contingency appropriations, by the legislature for that fiscal year. Any additional money required for operation of the office of the consumer counsel must be obtained from other sources in a manner authorized by the legislature."

Section 2. Section 69-1-224, MCA, is amended to read:

"69-1-224. Determination of fee. (1) Within 30 days following enactment of the legislative appropriation for the office of the consumer counsel, the department of revenue shall:

(a) determine the total gross operating revenue generated by all regulated activities within this state for all regulated companies for the previous fiscal year;

(b) compute the percentage, *subject to revision as provided in subsection (3),* of the amount determined in subsection (1)(a) which will produce an amount equal to the *base* appropriation to the *office of the* consumer counsel for *the first* year of the appropriation, except that no regulated company owned and operated by any municipal corporation within this

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state shall be required to pay a sum in excess of .06 of 1% of its gross operating revenue; and

(c) give notice by mail to each regulated company of the percentage determined in subsections (1)(a) and (b) to be applied to the gross operating revenue reported under 69-1-223(2) to determine the amount of the fee to be paid in *the first* year of the appropriation.

(2) On or before May 30 of the first year of the biennium, the department of revenue shall repeat the steps required by subsection (1) and compute the percentage multiplier for the second year, giving notice to the regulated companies.

(3) (a) The department of revenue may adjust the percentage multiplier quarterly if the department considers a change necessary to meet or to not exceed the amount to be raised by the fee because of:

(i) fluctuations in the actual gross operating revenue subject to the fee; or

(ii) submission and approval of a budget amendment authorizing the spending of money from a contingency appropriation included in the appropriation measure for the office of the consumer counsel and authorized to be raised by means of the fee.

(b) Adjustments of the percentage multiplier are subject to the exception provided in subsection (1)(b) for municipally owned and operated regulated companies.

(c) Regulated companies must be given at least 30 days notice of any change in the percentage multiplier.

(4) In the event the fee charged in one year is in excess of the amount actually expended in that year, the excess shall be deducted from the amount required *to be raised by the fee* for the *next* year before the determination required by subsection (1) is made. *Money in the account remaining unspent at the close of a fiscal year shall be used to reduce the percentage calculated in 69-1-224 in the subsequent fiscal year.*"

Approved March 26, 1979.

CHAPTER NO. 281

AN ACT TO AMEND SECTION 15-1-402, MCA; PROVIDING THAT BOTH THE OFFICERS COLLECTING LICENSES AND TAXES OR THE COUNTIES OR THE MUNICIPALITIES IN WHOSE BEHALF THEY WERE COLLECTED AND THE DEPARTMENT OF REVENUE MUST BE SERVED WITH SUMMONS AND COMPLAINT IN AN ACTION TO RECOVER TAX PAID UNDER PROTEST.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of taxes under protest — action to recover. (1) In all cases of levy of taxes, licenses, or other demands for

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public revenue which are deemed unlawful by the party whose property is thus taxed or from whom such tax or license is demanded or enforced, such party may, before such tax or license becomes delinquent, pay under written protest such portions of such tax or license deemed unlawful to the officers designated and authorized to collect the same, specifying the grounds of protest. Thereupon the party so paying or his legal representatives may bring an action in any court of competent jurisdiction against the officers to whom said license or tax was paid or against the county or municipality in whose behalf the same was collected and the department of revenue. *Both the officers to whom the license fee or tax was paid or the county or municipality in whose behalf the same was collected and the department of revenue must be served with summons and complaint within the time prescribed.* Any action instituted to recover any such portions of license or tax paid under protest shall be commenced and summons served within *90* days after the date of payment of the same. When any such license or tax is payable in installments, the first installment portion of such tax or license as may be deemed unlawful may be paid under written protest and suit commenced and summons served to recover the same within the time herein prescribed, and if any subsequent installment of such license or tax shall become due or payable before the final determination of the suit commenced to recover the first installment portion paid under protest, then such subsequent installment portion deemed unlawful may also be paid under written protest and no suit or action need be commenced to recover the same, but the determination of the suit or action commenced to recover the first installment portion paid under protest shall determine the right of the party paying such subsequent installment to have the same or any part thereof refunded to him. All such portions of licenses and taxes when so paid under protest shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as protest fund and shall be invested in interest-bearing deposits in local banks or savings and loan associations and retained in such protest fund until the final determination of any suit or action to recover the same. Nothing contained herein prohibits the investment of the moneys of this fund in the state unified investment program.

(2) If no action is commenced within the time herein specified or if such action be commenced and finally determined in favor of the county or municipality or treasurer thereof, the amount of such protested portions of the license or tax shall be taken from such protest fund and deposited to the credit of the fund or funds to which the same property belongs, but if such action is finally determined adversely to such county or municipality or the treasurer thereof, then the treasurer shall, upon receiving a certified copy of the final judgment in said action, refund to the person in whose favor such judgment is rendered the amount of such protested portions of the license or tax, with costs of suit and interest at the rate currently paid on short-term interest-bearing time deposits in banks in the county or 5% a year, whichever is greater, from the date of payment under protest. If such action was commenced for the purpose of recovering the first installment portions of any such license or tax and any subsequent installment thereof has been paid under protest as herein provided, then the county treasurer shall, at the time of refunding the amount of such

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first installment required by such judgment, also refund such portion of any subsequent installment as the person holding such judgment is entitled to recover, together with interest thereon at the rate of 6% a year from the date of payment under protest."

Approved March 26, 1979.

CHAPTER NO. 282

AN ACT TO AMEND SECTION 45-6-307, MCA, TO PROHIBIT THE MANUFACTURE, ASSEMBLY, POSSESSION, SALE, GIFT, OR OTHER TRANSFER OF ANY APPARATUS, INSTRUMENT, EQUIPMENT, OR DEVICE DESIGNED OR INTENDED TO AVOID LAWFUL TELECOMMUNICATIONS CHARGES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-6-307, MCA, is amended to read:

"45-6-307. Aiding the avoidance of telecommunications charges. (1) A person commits the offense of aiding the avoidance of telecommunications charges when he:

(a) publishes the number or code of an existing, canceled, revoked, expired, or nonexistent *telephone* credit card or the numbering or coding which is employed in the issuance of credit cards with the purpose that it will be used to avoid the payment of lawful telecommunications charges;

(b) publishes, advertises, sells, gives, or otherwise transfers to another plans or instructions for the making or assembling of any apparatus, instrument, equipment, or device described in 45-6-306(4) with the purpose that such will be used or with the knowledge or reason to believe that such will be used to avoid the payment of lawful telecommunications charges*; or*

(c) manufactures, assembles, possesses, sells, gives, or otherwise transfers any apparatus, instrument, equipment, or device described in 45-6-306(4) with the purpose that it will be used to avoid the payment of lawful telecommunications charges.

(2) A person convicted of the offense of aiding the avoidance of telecommunications charges shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) For the purposes of this section, the term "publish" means to communicate information to any one or more persons, either orally; in person; by telephone, radio, or television; or in a writing of any kind, including but not limited to a letter, memorandum, circular, handbill, newspaper or magazine article, or book."

Approved March 26, 1979.

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CHAPTER NO. 283

AN ACT TO INCREASE THE PERMISSIVE COUNTY BRIDGE LEVY; AND AMENDING SECTION 7-14-2502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-2502, MCA, is amended to read:

"7-14-2502. Special bridge tax authorized. (1) Each board may levy a special tax not to exceed *4* mills on all taxable property in the county for the purpose of constructing, maintaining, and repairing free public bridges, *which includes those bridges within the municipalities.*

(2) An additional levy for these purposes may be made under the following conditions:

(a) In any county where the total linear feet of bridges or bridge construction is more than 4,000 and the taxable value of property in that county is *$20* million or less, the board may, if necessary, levy 1 mill.

(b) In counties where the total linear feet of bridges or bridge construction is more than 6,000 and the taxable value of property in that county is not less than *$20* million or more than *$40* million, the board may, if necessary, levy 2 mills.

(3) For the purposes of this section, a free public bridge is defined as any drainage structure located on, over, or through any road or highway.

(4) These taxes must be levied and collected in the same manner as other taxes. The money shall be kept as a special bridge fund, subject to the order of the board for use as herein provided, and shall not be transferable to any other fund."

Approved March 26, 1979.

CHAPTER NO. 284

AN ACT TO EXEMPT WOOL AND SHEEP POOLS FROM CORPORATION LICENSE TAX; AMENDING SECTION 15-31-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-102, MCA, is amended to read:

"15-31-102. Organizations exempt from tax. (1) There shall not be taxed under this title any income received by any:

(a) labor, agricultural, or horticultural organization;

(b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity

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itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;

(c) cemetery company owned and operated exclusively for the benefit of its members;

(d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e) business league, chamber of commerce, or board of trade not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;

(f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

(i) any cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;

(j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members' wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep.

(2) In determining the license fee to be paid under this part, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function."

Section 2. **Effective date and application.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1978.

Approved March 26, 1979.

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CHAPTER NO. 285

AN ACT TO REVISE THE REPORTERS' CONFIDENCE ACT; AMENDING SECTIONS 26-1-901, 26-1-902, AND 26-1-903, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-1-901, MCA, is amended to read:

"26-1-901. Short title. This part shall be known and may be cited as the "*Media Confidentiality* Act"."

Section 2. Section 26-1-902, MCA, is amended to read:

"26-1-902. Extent of privilege. (1) Without his *or its* consent no person, *including* any newspaper, *magazine, press association, news agency,* news service, radio station, television station, or community antenna television service *or any person connected with or employed by any of these* for the purpose of gathering, writing, editing, or disseminating news may be examined as to or may be required to disclose any information obtained or prepared or the source of that information in any legal proceeding if the information was gathered, received, or processed in the course of his employment *or its business.*

(2) A person *described* in subsection (1) may not be adjudged in contempt by a judicial, legislative, administrative, or any other body having the power to issue subpoenas for refusing to disclose *or produce* the source of any information or for refusing to disclose any information obtained or prepared in gathering, receiving, or processing information in the course of his *or its business.*"

Section 3. Section 26-1-903, MCA, is amended to read:

"26-1-903. Waiver of privilege. (1) Dissemination, except as provided in subsection (2), in whole or in part does not constitute a waiver of provisions of 26-1-902.

(2) If the person claiming the privilege voluntarily offers to testify *or to produce the source,* with or without having been subpoenaed *or ordered to testify or produce the source,* before a judicial, legislative, administrative, or other body having the power to issue subpoenas *or judicially enforceable orders,* he *or it* waives the provisions of 26-1-902. *Except as provided in this subsection, the provisions of 26-1-902 may not be waived.*"

Approved March 26, 1979.

CHAPTER NO. 286

AN ACT TO GIVE THE COMMISSIONER OF LABOR AND INDUSTRY AUTHORITY TO ENFORCE MATERNITY LEAVE PROVISIONS THROUGH A DISTRICT COURT PROCEEDING.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Court enforcement of commissioner's decision.** (1) A decision by the commissioner pursuant to 39-7-207 may be enforced by the district court if the commissioner applies to the court, within 60 days from

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date of decision, for an order enforcing the decision and if the time provided to initiate judicial review by the employer has passed pursuant to Title 2, chapter 4, part 7.

(2) The commissioner shall apply to the district court of the county in which the employer has its principal place of business or in the first judicial district of the state.

(3) A proceeding under this section is not a review of the merits of the commissioner's decision.

Section 2. **Codification.** It is intended that section 1 be codified as an integral part of Title 39, chapter 7, part 2, and the provisions of Title 39, chapter 7, part 2, apply to section 1.

Approved March 26, 1979.

CHAPTER NO. 287

AN ACT TO REQUIRE APPROVAL OF THE TRUSTEES OF A RECEIVING SCHOOL DISTRICT BEFORE A TRANSFER OF TERRITORY FROM ANOTHER SCHOOL DISTRICT CAN BE MADE; AMENDING SECTION 20-6-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-6-213, MCA, is amended to read:

"20-6-213. Transfer of territory from one elementary district to another. (1) A majority of the electors of any elementary district who are qualified to vote under the provisions of 20-20-301 and who reside in territory which is a part of an elementary district may petition the county superintendent to transfer such territory to another elementary district when:

(a) such territory is contiguous to the district to which it is to be attached;

(b) such territory is not located within 3 miles, over the shortest practical route, of an operating school of the district from which it is to be detached;

(c) the transfer of such territory will not reduce the taxable value of the district to less than $100,000 unless the remaining territory of the district will contain not less than 50,000 acres of nontaxable Indian land; *and*

(d) the board of trustees of the school district that would receive the territory has approved the transfer.

(2) The petition shall be addressed to the county superintendent and shall:

(a) describe the territory that is requested to be transferred and to what district it is to be transferred;

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(b) state the reasons why such transfer is requested; and

(c) state the number of elementary school-age children residing in such territory.

(3) On receipt of a valid petition for a territory transfer, the county superintendent shall:

(a) file such petition;

(b) set a hearing place, date, and time for consideration of the petition that is not more than 40 days after receipt of the petition; and

(c) give notice of the place, date, and time of the hearing. The notices shall be posted in the districts affected by the request in the manner prescribed in this title for school elections, with at least one such notice posted in the territory to be transferred.

(4) The county superintendent shall conduct the hearing as scheduled, and any resident or taxpayer of the affected districts shall be heard. If the county superintendent *considers* it advisable and in the best interests of the residents of such territory, he shall grant the petitioned request and order the change of district boundaries to coincide with the boundary description in the petition. Otherwise, he shall, by order, deny the request. Either of the orders shall be final 30 days after its date unless it is appealed to the board of county commissioners by a resident or taxpayer of either district affected by the territory transfer. The decision of the board of county commissioners, after a hearing on such matter and consideration of the material presented at the county superintendent's hearing, shall be final 30 days after its date unless a petition to submit the question to a vote of the people in the district from which the land is to be transferred, which has been signed by a majority of the electors of the district who reside in the territory to be transferred and who are qualified to vote in elections for that district under 20-20-301, is presented prior to that time. When a petition is submitted under this subsection, the question of whether the land shall be transferred to another district shall be put before the voters at the next regular school election in the affected district.

(5) Whenever a petition to transfer territory from one elementary district to another elementary district would create a joint elementary district or affect the boundary of an existing joint elementary district, the petition shall be presented to the county superintendent of the county where the territory is located. Such county superintendent shall notify any other county superintendents of counties with districts affected by such petition, and the duties prescribed in this section for the county superintendent and the board of county commissioners shall be performed jointly by such county officials."

Approved March 26, 1979.

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CHAPTER NO. 288

AN ACT ALLOWING SCHOOL DISTRICTS TO CONDUCT LESS THAN THE MINIMUM NUMBER OF SCHOOL DAYS PROVIDED BY LAW; PROVIDING DEFINITIONS AND CONDITIONS; PROVIDING FOR PROPORTIONAL REDUCTIONS IN SCHOOL EQUALIZATION AID; AMENDING SECTIONS 20-1-301, 20-6-209, AND 20-9-311, MCA; PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** [Sections 1 through 5] govern a school district's entitlement to state equalization apportionment funds for any school year during which the school district is unable to conduct the minimum number of school days required by law by reason of one or more unforeseen emergencies. The provisions of [sections 1 through 5] must be narrowly interpreted.

Section 2. **Definitions.** As used in [sections 1 through 5], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Unforeseen emergency" means a fire, flood, explosion, storm, earthquake, riot, insurrection, community disaster, or act of God or any combination of the foregoing that acts as a principal cause for a school district's inability to conduct one or more scheduled school days.

(2) "School day" means the school day defined in 20-1-302.

(3) "Reasonable effort" means the rescheduling or extension of the school district's instructional calendar in an effort to attain the minimum number of school days required by law by:

(a) extending the school year 1 week beyond the last scheduled day; or

(b) the use of scheduled vacation days.

Section 3. **Unforseen emergency minimum.** In no case may a district be considered to have made a reasonable effort unless at least 3 school days that have been lost by reason of one or more unforeseen emergencies have in fact been made up.

Section 4. **Determination of eligibility.** If the county superintendent or, in a county with no county superintendent, the superintendent of public instruction determines that a reasonable effort has been made to make up all school days lost by reason of one or more unforeseen emergencies but fewer than the minimum number of school days required by law have been conducted, the school district will nevertheless be credited with full annual equalization apportionment according to the rate established in [section 5].

Section 5. **Rate of reduction in annual apportionment entitlement.** (1) For each school day short of the minimum number of school days required by law that a school district fails to conduct by reason of one or more unforeseen emergencies or by reason of any other cause and for which the school district is not entitled to apportionment

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credit, the superintendent of public instruction shall reduce the equalization apportionment and entitlement of the district for that school year by 1/180th.

(2) Kindergarten and grade 1 through 12 programs shall be considered separately for the purpose of computing compliance with minimum school day requirements and any loss of apportionment.

Section 6. Section 20-1-301, MCA, is amended to read:

"20-1-301. School fiscal year. The school fiscal year shall begin on July 1 and end on June 30. At least 180 school days of pupil instruction shall be conducted during each school fiscal year, unless a variance for kindergarten has been granted under 20-1-302 *or a district is granted a variance under the provisions of [sections 1 through 5].* Any district that fails to provide for at least 180 school days of pupil instruction shall not be entitled to receive any apportionment of the state interest and income funds. Any such forfeited moneys shall be apportioned by the county superintendent to the other elementary districts of his county."

Section 7. Section 20-6-209, MCA, is amended to read:

"20-6-209. Elementary district abandonment. (1) The county superintendent shall declare an elementary district to be abandoned and order the attachment of the territory of such district to a contiguous district of the county when:

(a) a school has not been operated by a district for at least 180 days under the provisions of 20-1-301 for each of 3 consecutive school fiscal years *or a lesser number of days as approved by the county superintendent or the superintendent of public instruction under the provisions of [section 4]*; or

(b) there is an insufficient number of residents who are qualified electors of the district that can and will serve as the trustees and clerk of the district so that a legal board of trustees can be organized.

(2) The county superintendent shall notify the elementary district that has not operated a school for 2 consecutive years before the first day of the third year that the failure to operate a school for 180 days *or a lesser number of days than approved by the county superintendent or the superintendent of public instruction as provided under the provisions of [section 4]* during the ensuing school fiscal year shall constitute grounds for abandonment of such district at the conclusion of the succeeding school fiscal year. Failure by the county superintendent to provide such notification shall not constitute a waiver of the abandonment requirement prescribed in subsection (1)(a) above.

(3) Any abandonment under subsection (1)(a) shall become effective on July 1. Any abandonment of an elementary district under subsection (1)(b) shall become effective immediately on the date of the abandonment order."

Section 8. Section 20-9-311, MCA, is amended to read:

"20-9-311. Calculation of average number belonging (ANB). (1) Average number belonging shall be computed by determining the total

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of the aggregate days of attendance by regularly enrolled, full-time pupils during the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the current school fiscal year and by dividing such total by 180. *However, when a school district has approval to operate less than 180 school days under [section 4], such total shall be calculated in accordance with the provisions of [section 5].* Attendance for a part of a morning session or a part of an afternoon session by a pupil shall be counted as attendance for one-half day. In calculating the ANB for pupils enrolled in a program established under 20-7-117 prior to January 1, 1974, or pursuant to 20-7-117(1), attendance at or absence from a regular session of the program for at least 2 hours of either a morning or an afternoon session will be counted as one-half of a day attended or absent as the case may be. If a variance has been granted as provided in 20-1-302, ANB will be computed in a manner prescribed by the superintendent of public instruction, but in no case shall the ANB exceed one-half for each kindergarten pupil. When any pupil has been absent, with or without excuse, for more than 10 consecutive school days, including pupil-instruction-related days, his absence after the 10th day of absence shall not be included in the aggregate days of absence and his enrollment in the school shall not be considered in the calculation of the average number belonging until he resumes attendance at school.

(2) If a student spends less than half his time in the regular program and the balance of his time in school in the special education program, he shall be considered a full-time special pupil but shall not be considered regularly enrolled for ANB purposes. If a student spends half or more of his time in school in the regular program and the balance of his time in the special education program, he shall be considered regularly enrolled for ANB purposes.

(3) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district shall be calculated individually for each school, except that when:

(a) more than one school of a district, other than a junior high school in an elementary district which has been approved and accredited as a junior high school, is located within the incorporated limits of a city or town, the average number belonging of such schools shall be based on the aggregate of all the regularly enrolled, full-time pupils attending such schools located within the incorporated limits of a city or town;

(b) a junior high school which has been approved and accredited as a junior high school is located within the incorporated limits of a city or town in which a high school is located, all of the regularly enrolled, full-time pupils of the junior high school shall be considered as high school district pupils for the purposes of calculating the average number belonging of the high schools located within the incorporated limits of such city or town;

(c) a middle school has been approved and accredited, in which case pupils below the 7th grade shall be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils shall be considered high school pupils for ANB purposes; or

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(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school shall not be eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the foundation program for such district.

(4) When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB shall be determined in a manner prescribed by the superintendent of public instruction."

Section 9. **Effective date.** This act is effective upon passage and approval.

Approved March 26, 1979.

CHAPTER NO. 289

AN ACT TO AMEND SECTION 32-1-213, MCA, RELATING TO THE COST OF EXAMINATION OF BANKS, INVESTMENT COMPANIES, AND TRUST COMPANIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-213, MCA, is amended to read:

"32-1-213. Payments to be made by banks, investment companies, and trust companies. For the credit of the general fund of the state, each bank, trust company, or investment company under the supervision of the department shall pay to the state treasurer, on or before June 30 of each year, a supervision fee of $400. An examination fee of *12* cents for each $1,000 of total assets as of the date of the examination shall be paid at the conclusion of the examination."

Approved March 26, 1979.

CHAPTER NO. 290

AN ACT TO PUT COMPENSATION FOR LOSS OF SALARY FOR INJURED OFFICERS UNDER WORKERS' COMPENSATION; MANDATING A MUNICIPALITY TO PAY THE DIFFERENCE BETWEEN THE OFFICER'S FULL SALARY AND THE AMOUNT PAID BY WORKERS' COMPENSATION AND CLARIFYING THE MEANING OF MONTHLY COMPENSATION FOR PURPOSES OF THE STATEWIDE POLICE RETIREMENT SYSTEM; AMENDING SECTIONS 7-32-4132, 7-32-4135, AND 7-32-4136, MCA; REPEALING SECTIONS 7-32-4133 AND 7-32-4134, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-4132, MCA, is amended to read:

"7-32-4132. Payment of partial salary amount of officer injured in performance of duty. A member of a municipal law

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enforcement agency of a first- or second-class municipality who is injured in the performance of his duties so as to necessitate medical or other remedial treatment and render him unable to perform his duties shall be paid by the municipality by which he is employed the *difference between his full salary and the amount he receives* from workers' compensation until his disability has ceased, *as determined by workers' compensation,* or for a period not to exceed 1 year, whichever shall first occur."

Section 2. Section 7-32-4135, MCA, is amended to read:

"7-32-4135. Discontinuation of salary when retirement allowance granted. Payment of a *partial* salary *amount* under 7-32-4132 shall be discontinued if the officer is disabled for an undetermined duration and is granted a disability retirement allowance under Title 19, chapters 9 and 10. If an application for such a retirement allowance is not made by the officer, application therefor may be made by the chief executive officer of the municipality by which such officer is employed."

Section 3. Section 7-32-4136, MCA, is amended to read:

"7-32-4136. Assignment to light duty or another agency. (1) Whenever, in the opinion of the municipality, supported by a physician's opinion, the officer is able to perform specified types of light police duty, payment of his *partial* salary *amount* under 7-32-4132 shall be discontinued if he refuses to perform such light police duty when it is available and offered to him. Such light duty shall be consistent with the officer's status as a law enforcement officer.

(2) With his consent, the officer may be transferred to another department or agency within the municipality."

Section 4. **Contributions.** (1) When an officer receives compensation under [section 1] the member contributions for retirement required under 19-9-601 will be paid on the total compensation received under [section 1] and the employer contribution paid by the municipalities under 19-9-703 and the state contribution under 19-9-702 shall include as part of the salaries paid to police officers all compensation received under [section 1]. The service represented by these contributions will be credited in the same manner as provided in 19-9-401.

(2) When an injured officer accepts a transfer under [section 3] to a nonpolice position within the municipality covered under 19-3-401, all service and contributions previously credited with the municipal police officers' retirement system shall be transferred from the municipal police officers' retirement system retirement account in the agency fund along with the interest to the public employees' retirement system agency fund. The employer contributions and interest transferred will be equal to the amount that would have been contributed had the transferred service been normal employment covered under the public employees' retirement system.

Section 5. **Repealer.** Sections 7-32-4133 and 7-32-4134, MCA, are repealed.

Approved March 26, 1979.

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CHAPTER NO. 291

AN ACT TO DEFINE CRIMINAL POSSESSION OF PRECURSORS TO CERTAIN DANGEROUS DRUGS, INCLUDING AMPHETAMINE, METHAMPHETAMINE, AND PHENCYCLIDINE; PROVIDING CRIMINAL SANCTIONS; PROVIDING CERTAIN EXEMPTIONS; AND AUTHORIZING RULEMAKING AUTHORITY FOR THE BOARD OF PHARMACISTS TO GRANT EXEMPTIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Criminal possession of precursors to dangerous drugs.** (1) A person commits the offense of criminal possession of precursors to dangerous drugs if he possesses:

(a) both phenyl-2-propanone (phenylacetone) and formamide or hydroxylamine at the same time with the intent to manufacture amphetamine;

(b) both phenyl-2-propanone (phenylacetone) and methylamine or N-methylformamide at the same time with the intent to manufacture methamphetamine;

(c) both piperidine and cyclohexanone at the same time, or a combination product thereof, with the intent to manufacture phencyclidine (PCP).

(2) A person convicted of criminal possession of precursors to dangerous drugs shall be imprisoned in the state prison for a term not less than 2 years or more than 20 years.

Section 2. **Exemptions.** The provisions of [section 1] do not apply to:

(1) a drug manufacturer licensed by the state;

(2) a person authorized by rules adopted by the board of pharmacists to possess the combination of substances;

(3) a person employed by or enrolled as a student in a college or university within the state who possesses any combination of substances listed in [section 1] for the purposes of teaching or research which is authorized by the college or university.

Section 3. **Rulemaking authorized.** The board of pharmacy shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the processing of any combination of the substances listed in [section 1] whenever it determines that there is a legitimate need and that the substances will be used for a lawful purpose.

Approved March 26, 1979.

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CHAPTER NO. 292

AN ACT TO PROVIDE THAT THE BOARD OF NATURAL RESOURCES AND CONSERVATION MAY REQUIRE METERS ON WELLS IN CONTROLLED GROUNDWATER AREAS AND PROPOSED CONTROLLED GROUNDWATER AREAS AND WELLS WITH A MAXIMUM YIELD IN EXCESS OF 100 GALLONS PER MINUTE OUTSIDE SUCH AREAS; AND AMENDING SECTION 85-2-113, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-113, MCA, is amended to read:

"85-2-113. Board powers and duties. (1) The board may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates. There shall be no fees for the filing of declarations or for the issuance of certificates of existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, *except that the board may not require a meter on a water well outside of a controlled groundwater area or proposed controlled groundwater area unless the maximum yield of the well is in excess of 100 gallons a minute*;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of groundwater.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property."

Approved March 26, 1979.

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CHAPTER NO. 293

AN ACT TO PROVIDE A COST OF LIVING INCREASE IN CERTAIN RETIREMENT ALLOWANCES PAYABLE UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Cost of living increase.** Effective July 1, 1979, every service or disability retirement allowance or survivorship allowance then payable to a retired member or his beneficiary by the public employees' retirement system shall be increased by 0.45% for each month that the allowance was payable between January 1, 1977, and December 31, 1978.

Approved March 26, 1979.

CHAPTER NO. 294

AN ACT TO PROVIDE UNIFORM COLLECTION PROCEDURES FOR THE LICENSE TAXES ON TELEPHONE COMPANIES, EXPRESS COMPANIES, FREIGHT LINE COMPANIES, AND SLEEPING CAR COMPANIES; PROVIDING FOR PENALTIES AND INTEREST FOR UNPAID TAXES AND CREATING A LIEN UPON REAL PROPERTY FOR UNPAID TAXES; AMENDING SECTIONS 15-53-102, 15-54-102 THROUGH 15-54-104, 15-56-102, 15-56-103, AND 15-56-107, MCA; AND REPEALING SECTIONS 15-52-101 THROUGH 15-52-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-53-102, MCA, is amended to read:

"15-53-102. Statement required of telephone companies. *(1)* Each and every person, liable to tax under this chapter engaged in carrying on such telephone business in this state shall, within 60 days after the end of each quarter, make and file with the department of revenue a statement in such form as the department may require and prescribe, showing the total gross income of such person derived from the telephone business within this state, including the transmission of telephone messages originating and terminating within this state, but excluding therefrom the gross income derived from the transmission of telephone messages passing through this state but both originating and terminating outside of this state and from those originating outside of but terminating within this state and from those originating within but terminating outside of this state, during the preceding quarter and containing such other information as the department may require, and shall accompany such statement with the payment to the department of a license tax in the amount equal to 1.725%.

(2) The department may grant a reasonable extension of time for filing the statement upon good cause shown."

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Section 2. **Penalty and interest for delinquency — waiver.** (1) License taxes due under this chapter become delinquent if not paid within 60 days after the end of each calendar quarter. The department of revenue shall add to the amount of all delinquent telephone company license taxes a penalty of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest is computed from the date the license taxes were due to the date of payment.

(2) The 10% penalty may be waived by the department if reasonable cause for the failure or neglect to file the statement required by 15-53-102 or pay the tax due is provided to the department.

Section 3. **Estimation of tax upon failure to file statement or pay tax — notice.** (1) If a person fails, neglects, or refuses to file the statement required by 15-53-102 within the time required or fails to pay the tax required by this chapter on or before the date payment is due, the department of revenue shall proceed to inform itself as best it may regarding the total gross income of the person from its telephone business within this state during the quarter.

(2) The department shall compute the amount of license taxes due from the person and shall mail to the person a letter and tax assessment statement setting forth the amount of delinquent license tax, penalty, and interest due. The letter shall advise that if payment is not made within 15 days a lien may be filed.

Section 4. **Lien for collection of tax.** All tax, penalty, and interest due from any person under this chapter shall be a lien upon all real property of the person within a county when the department of revenue files in the office of the clerk of court of any county where the real property is situated a certified copy of its assessment letter. The lien has precedence over any claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

Section 5. **Disposal of license taxes.** License taxes collected under this chapter shall be credited to the general fund of the state.

Section 6. Section 15-54-102, MCA, is amended to read:

"15-54-102. Rate of express company license tax — proceeds to general fund. *(1)* The department of revenue shall *compute the amount of license tax due* by taking 4% of the amount fixed as the gross receipts of such express company for business done within the state for the year next preceding April 1. *The* department *shall on or before September 1 mail to each person making and filing the statement required by 15-54-103 a written notice of the amount of license tax due and payable on or before the September 30 immediately following. Nothing* contained in this chapter shall exempt or relieve any express company from the assessment and taxation of its tangible property in the manner authorized and provided by law.

(2) License taxes collected under this chapter shall be *credited* to the general fund of the state."

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Section 7. Section 15-54-103, MCA, is amended to read:

"15-54-103. Statements required from express companies. *(1)* Any express company, as defined in 15-54-101, doing business in this state *must, not later than July 1,* make and file with the department of revenue a statement in such form as the department may prescribe. *The statement must show the following*:

(a) the name of the person or persons, association, or corporation;

(b) under the laws of what state or country organized;

(c) the location of its principal office;

(d) the name and post-office address of the president, secretary, auditor, treasurer, superintendent, and general manager;

(e) the name and post-office address of the chief officer or managing agent of the company in this state;

(f) the entire receipts (including all sums entered or charged, whether actually received or not) for business done by such company within this state, including its proportion of gross receipts for business done by such company within the state in connection with other companies;

(g) such other facts and information as the department may require in the form of return prescribed by it.

(2) The department may grant a reasonable extension of time for the filing of a statement upon good cause shown."

Section 8. Section 15-54-104, MCA, is amended to read:

"15-54-104. Computing express company gross receipts. The department of revenue shall proceed to ascertain and determine on or before *September 1* in each year the entire gross receipts of each of said express companies for business done within the state for the year next preceding April 1, and the amount so ascertained by the department shall be held and deemed to be the gross receipts of such express company for business done within the state for the year under consideration."

Section 9. **Estimation of tax upon failure to file statement — notice.** If a person fails, neglects, or refuses to make and file the statement required by 15-54-103, the department of revenue shall determine as nearly as possible from any returns or reports filed with any state or county officer or board under any law of this state and from any other information that the department may be able to obtain the total gross receipts of the person from the business in this state during the year next preceding April 1.

(2) The department shall prepare a statement showing the amount of the gross receipts and shall compute and assess the amount of license taxes due from the person and shall give notice to the person in the same manner as though the statement had been filed on time and shall proceed to collect the license tax, if delinquent, together with penalty and interest as provided for other delinquencies.

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Section 10. **Penalty and interest for delinquency — waiver.** (1) License taxes assessed under this chapter become delinquent if not paid on or before September 30 following the date assessed. The department of revenue shall add to the amount of all delinquent express company license taxes a penalty of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest is computed from the date the license taxes become delinquent until paid.

(2) The 10% penalty may be waived by the department if reasonable cause for the failure or neglect to file the statement required by 15-54-103 or pay the tax due is provided to the department.

Section 11. **Lien for collection of tax.** All tax, penalty, and interest due from any person under this chapter shall be a lien upon all real property of the person within a county when the department of revenue files in the office of the clerk of court of any county where the real property is situated a certified copy of its assessment letter. The lien has precedence over any claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

Section 12. **Penalty and interest for delinquency — waiver.** (1) License taxes due under this chapter become delinquent if not paid by March 1. The department shall add to the amount of all delinquent freight line company license taxes a penalty of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest is computed from the date the license taxes were due to the date of payment.

(2) The 10% penalty may be waived by the department if reasonable cause for the failure or neglect to file the statement required by 15-55-103 or pay the tax due is provided to the department.

Section 13. **Lien for collection of tax.** All tax, penalty, and interest due from any person under this chapter shall be a lien upon all real property of the person within a county when the department files in the office of the clerk of court of any county where the real property is situated a certified copy of its letter assessing tax, penalty, or interest under this chapter. The lien has precedence over any claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

Section 14. **Disposal of license taxes.** License taxes collected under this chapter shall be credited to the general fund of the state.

Section 15. Section 15-56-102, MCA, is amended to read:

"15-56-102. Rate of license tax on sleeping car companies — proceeds to general fund. *(1)* The department shall *compute the amount of* license tax *due* at the rate of 1 ½% *of* the valuation *determined under 15-56-105. The department shall mail to each person making and filing the report required by 15-56-103 a written notice of the value of the property subject to the license tax in this state and the*

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amount of tax due which is payable within 60 days from the date of the notice.

(2) License taxes collected under this chapter shall be credited to the general fund of the state."

Section 16. Section 15-56-103, MCA, is amended to read:

"15-56-103. Report required of sleeping car companies. Every sleeping car company shall annually, on or before *June* 1 and covering *the preceding calendar year*, make and file a *report*. The department shall furnish forms upon which to make such reports. *The* report *must* contain:

(1) the name of the company;

(2) the nature of the company; whether a person, agent, trustee, lessee, receiver, or other person or a joint-stock company, partnership, association, or corporation;

(3) the location of its principal office and under the laws of what state or country organized and when;

(4) the name and address of the president, secretary, auditor, treasurer, and superintendent or general manager;

(5) the name and address of its chief officer or managing agent in Montana;

(6) its capital stock:

(a) the amount authorized;

(b) the amount issued;

(c) the amount of capital stock invested in its sleeping car business;

(d) the number of shares of stock:

(i) outstanding;

(ii) not issued;

(iii) treasury; and whether common or preferred;

(7) the amount of the bonds outstanding, when issued, when due, and the rate of interest of each issue;

(8) the par market value of the stocks and bonds issued and outstanding;

(9) the whole length and the names of railroad lines over which its *equipment was used* in the state;

(10) the total *equipment* mileage and the *equipment* mileage within this state;

(11) the gross and net earnings during the year;

(12) such other facts and information as such company or the department may deem material upon the question of the true and full value of said property within this state."

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Section 17. **Extension for filing report.** The department may grant a reasonable extension of time for filing the report required by 15-56-103 upon good cause shown.

Section 18. Section 15-56-107, MCA, is amended to read:

"15-56-107. Tax receipt as license to do business. The receipt by the *department* of the license tax paid in full shall serve as a license to the sleeping car company to conduct its business in the state during the year when issued."

Section 19. **Penalty and interest for delinquency — waiver.** (1) License taxes assessed under this chapter become delinquent if not paid within 60 days following the date assessed. The department shall add to the amount of all delinquent sleeping car company license taxes a penalty of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest is computed from the date the taxes become delinquent until paid.

(2) The 10% penalty may be waived by the department if reasonable cause for the failure or neglect to file the report required by 15-56-103 or pay the tax due is provided to the department.

Section 20. **Estimation of tax upon failure to file return.** (1) If a person fails to make the report required by 15-56-103, the department shall determine the value of the property of that person in this state from any information that the department may be able to obtain.

(2) The department shall prepare a statement showing the amount of the valuation determined and shall compute and assess the amount of license taxes due and shall give notice to the person failing to make the report in the same manner as though a report had been filed as required by 15-56-103.

Section 21. **Lien for collection of tax.** All tax, penalty, and interest due from any person under this chapter shall be a lien upon all real property of the person within a county when the department files in the office of the clerk of court of any county where the real property is situated a certified copy of its assessment letter. The lien has precedence over any claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

Section 22. **Repealer.** Sections 15-52-101 through 15-52-103, MCA, are repealed.

Section 23. **Codification.** It is intended that:

(1) sections 2 through 5 be codified as an integral part of Title 15, chapter 53, part 1, and the provisions contained in Title 15, chapter 53, part 1, apply to sections 2 through 5;

(2) sections 9 through 11 be codified as an integral part of Title 15, chapter 54, part 1, and the provisions contained in Title 15, chapter 54, part 1, apply to sections 9 through 11;

(3) sections 12 through 14 be codified as an integral part of Title 15, chapter 55, part 1, and the provisions contained in Title 15, chapter 55, part 1, apply to sections 12 through 14;

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(4) section 17 and sections 19 through 21 be codified as an integral part of Title 15, chapter 56, part 1, and the provisions contained in Title 15, chapter 56, part 1, apply to section 17 and sections 19 through 21.

Approved March 26, 1979.

CHAPTER NO. 295

AN ACT TO CHANGE THE EMPLOYEE CONTRIBUTION FOR CREDITABLE SERVICE FOR OUT-OF-STATE EMPLOYMENT; AMENDING SECTION 19-4-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-4-402, MCA, is amended to read:

"19-4-402. Creditable service for out-of-state employment. A person applying for membership may also apply for creditable service in the retirement system for out-of-state employment service that would have been acceptable under the provisions of this chapter if such service had been performed in the state of Montana. The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, not exceeding 5, that the retirement board determines to be creditable service, if he contributes to the retirement system an amount equal to the *combined employer and* employee contribution for his first full year's teaching salary earned in Montana after his out-of-state service for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contributions may be made in a lump-sum payment or in installments as agreed between the person and the retirement board."

Approved March 26, 1979.

CHAPTER NO. 296

AN ACT TO PROVIDE THAT CERTAIN PAYMENTS TO THE FIRE DEPARTMENT RELIEF ASSOCIATION IN A CITY OF THE FIRST OR SECOND CLASS SHALL BE MADE DIRECTLY TO THE BOARD OF INVESTMENTS TO BE CREDITED TO THE ACCOUNT OF THE ASSOCIATION AND THAT THE STATE AUDITOR SHALL REPORT TO THE TREASURER OF THE ASSOCIATION THE AMOUNT OF SUCH PAYMENTS; AMENDING SECTIONS 19-11-512, 19-11-514, AND 19-11-606, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-11-512, MCA, is amended to read:

"19-11-512. State auditor to pay association out of insurance premium taxes. (1) At the end of the fiscal year, the state auditor shall

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issue and deliver the payment described in this subsection to the *board of investments to be credited to the account of each fire department relief association of any* city or town of the first *or* second class which has a fire department relief association entitled by law to receive payments. *The state auditor shall, at the same time, report to the treasurer of the association the amount of the payment.* The payment shall be for the use and benefit of the association. It shall be paid out of the premium taxes on insurance risks enumerated in subsection (6) collected by the state auditor and shall be equal to 10% of the total annual compensation paid by the city or town to its paid or part-paid firefighters for services in the previous calendar year. The city clerk of the city or town shall certify in writing to the state auditor, on or before April 1 of each year, the amount paid by the city or town as compensation for services to paid or part-paid firefighters.

(2) When there is a disaster resulting in death or injury sufficient to draw the pensions of 10% of the active force and the fund, after receiving all moneys provided for in 19-11-501, 19-11-503, 19-11-504, and subsection (1) of this section, does not show at least the 1-mill growth referred to in 19-11-504, the treasurer of the association shall request and the state auditor shall issue and deliver an additional payment under the same conditions described in subsection (1). The payment shall be in an amount sufficient to cause at least the above-mentioned 1-mill growth in the fund.

(3) If a city is not entitled to receive a sum equal to 1 ½ mills of its total taxable value under subsections (1) and (2), the *payment shall be made* in the *amount* provided in subsections (4) and (5) for cities of the third class *and in the manner described in subsection (1).*

(4) At the end of the fiscal year, the state auditor shall issue and deliver the warrant described in this subsection to the treasurer of every city or town, except cities and towns of the first or second class, which has a fire department relief association entitled by law to receive payments. The warrant shall be for the use and benefit of the association. It shall be for an amount equal to 1 ½ mills of the total taxable value of the city or town and shall be paid out of the premium taxes on insurance risks enumerated in subsection (6) collected by the state auditor.

(5) If the payment provided for in subsection (4) is less than $100, an additional payment *shall be made* from the same tax moneys so that the total amount received is $100.

(6) The risks referred to in subsections (1) and (4) are:

(a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty;

(b) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether by land, water, or air;

(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;

(d) insurance of growing crops against loss or damage resulting from hail or the elements;

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(e) insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus;

(f) insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and

(g) insurance against theft of the whole or any part of any vehicle."

Section 2. Section 19-11-514, MCA, is amended to read:

"19-11-514. State treasurer to pay warrants. The state treasurer is hereby authorized and directed, upon the presentation to him of a warrant drawn pursuant to this chapter, to pay:

(1) in the case of a municipality other than a city of the first or second class, to the treasurer of *the* city or town, out of moneys in the earmarked revenue fund dedicated for such purpose, the amount of such warrant specified, which amount shall be paid by said city treasurer to said fire department relief association;

(2) in the case of a city of the first or second class, to the board of investments to be credited to the account of the fire department relief association, out of the money in the earmarked revenue fund dedicated for such purpose, the amount of the warrant."

Section 3. Section 19-11-606, MCA, is amended to read:

"19-11-606. Supplement to certain pensions. (1) In addition to the taxes on premiums required by law to be paid by each insurer doing business in this state that is authorized to effect insurance on risks enumerated in 19-11-512, there is a tax of 1 ½ % on the fire portion of the direct premiums received during the calendar year of 1975 and each succeeding year, with allowance for cancellations and returned premiums. The insurance commissioner shall collect the tax during March of each year and deposit the moneys in the earmarked revenue fund. The auditor shall pay claims as provided in subsection (2) of this section. As those persons who are to receive the fund die, the tax shall be reduced proportionately, and when no eligible person, as defined by subsection (2), survives, the tax terminates and the remaining fund, if any, shall be transferred to the general fund.

(2) Effective January 1, 1976, each association shall pay to the firefighters retired before July 1, 1973, or their surviving spouses and children a monthly pension of not less than one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. In the case of volunteer firefighters, the pension may not exceed $75 per month. Distribution of the funds provided for this purpose under subsection (1) shall be made as follows:

(a) At the beginning of each fiscal year the treasurer of each association shall request and the state auditor shall issue from the earmarked revenue fund and deliver, *in the case of a municipality other than a city of the first or second class,* to the treasurer of the respective city or town *or,*

in the case of a city of the first or second class, to the board of investments to be credited to the account of the fire department relief association an amount certified to be equal to the total annual dollar difference between what the retirees or their surviving spouses and children received from the fund and one-half of the salary paid by the respective city or town to a confirmed active firefighter for the fiscal year just preceding. *The state auditor shall, at the same time, report to the treasurer of the appropriate association the amount of any payment delivered to the board of investments.*

(b) The treasurer of a city or town receiving funds shall immediately disburse them to the treasurer of the respective association.

(c) The treasurer of the association shall utilize these funds to increase the monthly pension of retirees or their surviving spouses and children to an amount equal to one-half of the salary that was paid to a confirmed active firefighter in the city or town for the preceding year."

Approved March 26, 1979.

CHAPTER NO. 297

AN ACT TO REVISE THE ELIGIBILITY REQUIREMENTS FOR THE DRIVER IMPROVEMENT PROGRAM; AMENDING SECTION 61-2-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver improvement program — participation by offending drivers. (1) The department of justice may establish by administrative rules a driver rehabilitation and improvement program or programs which may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other such subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

(2) Official participation in such driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana is:

(a) subject to suspension or revocation as a result of a violation of the traffic laws of this state; *or*

(b) revoked and they have:

(i) completed at least 3 months of a 1-year revocation; or

(ii) completed 1 year of a 3-year revocation; and

(iii) have met the requirements for reobtaining a Montana driver's license.

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order which constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for herein may be stayed if that person complies with the requirements established for the driver improvement program *and meets the eligibility requirements of subsection (2).*

(4) In the event a person's driver's license has been surrendered prior to his selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of his agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation order shall be terminated and the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) Nothing in this part creates a right to be included in any program established under this part.

(7) The department of justice may establish a schedule of fees which may be charged those persons participating in the driver improvement and rehabilitation program, which fees shall be used to help defray costs of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, judge of a district court of the state, or a hearing examiner of the department of justice."

Approved March 26, 1979.

CHAPTER NO. 298

AN ACT REVISING THE BRAND INSPECTION LAW BY REQUIRING THE BRAND INSPECTION OF ASSES; BY INCREASING THE INSPECTION FEES FOR EQUINE-TYPE ANIMALS; AND AMENDING SECTIONS 81-3-201 AND 81-3-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-3-201, MCA, is amended to read:

"81-3-201. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Deputy state stock inspector" means a person designated by the department as a deputy state stock inspector, who does not receive a salary or compensation from the department.

(2) "Feedlot" means a confined livestock feeding operation where the owner or operator of the feedlot feeds livestock belonging to others for a fee.

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(3) "Livestock" means *any bovine animal, horse, mule, or ass regardless of its age or sex.*

(4) "Person" means an individual, partnership, corporation, association, or any entity not enumerated capable of owning or controlling livestock.

(5) "State stock inspector" means an employee of the department of livestock designated by the department as a state stock inspector."

Section 2. Section 81-3-205, MCA, is amended to read:

"81-3-205. Fees for inspection and livestock transportation permits. (1) For the service of inspection *of all livestock except horses, mules, or asses* before removal from a county or before change of ownership, the inspector making the inspections shall receive 25 cents per head for 12 head or less, or $3 for 12 head to 20 head and 20 cents per head for each head over 20 head. For the issuance of a market consignment permit or transportation permit (other than a permanent permit) before removal from a county *for all livestock*, the inspector, sheriff, or deputy sheriff issuing the permits shall receive 25 cents for each permit issued for 12 head or less, 50 cents for each permit for 12 to 30 head, and $1 for each permit issued for over 30 head and shall receive in addition his necessary actual expenses, to be paid by the owner or the person for whom the inspection is made or permit issued. For the issuance of a permanent horse transportation permit, the state stock inspector taking the application for permit shall receive $5 per head for each permit issued. All inspection and permit fees and expenses shall be collected by the inspector, sheriff, or deputy sheriff at the time of inspection or issuance of permit, and all the fees and expenses collected by a deputy state stock inspector, sheriff, or deputy sheriff shall be retained by him, and all such fees and expenses collected by a state stock inspector shall be sent by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department.

(2) For the service of inspection before *any* livestock *except a horse, mule, or ass* is sold or offered for sale at a licensed livestock market, a state stock inspector making the inspection shall receive 20 cents per head for an animal originating within the county in the state in which the market is maintained or transported under a market consignment permit and 10 cents per head for an animal previously inspected before removal from a county as herein provided. All fees shall be paid by the owner or by the person for whom the inspection is made. For releasing an animal so that it may be removed from the premises of a licensed livestock market, the state stock inspector making the release shall receive 20 cents per head from the owner or the person for whom the release is made. All fees for inspection and release at the market shall be collected at the time the inspection or release is made by the state stock inspector making the inspection or release and shall be sent by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department.

(3) (a) For the service of inspection of horses, mules, or asses before removal from a county or before change of ownership, the inspector making the inspection shall receive $1 a head for the first 10 head, and

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50 cents per head for each animal more than 10 and shall receive in addition his necessary actual expenses to be paid by the owner or the person for whom the inspection is made. All fees and expenses collected by a state stock inspector must be sent by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department.

(b) For the service of inspection before a horse, mule, or ass is sold or offered for sale at a licensed livestock market, a state stock inspector making the inspection shall receive $1 per head. All fees shall be paid by the owner or the person for whom the inspection is made to the state stock inspector.

(4) All inspection and release fees and expenses shall be paid to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department. State stock inspectors shall be paid for their services and receive their expenses as fixed by the department."

Approved March 26, 1979.

CHAPTER NO. 299

AN ACT AMENDING SECTION 15-70-325, MCA, TO CHANGE THE ANNUAL AND MONTHLY DEADLINE FOR FILING SPECIAL FUEL TAX RETURNS FROM THE 25TH TO THE LAST DAY OF THE MONTH.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-325, MCA, is amended to read:

"15-70-325. Returns. (1) For the purpose of determining the amount of his liability for the tax herein imposed, each special fuel dealer and each special fuel user shall file with the department, on forms prescribed by said department, a monthly tax return.

(2) Upon annual application, the department shall waive the filing of a monthly tax return of any special fuel user who establishes that such user's annual tax liability is or will be $100 or less.

(3) Such user shall make an annual report and return to the department on forms prescribed by said department, on or before January *31* of each year. Should the department determine that a user filing annual returns as herein provided is delinquent in making reports and payments, it shall require such person to file monthly returns as herein provided. Such return, annual or monthly, shall contain a declaration by the person making the same to the effect that the statements contained are true and are made under penalties of perjury, which declarations shall have the same force and effect as a verification. The return shall show such information as the department may reasonably require for the proper administration and enforcement of this part.

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(4) If a special fuel dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the monthly return to the department need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made.

(5) The special fuel dealer or special fuel user shall file the return on or before the *last* day of the next succeeding calendar month following the monthly period to which it relates; provided, however, that for good cause the department may grant a taxpayer a reasonable extension of time for filing but not to exceed 30 days."

Approved March 26, 1979.

CHAPTER NO. 300

AN ACT PROVIDING FOR AN INCREASE IN LICENSING OR REGISTRATION AND INSPECTION FEES FOR PERSONS WAREHOUSING BEANS, FOR APIARIES, AND FOR NURSERYMEN; AND AMENDING SECTIONS 80-3-503, 80-6-105, 80-6-202, AND 80-7-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-3-503, MCA, is amended to read:

"80-3-503. License required of persons warehousing beans — fee — disposal of moneys — expiration date. A person in the business of buying and selling at wholesale or warehousing and storing beans or receiving or soliciting beans for purchase, sale, or storage, within or outside this state shall, before engaging in the business, obtain a license from the department of agriculture and pay a license fee of *$20* to the department. The license fee shall be deposited with the state treasurer and credited to the general fund. Licenses shall be renewed annually and the prescribed fee paid annually. All licenses shall be issued for the fiscal year ending June 30 or a fraction of the fiscal year."

Section 2. Section 80-6-105, MCA, is amended to read:

"80-6-105. Registration fees. (1) Each year before a certificate of registration may be issued for an apiary, the owner or applicant for the certificate shall pay the department a registration fee in accordance with the following schedule of fees for the total number of colonies owned or possessed:

1 to	10 colonies of bees	*$ 5.00*
11 to	50 colonies	*10.00*
51 to	200 colonies	*20.00*
201 to	300 colonies	*30.00*
301 to	500 colonies	*40.00*

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501 to 1,000 colonies *60.00*
1,001 to 2,000 colonies *70.00*
2,001 to 3,000 colonies *90.00*
3,001 to 4,000 colonies *110.00*
4,001 to 5,000 colonies *130.00*
5,001 colonies and upward *150.00*

(2) If, after registration, additional or new colonies are authorized for a registered apiary, fees shall be paid by the registrant in accordance with the schedule in subsection (1) for the total number of colonies for that year."

Section 3. Section 80-7-102, MCA, is amended to read:

"80-7-102. License required of nurserymen — application and payment of fees. (1) A person, before engaging in the business of selling, dealing in, or importing nursery stock into this state for sale or distribution or acting as agent, salesman, or solicitor for any nurseryman or dealer in nursery stock or soliciting orders for the purchase of nursery stock, must obtain a license for each place of business from the department. A person may not falsely represent that he is an agent, salesman, solicitor, or representative of any nurseryman or dealer in nursery stock.

(2) The department shall provide application forms for prospective licensees. Applications for licenses may be made at any time before engaging in business, except seasonal nurserymen must make application at least 30 days in advance of doing business in this state.

(3) Licenses shall be in the name of the person licensed and shall indicate the purpose for which issued and the name and location of the nursery or place of business of the nurseryman or dealer licensed or represented by an agent, salesman, or solicitor. Licenses, except seasonal nurserymen's licenses, shall bear the date of issue and expire July 1 next following the date of issue. Seasonal nurserymen's licenses shall bear the date of issue and expire on the date provided on the license by the department.

(4) The license fee is *$30* a year for a general nursery, dealing in all kinds of nursery products; *$20* a year for a nursery dealing in small fruits, ornamental shrubs, bulbs, and perennials; *$10* a year for a nursery dealing in bulbs and perennials only; and *$30* a year for seasonal nurserymen. Agents, salesmen, and solicitors for licensed nurseries shall be granted salesmen's licenses, free of charge, upon the request of the licensee."

Section 4. Section 80-6-202, MCA, is amended to read:

"80-6-202. Inspection of bees or used beekeeping equipment transported interstate. (1) A person may not transport or bring into the state any used beekeeping equipment or containers, including honey to be extracted, unless it is certified and duly marked as disease-free by an official responsible for apiary regulations of the state from which it is being moved. The department shall be advised in advance of the date of entry and the destination of the material. Used equipment transported into the state may be quarantined by the department, in accordance with 80-6-201(1)(c), from the time it enters the state until it has been in use

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while under quarantine for a minimum of 90 days and at least until the following July 1. The beekeeping materials are also subject to quarantine as provided in this section. The department may also inspect and certify as disease-free bees or beekeeping equipment which is to be transported from Montana to a state which requires an inspection in the state of origin.

(2) The costs of making the inspections provided for in subsection (1) shall be paid in advance by the owner of the bees or equipment and shall include a per diem *pursuant to Title 2, chapter 18, part 5*, necessary traveling expenses, and a fee of *$20* for the issuance of a certificate of health. If inspection by an official of any other state is considered insufficient for the protection of the Montana bee industry by the department, the department shall so state by public statement. Importation of beekeeping materials, including honey for extracting, from that other state shall be denied unless the materials or honey are first inspected by the department and there is obtained from it a certificate of inspection showing that the materials or honey are apparently free from contagious or infectious disease. The costs of making the inspection shall be paid by the person requesting it, and inspection may be made at any point outside this state convenient to the person making the inspection. The department may require that the costs of making the inspection be paid in advance, and the costs shall include per diem *pursuant to Title 2, chapter 18, part 5*, necessary traveling expenses, and a fee of *$20* for the issuance of the certificate of inspection."

Approved March 26, 1979.

CHAPTER NO. 301

AN ACT TO AMEND SECTION 61-8-714, MCA, TO PROVIDE THAT ON A SECOND CONVICTION OF DRIVING WHILE INTOXICATED THE PERSON MAY BE PUNISHED BY IMPRISONMENT FOR A TERM NOT MORE THAN 30 DAYS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving while intoxicated. (1) Every person who is convicted of a violation of 61-8-401 shall be punished by a fine of not less than $100 or more than $500. On a second conviction, he shall be punished by a fine of not less than $300 or more than $500 *to which may be added, in the discretion of the court, imprisonment for a term not more than 30 days.* On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days or more than 1 year, to which may be added, in the discretion of the court, a fine of not less than $500 or more than $1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense

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that occurred within 5 years of the first offense may not be deferred or suspended.

(2) Except as otherwise provided in this section, the court may, in its discretion, suspend the execution of any sentence imposed under subsection (1) on the condition that the defendant successfully complete a course in a driver improvement school approved by the court or an alcohol treatment program approved by the department of institutions. Each school or institution providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been accepted by the school or treatment program. If the defendant fails to attend the school or the treatment program, the school or institution shall notify the court of the failure."

Approved March 26, 1979.

CHAPTER NO. 302

AN ACT CEDING TO THE UNITED STATES CONCURRENT JURISDICTION OVER CRIMES AND OFFENSES UNDER THE LAWS OF THE STATE OVER AND WITHIN CERTAIN LANDS DEDICATED TO NATIONAL PARK PURPOSES; AND ACCEPTING JURISDICTION OVER FEDERAL LANDS USED FOR NATIONAL PARK PURPOSES IN MONTANA THAT THE UNITED STATES IS WILLING TO RELINQUISH.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Concurrent jurisdiction of the United States over certain lands dedicated to national park purposes.** (1) Concurrent jurisdiction over crimes and offenses under the laws of the state is ceded to the United States over and within all the lands dedicated to national park purposes in the following tracts:

(a) Big Horn Canyon;

(b) Grant-Kohrs national historic site;

(c) Big Hole national battlefield; and

(d) Fort Union trading post.

(2) The concurrent jurisdiction ceded by subsection (1) is vested upon acceptance by the United States by and through its appropriate officials and shall continue so long as the lands within the designated areas are dedicated to park purposes.

Section 2. **Acceptance of jurisdiction over federal lands.** The consent of the state is hereby given to the retrocession of jurisdiction, either partially or wholly, by the United States of America over lands owned by the United States of America within the boundaries of Montana that are used for national park purposes. The governor is authorized to accept for the state retrocession of jurisdiction.

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Section 3. **Filing of acceptance of jurisdiction over federal lands.** (1) When the state receives written notification from the authorized official or agent of the United States of America that the United States desires or is willing to relinquish to the state jurisdiction, or a portion thereof, over certain lands owned by the United States within Montana that are used for national park purposes, the governor may accept relinquishment.

(2) After acceptance and approval by the governor, retrocession of jurisdiction becomes effective upon filing of the original acceptance with the secretary of state of Montana.

Approved March 26, 1979.

CHAPTER NO. 303

AN ACT TO AMEND THE FORCIBLE ENTRY AND DETAINER AND UNLAWFUL DETAINER LAW TO PROVIDE A STANDARD OF DUE DILIGENCE IN LOCATING DEFENDANTS WITHIN THE STATE FOR PURPOSES OF SERVICE OF SUMMONS; AMENDING SECTION 70-27-114, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-27-114, MCA, is amended to read:

"70-27-114. Summons — contents — service. (1) The summons must:

(a) state the parties to the proceeding, the court in which the same is brought, the nature of the action in concise terms, and the relief sought and also the return day; and

(b) notify the defendant to appear and answer within the time designated or that the relief sought will be taken against him.

(2) The summons must be directed to the defendant and be served at least 4 days before the return day designated therein and must be served and returned in the same manner as summons in civil actions is served and returned.

(3) The summons must be served personally upon the defendants if *the defendants can be found with due diligence* within the state *or* if *the defendants cannot be found with due diligence* within the state, *the summons must be served* in the same manner as notices are required to be served in 70-27-110. The complaint need not be served.

(4) Upon the return of any summons issued under this chapter, where the same has not for any reason been served or not served in time, the plaintiff may have a new summons issued, the same as if no previous summons had been issued."

Approved March 26, 1979.

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CHAPTER NO. 304

AN ACT TO ABOLISH THE REQUIREMENT THAT THE STATE TREASURER KEEP A PERMANENT RECORD OF ALL GIFTS, DONATIONS, GRANTS, LEGACIES, AND OTHER CONTRIBUTIONS TO THE STATE OF MONTANA; REPEALING SECTION 17-6-222, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 17-6-222, MCA, is repealed.

Approved March 26, 1979.

CHAPTER NO. 305

AN ACT TO AMEND SECTION 61-8-351, MCA, TO REQUIRE DRIVERS TO STOP FOR SCHOOL BUSES DISPLAYING FLASHING RED SIGNALS IN TOWNS OR CITIES AND TO CLARIFY WHEN SCHOOL BUS DRIVERS ARE TO ACTUATE AMBER AND RED WARNING LIGHTS WITHIN CITIES OR TOWNS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-351, MCA, is amended to read:

"61-8-351. Meeting or passing school bus. (1) The driver of a vehicle upon a highway *or street either inside or* outside the corporate limits of any city or town upon meeting or overtaking from either direction any school bus which has stopped on the highway *or street* for the purpose of receiving or discharging any school children shall stop the vehicle not less than 10 feet before reaching such school bus when there is in operation on said bus a visual flashing red signal as specified in 61-9-402 and said driver shall not proceed until the children have entered the school bus or have alighted and reached the side of the highway *or street* on which they live and until such school bus resumes motion or the driver has signaled traffic to proceed. In addition the driver of a vehicle must slow and proceed with caution when meeting or overtaking from either direction any school bus which is preparing to stop on the highway *or street* for the purpose of receiving or discharging any school children as indicated by flashing amber lights as specified in 61-9-402.

(2) Every bus used for the transportation of school children shall bear upon the front and rear thereof plainly visible signs containing the words "SCHOOL BUS" in letters not less than 8 inches in height, and in addition shall be equipped with visual signals meeting the requirements of 61-9-402. Amber flashing lights shall be actuated by the driver approximately *150 feet in cities and approximately* 500 feet *in other areas* before the bus is stopped to receive or discharge school children on the highway *or street.* Red lights shall be actuated by the driver of said school bus

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whenever but only whenever such vehicle is stopped on the highway *or street whether inside or outside the corporate limits of any city or town* for the purpose of receiving or discharging school children. *However, a school district board of trustees may, in its discretion, adopt a policy prohibiting the operation of amber or red lights when a bus is stopped at the school site for purposes of receiving or discharging school children and such receipt or discharge does not involve street crossing by the children; and such lights may not be operated in violation of such a policy.*

(3) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school all markings thereon indicating "SCHOOL BUS" shall be covered or concealed.

(4) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway."

Approved March 26, 1979.

CHAPTER NO. 306

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO REAL ESTATE BROKERS AND SALESMEN; AMENDING SECTIONS 37-51-102, 37-51-302, 37-51-305, 37-51-308, 37-51-309, AND 37-51-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of real estate provided for in 2-15-1642.

(2) "Broker" includes an individual who for another or for a fee, commission, or other valuable consideration or who with the intent or expectation of receiving the same negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements thereon or collects rents or attempts to collect rents or advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes an individual employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition thereof at a salary or for a fee, commission, or any other consideration. The term "broker" also includes an individual who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for

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referral of information concerning real estate to brokers, or both, and any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease.

(3) "Broker associate" means a broker who associates with a broker owner and does not own an interest in a real estate firm.

(4) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

(5) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(6) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(7) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(8) "Salesman" includes an individual who for a salary, commission, or compensation of any kind is *associated*, either directly, indirectly, regularly, or occasionally, *with* a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate."

Section 2. Section 37-51-302, MCA, is amended to read:

"37-51-302. Broker or salesman license — qualifications of applicant. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesman in a manner as to safeguard the interests of the public.

(2) An applicant for a broker's license shall:

(a) be a citizen of the United States;

(b) be at least 18 years of age;

(c) have graduated from an accredited high school or completed an equivalent education as determined by the board;

(d) have been actively engaged as a licensed real estate salesman for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesman ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesman because of conditions existing in the area where he resides, the board may waive this experience requirement; and

(e) file an application for license with the department.

(3) The board shall require information it considers necessary from an applicant to determine his honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesman's license shall:

(i) be at least 18 years of age;

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(ii) have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board; and

(iii) file an application for license with the department.

(b) His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesman a license and a pocket card in a form and size as the board prescribes.

(6) A broker's license must indicate whether the broker is a broker owner or a broker associate."

Section 3. Section 37-51-305, MCA, is amended to read:

"37-51-305. License — form — delivery — display — pocket card. (1) The board shall prescribe the form of license. A license shall bear the seal of the board.

(2) The license of a real estate salesman shall be delivered or mailed to the real estate broker *with* whom the real estate salesman is *associated* and shall be kept in the custody and control of the broker.

(3) A broker shall display his own license conspicuously in his place of business.

(4) The department shall annually prepare and deliver a pocket card certifying that the person whose name appears is a registered real estate broker or a registered real estate salesman, stating the period for which fees have been paid and, on real estate salesman's cards only, the name and address of the broker *with whom he is associated.*"

Section 4. Section 37-51-308, MCA, is amended to read:

"37-51-308. Broker's office — notice to department of change of address. (1) A resident licensed broker shall maintain a fixed office in this state. The original license of the broker and the original license of each salesman *associated* or under contract with the broker shall be prominently displayed in the office. The address of the office and a branch office shall be designated on the broker's license.

(2) In case of removal from the designated address, the licensee shall notify the department before removal or within 10 days thereafter, designating the new location of this office and paying the required fee, whereupon a license for the new location for the unexpired period shall be issued."

Section 5. Section 37-51-309, MCA, is amended to read:

"37-51-309. Broker owner — broker associate — salesman — notice to department of change of association. (1) A salesman may

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not be *associated with* or under contract to more than one licensed broker *owner*, nor may he perform services for a broker other than the one designated on the license issued to the salesman.

(2) When a licensed salesman desires to change his *association* or contractual relationship from one licensed broker to another, he shall notify the department promptly in writing of these facts, pay the required fee, and return his license and pocket card, and a new license and pocket card shall be issued. No salesman shall directly or indirectly work for or with a broker *owner* until he has been issued a license to work for or with that broker *owner*. On termination of a salesman's *association* or contractual relationship, he shall surrender his license and pocket card to his broker *owner* who shall return them to the department for cancellation.

(3) Only one license shall be issued to a salesman to be in effect at one time.

(4) A broker associate may not be associated with more than one broker owner."

Section 6. Section 37-51-311, MCA, is amended to read:

"**37-51-311. Fees — deposit of fees.** (1) The following fees shall be charged by the department and paid into the earmarked revenue fund for the use of the board, subject to 37-1-101(6):

(a) for each examination, a fee not to exceed $25;

(b) for each original resident broker's license issued, a fee not to exceed $50;

(c) for each annual renewal of a resident broker's license, a fee not to exceed $30;

(d) for each original nonresident broker's license issued, a fee not to exceed $50;

(e) for each annual renewal of a nonresident broker's license, a fee not to exceed $30;

(f) for each original salesman's license issued, a fee not to exceed $25;

(g) for each annual renewal of a salesman's license, a fee not to exceed $15;

(h) for each additional office or place of business, an annual fee not to exceed $25;

(i) for each change of place of business or change of employer or contractual associate, a fee not to exceed $15;

(j) for each duplicate license, *when* the original license is lost or destroyed and affidavit is made, a fee not to exceed $10;

(k) for each duplicate pocket card, *when* the original pocket card is lost or destroyed and affidavit is made, a fee not to exceed $10.

(2) The board shall charge a $5 annual fee from a licensee who wishes to be placed in an inactive status. A licensee who is placed in an inactive

status by the board and who has paid the required fee need not file a bond with the department as provided in 37-51-304.

(3) The board shall adopt a schedule of fees within the limits set by this section. However, a fee once set for one of the items for which a fee is charged cannot be increased or decreased until at least 1 year has passed since the fee for that particular item was last increased or decreased."

Approved March 26, 1979.

CHAPTER NO. 307

AN ACT TO AMEND SECTION 33-5-401, MCA, INCREASING THE SURPLUS FUND REQUIREMENTS OF RECIPROCAL INSURERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-5-401, MCA, is amended to read:

"33-5-401. Surplus funds required. (1) A domestic reciprocal insurer hereunder formed, if it has otherwise complied with the applicable provisions of this code, may be authorized to transact insurance if it has and thereafter maintains surplus funds as follows:

(a) to transact property insurance, surplus funds of not less than *$400,000*;

(b) to transact casualty insurance, other than workers' compensation, surplus funds of not less than *$400,000.*

(2) In addition to surplus required to be maintained under subsection (1) above, the insurer shall have, when first so authorized, expendable surplus in amount as required of a like foreign reciprocal insurer under 33-2-110.

(3) A domestic reciprocal insurer may be authorized to transact additional kinds of insurance if it has otherwise complied with the provisions of this code therefor and possesses and so maintains surplus funds in amount equal to the minimum capital stock required of a stock insurer for authority to transact a like combination of kinds of insurance."

Approved March 26, 1979.

CHAPTER NO. 308

AN ACT TO CLARIFY THE MONTANA RECALL ACT; AMENDING SECTIONS 2-16-614 AND 2-16-632, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-16-614, MCA, is amended to read:

"2-16-614. Number of electors required for recall petition. Recall petitions for elected or appointed state officers shall contain the

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signatures of qualified electors equalling at least 10% of the number of persons registered to vote at the preceding state general election. A petition for the recall of a state-district officer must contain the signatures of qualified electors equalling at least 15% of the number of persons registered to vote in the last preceding election in that district. Recall petitions for elected or appointed county officers shall contain the signatures of qualified electors equalling at least 15% of the number of persons registered to vote at the preceding county general election. Recall petitions for elected or appointed officers of municipalities or school districts shall contain the signatures of qualified electors equalling at least 20% of the number of persons registered to vote at the preceding election for the municipality or school district."

Section 2. Section 2-16-632, MCA, is amended to read:

"2-16-632. Conduct of special elections. *A special election* for recall shall be conducted and the results canvassed and certified in *the same manner that the law in effect at the time of the election for recall requires for an election to fill the office that is the subject of the recall petition,* except as herein otherwise provided. *In the case of an official holding a nonelective office, the election shall be conducted and the results canvassed and certified in the same manner that the law in effect at the time of the election for recall requires for an election to fill the office of the person who has the power to appoint such official.* The powers and duties conferred or imposed by law upon boards of election, registration officers, canvassing boards, and other public officials who conduct general elections are conferred and imposed upon similar officers conducting recall elections under the provisions of this section together with the penalties prescribed for the breach thereof."

Approved March 26, 1979.

CHAPTER NO. 309

AN ACT TO REQUIRE A PUBLIC HEARING ON FEDERAL LAND, WETLAND, OR WATER ACQUISITIONS IN FEE FOR FISH AND GAME PURPOSES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Federal waterfowl and wildlife area acquisitions — submission to affected county governing bodies for review.** The governor, the department, or their agents, responsible under federal law for final approval of land, wetland, and water acquisitions in fee by the United States government or its agents for waterfowl protection areas or wildlife refuges, or the United States fish and wildlife service shall submit the proposed acquisitions to the governing body of each county in which all or part of the land, wetland, and water areas are proposed to be located for the governing body's recommendations.

Section 2. **Hearings on proposed waterfowl and wildlife area acquisitions.** (1) The governing body of the county affected by a proposed federal acquisition of land under [section 1], the department, and

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the United States fish and wildlife service shall, within 21 days of receipt of an acquisition proposal, physically inspect the proposed acquisition areas, if the governing body deems such inspection appropriate.

(2) If requested by the governing body, the agencies described in subsection (1) shall hold a joint public hearing on the proposed acquisition and shall give public notice of the date, time, and place of the hearing. The hearing shall be held in the county in which the proposed acquisition is located. The hearing shall be held within 30 days of the governing body's receipt of the acquisition proposal. The notice shall be published once a week for 2 successive weeks in a newspaper of general circulation in each county in which all or part of the proposed acquisition is located. The notice shall include the substance of the proposed action and a legal description of the proposed acquisitions.

Section 3. **Codification.** This act is intended to be codified as an integral part of Title 87, chapter 1, part 7, and the provisions contained in Title 87, chapter 1, part 7, apply to this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 26, 1979.

CHAPTER NO. 310

AN ACT TO ALLOW STATE AND LOCAL EDUCATIONAL AGENCIES TO ADMINISTER, PLAN, DEVELOP, OPERATE, AND IMPROVE PROGRAMS DESIGNED TO MEET THE SPECIAL NEEDS OF GIFTED AND TALENTED CHILDREN; AMENDING SECTION 20-9-507, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act] the following definitions apply:

(1) "Gifted and talented children" means children of outstanding abilities who are capable of high performance and require differentiated educational programs beyond those normally offered in public schools in order to fully achieve their potential contribution to self and society. The children so identified include those with demonstrated achievement or potential ability in a variety of worthwhile human endeavors.

(2) "Professionally qualified persons" means teachers, administrators, school psychologists, counselors, curriculum specialists, artists, musicians, and others with special training who are qualified to appraise pupils' special competencies.

Section 2. **School district programs to identify and serve the gifted and talented child.** (1) A school district may identify gifted and talented children and devise programs to serve them.

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(2) In identifying gifted and talented children, the school district shall:.

(a) consult with professionally qualified persons and the parents of children being evaluated;

(b) consider a child's demonstrated or potential gifts or talents; and

(c) use comprehensive and appropriate assessment methods including objective measures and professional assessment measures.

Section 3. **Funding of programs to serve gifted and talented children.** (1) The superintendent of public instruction shall adopt criteria for gifted and talented children's program proposals and the procedures for submission of such proposals. Proposals approved by the superintendent of public instruction must be funded by money appropriated to the superintendent for that purpose.

(2) A school district shall match funds provided by the superintendent for a gifted and talented children's program with equal funds from other sources. "In kind" contributions may not be used to constitute such a match. Funds must be administered by the school district as provided in 20-9-507.

(3) The superintendent of public instruction may deduct reasonable costs of administration from the funds appropriated for the purposes of [this act].

Section 4. **Review and recommendations of proposals.** (1) Program proposals submitted by school districts to the superintendent of public instruction shall contain:

(a) evidence that identification procedures are comprehensive and appropriate;

(b) a program description including stated needs and measurable objectives designed to meet those needs;

(c) evidence that the activities are appropriate and will serve to achieve the program objectives; and

(d) a method to evaluate the effectiveness of the program.

(2) School districts may request assistance from the staff of the superintendent in formulating program proposals.

(3) The superintendent of public instruction must establish a procedure for proposed review and approval.

Section 5. Section 20-9-507, MCA, is amended to read:

"20-9-507. Miscellaneous programs fund. (1) The trustees of any district receiving *grants of state or* federal moneys other than moneys under the provisions of Title I of Public Law 81-874 or federal moneys designated for deposit in a specific fund of the district shall establish a miscellaneous programs fund for the deposit of such moneys. Such moneys may be a reimbursement of expenditures already realized by the district or may be a grant of moneys for the financing of expenditures to be realized by the district for a special, approved program to be operated by

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the district. When the moneys are a reimbursement, the moneys shall be expended at the discretion of the trustees for school purposes. When the moneys are a grant, the moneys shall be expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous programs fund, the trustees shall cause a separate accounting to be maintained for each federal grant program and for the aggregate of all reimbursement moneys.

(2) The financial administration of the miscellaneous programs fund shall be in accordance with the financial administration provisions of this title for a nonbudgeted fund which shall be applied by individual grant programs or for the aggregate amount of the reimbursement moneys rather than on the basis of the total fund."

Approved March 26, 1979.

CHAPTER NO. 311

AN ACT TO GENERALLY REVISE AND CLARIFY THE LOCAL GOVERNMENT LAWS RELATING TO THE GENERAL OPERATION AND CONDUCT OF BUSINESS OF LOCAL GOVERNMENTS AND TO THE ACQUISITION, TRANSFER, AND MANAGEMENT OF PROPERTY AND BUILDINGS BY LOCAL GOVERNMENTS; REPEALING SECTION 16-1008, R.C.M. 1947, AND SECTION 7-5-2124, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-122, MCA, is amended to read:

"7-5-122. Resolution veto procedure. If the plan of government allows the *chief* executive to veto resolutions, this power must be exercised in writing at the next regular meeting. If the *chief* executive fails to act, the resolution *is* approved. If the *chief* executive vetoes a resolution, the governing body must act at the same meeting or its next regularly scheduled meeting to either override or confirm the veto."

Section 2. Section 7-5-2145, MCA, is amended to read:

"7-5-2145. Attendance at meetings and conventions by county officers and employees. (1) *Unless otherwise provided by law, no* county officer or employee *may* receive payment from any public funds for traveling expenses or other expenses of any sort for attendance *at* any convention, meeting, or other gathering of public officers except for attendance *at* such convention, meeting, or other gathering as *the* officer or employee may by virtue of his office find it necessary to attend.

(2) Three members of the board of county commissioners may be allowed actual transportation expenses and per diem for attendance *at* any general meeting of county commissioners or assessors held within the state not more often than once a year, and the proportionate expenses and charges against each county as a member of such association shall also be paid.

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(3) County attorneys, sheriffs, and justices of the peace *may* attend their respective meetings or conventions held within the state and are allowed actual traveling expenses, not more often than once a year, for attending *the* same."

Section 3. Section 7-5-2501, MCA, is amended to read:

"7-5-2501. Vacation of plats in abandoned townsites. (1) When there *is* filed in the office of the county clerk of any county of this state a plat of any village or townsite or a plat of any vineyard tracts, acreage tracts, suburban tracts, or community tracts and it is desired by the owners of *the land* to vacate *the* plat, the county commissioners of the county in which such plat is filed shall, upon petition of the owners of the *land* described in *the* plat and upon such conditions as may be reasonable, cancel *the* plat and shall vacate the lots, streets, alleys, parks, and boulevards, if any, described in *the* plat. Thereafter the designation of *the* property shall be by metes and bounds or by legal subdivisions if the circumstances require and the same shall be assessed accordingly. If any post office, store, or other business establishment *is* located within *the* platted area, that fact shall not prevent the cancellation and vacating of *the* plat in accordance with the terms of this section, but in all cases where it *is* necessary to designate the location of any such post office, store, or other business property by metes and bounds for purposes of identification, *this* designation shall be made in the order to be entered by the board of county commissioners.

(2) Petitions under the terms of this section shall be signed by all the owners of the land in *the* platted area, shall distinctly refer to the original plat for purposes of identification, and shall disclose that the petitioners are the owners of all the lands described in *the* plat and that no rights of any person have intervened since the filing of *the* plat which would be adversely affected by the cancellation and annulment thereof."

Section 4. Section 7-5-4102, MCA, is amended to read:

"7-5-4102. Powers and duties of mayor related to administration and executive function. (1) The mayor has power to:

(a) communicate to the council, at the beginning of every session and more often if *considered* necessary, a statement of the affairs of the city or town, with such recommendations as the mayor *considers* proper;

(b) recommend to the council such measures connected with the public health, cleanliness, and ornament of the city or town and the improvement of the government and finances as the mayor *considers* expedient;

(c) call special meetings of the council;

(d) cause to be presented, once in 3 months, a full statement of the financial condition of the city or town;

(e) bid for the city or town *on* any property sold at a tax or judicial sale *whenever* the city or town is *an interested* party;

(f) procure and have in *his* custody the seal of the city or town;

(g) take and administer oaths;.

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(h) perform such other duties as may be prescribed by law or by resolution or ordinance of the council.

(2) The mayor is the presiding officer of the council and must sign the journals thereof and all warrants on the city *treasury* and decide all ties by his vote. The mayor has no other vote."

Section 5. Section 7-5-4141, MCA, is amended to read:

"7-5-4141. Membership in organizations of municipal officers. (1) *The governing body of a city or town may pay*:

(a) the membership fees and dues in any organization of city and town officials *when the* purpose *of the organization* is improvement of laws relating to city and town government and their better and more economical administration; and

(b) the necessary expenses of any regular officer or employee of *the* city or town in attending any convention or meeting of such organization upon the direction of *the* governing body by order upon its minutes, stating that the public interest requires such attendance.

(2) *The* payment of membership fees, dues, and/or expenses is to be made from such fund of the city or town as the governing body shall direct *in the* order, *with the* claim presented, audited, and allowed as are other claims against *the* city or town."

Section 6. Section 7-5-4142, MCA, is amended to read:

"7-5-4142. Attendance at meetings and conventions by municipal officers and employees. *Unless otherwise provided by law, no* city officer or employee *may* receive payment from any public funds for traveling expenses or other expenses of any sort for attendance *at* any convention, meeting, or other gathering of public officers except for attendance upon such convention, meeting, or other gathering as *the* officer or employee may by virtue of his office find it necessary to attend."

Section 7. Section 7-5-4203, MCA, is amended to read:

"7-5-4203. Effective date of ordinances and resolutions. No ordinance or resolution passed by the council of any city or town *may* become effective until 30 days after its passage except:

(1) general appropriation ordinances providing for the ordinary and current expenses of the city or town; and

(2) emergency measures."

Section 8. Section 7-5-4304, MCA, is amended to read:

"7-5-4304. Certain contracts to be submitted to voters. No contract *may* be let extending over a period of 5 years or more without first submitting the question to a vote of the electors of *the* city or town."

Section 9. Section 7-5-4321, MCA, is amended to read:

"7-5-4321. Grant of franchise — election required. (1) The council *may* not grant a franchise or special privilege to any person except

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in the manner specified in subsection (2). The powers of the council are only those expressly prescribed by law and those necessarily incident thereto.

(2) No franchise for any purpose *may* be granted by any city or town or by the mayor or city council thereof to any person, association, or corporation without first submitting the application therefor to the *electors of* the city."

Section 10. Section 7-5-4402, MCA, is amended to read:

"7-5-4402. Biennial municipal election. (1) On the first Tuesday of April of every second year, a municipal election must be held.

(2) At this election the qualified electors of each town or city must elect *persons to each office for which the current term is expiring.* Aldermen shall be voted for by *ward.*"

Section 11. Section 7-8-104, MCA, is amended to read:

"7-8-104. Who may make gift or devise to governmental entities. (1) Any company, partnership, corporation, *or other nonindividual entity* may make to *a* city or town organized under the laws of Montana *a* donation, gift, or grant of any property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of Montana, to be held for the use and benefit of *the* city or town.

(2) Any person over the age of 18 years and of sound mind and discretion may make to *a* city or town organized under the laws of Montana *a* gift, grant, donation, or testamentary disposition of property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of the state."

Section 12. Section 7-8-2704, MCA, is amended to read:

"7-8-2704. Membership of land advisory board. The board of each county shall consist of five residents *of the county* to be appointed by the judge of the district court."

Section 13. Section 7-8-2705, MCA, is amended to read:

"7-8-2705. Term of office of board members. (1) The citizen members first appointed pursuant to *7-8-2704* serve the following terms:

(a) *two* for a 2-year term;

(b) *two* for a 4-year term; and

(c) one for a 6-year term.

(2) On the expiration of the terms of the initial appointees, the succeeding members shall be appointed for the term of 6 years."

Section 14. Section 7-8-4201, MCA, is amended to read:

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"**7-8-4201. Disposal or lease of municipal property.** (1) Subject to the provisions of subsection (2), the city or town council *may* sell, dispose of, or lease any property belonging to *the* city or town.

(2) (a) Such lease or transfer shall be made by *an* ordinance or resolution passed by a two-thirds vote of all the members of the council.

(b) If *the* property is held in trust for a specific purpose, *the* sale or lease thereof must be approved by a majority vote of *the electors* of *the* municipality voting at an election called for that purpose.

(3) Nothing contained herein *may* be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city heretofore acquired for parks within the limitations prescribed by 7-16-4223."

Section 15. **Repealer.** Section 16-1008, R.C.M. 1947, and section 7-5-2124, MCA, are repealed.

Approved March 26, 1979.

CHAPTER NO. 312

AN ACT TO REPEAL SECTION 45-8-320, MCA, RELATING TO JURISDICTION OF THE DISTRICT COURTS OVER CERTAIN WEAPONS OFFENSES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 45-8-320, MCA, is repealed.

Approved March 26, 1979.

CHAPTER NO. 313

AN ACT TO REVISE THE LAW RELATING TO ATTENDANCE OF TRIAL JURIES IN DISTRICT COURT; AMENDING SECTIONS 3-15-401, 3-15-411, 3-15-501, 3-15-503, 3-15-505, AND 3-15-506, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-15-401, MCA, is amended to read:

"**3-15-401. Jury lists — by whom and when made.** The chairman or, in his absence, any member of the board of county commissioners and the county *clerk and recorder* of each county must meet at the county seat of each county at the office of the county clerk *and recorder* on the second Monday of December of each year for the purpose of making a list of persons to serve as trial jurors for the ensuing year. If they fail to meet on the day specified in this section, they must meet as soon thereafter as practicable."

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Section 2. Section 3-15-411, MCA, is amended to read:

"3-15-411. Term of service of jurors. (1) The persons whose names are so returned are known as regular jurors and must serve for 1 year and until other persons are selected and returned *unless they are excused by the court or a judge pursuant to 3-15-501.*

(2) If jurors are drawn before the selection and return of the new jury list as provided in this part and thereafter a new jury list is returned, they shall continue to serve as jurors, if the business of the court requires the attendance of a jury, for a period not exceeding 90 days.

(3) Notwithstanding such limitation of service, a jury composed of such jurors duly impaneled to try any cause shall continue to serve in such cause until discharged by the court from any further consideration of such cause. The fact that a new jury list has been returned shall not affect their status as jurors."

Section 3. Section 3-15-501, MCA, is amended to read:

"3-15-501. Order directing that trial jury be drawn and summoned. (1) At least once each year in each county, when a civil or criminal case has been at issue and ready for trial for more than 6 months and the plaintiff or defendant in such case has requested a jury trial or whenever the business of a district court requires the attendance of a trial jury for the trial of civil or criminal cases and no jury is in attendance, the court must make an order directing a trial jury to be drawn and summoned to attend before said court. Such order must specify the number of jurors to be drawn and the time at which the jurors are required to attend, which time may be at the same term in which the jurors are drawn or at the next succeeding term, in the discretion of the court.

(2) The court may direct that such causes, either criminal or civil, in which a jury may be required or in which a jury may have been demanded be continued and fixed for trial when a jury shall be in attendance.

(3) A district court may draw more than one trial jury in a given year if, in the opinion of the judge or judges thereof, the service of the trial jury in attendance has been unduly demanding, and in such case the trial jury in attendance may be excused by the court from further jury duty in that year.

(4) The judge or judges of a district or the judge of a department may designate that jury service in his or their district or department is on a "one-day or one-trial" basis; that is, each individual juror is excused for the rest of the year after having attended for 1 day and not having been selected to serve at the trial of a particular cause or after having completed service at such a trial.

(5) If the number of unexcused jurors is not sufficient to meet current requirements at any time, jurors excused under subsection (3) or (4) may be required to serve."

Section 4. Section 3-15-503, MCA, is amended to read:

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"**3-15-503. Drawing — how conducted.** (1) The clerk shall place the box on a rod so that it may readily revolve. The box must be revolved a sufficient number of times to ensure that the numbered slips in it become thoroughly mixed. Thereafter the judge shall draw from the box, one at a time, as many of the numbered slips as are ordered by the court.

(2) A record of the drawing shall be entered in the minutes of the court. It must show the names of the jurors corresponding to the numbers drawn from the jury box.

(3) If the court is satisfied that any person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person shall be omitted from the list and another name shall be drawn in its place. The reason for the omission shall be entered upon the minutes of the court. The same procedure shall be followed as often as may be necessary, until the number of names of jurors required has been drawn.

(4) No person may be asked to serve for more than one term during any year unless all the numbers in the jury box have been drawn and there are no other qualified jurors available."

Section 5. Section 3-15-505, MCA, is amended to read:

"**3-15-505. Notice to jurors.** *The clerk shall serve notice by mail on the persons drawn as jurors and require response thereto by mail in such form as the supreme court designates. He may attach to the notice a form for an affidavit claiming exemption, provided for in 3-15-314. If a person fails to respond to the notice, the clerk shall certify the failure to the sheriff, who shall then serve notice personally on such person and require a response to the notice.*"

Section 6. Section 3-15-506, MCA, is amended to read:

"**3-15-506. Obtaining additional jurors when necessary.** (1) Whenever it appears to a district judge that additional jurors will be needed for any term or trial, the judge shall draw as many numbers from the jury box as are necessary to secure the required number of additional jurors. Before drawing the numbers, the judge shall by appropriate order designate the number of jurors needed.

(2) When the judge believes that securing the additional jurors from all of the county would cause unnecessary delay or expense, he may order the jurors selected from only a designated portion of the county, which portion shall never be less than the corporate limits of the county seat. If, in the selection of the additional jurors, a number is drawn and the jury list shows the person represented by the number to be a resident of an area outside the area designated by the court order, that number shall be returned to the jury box and a new number drawn.

(3) When the required number of names have been selected, the judge may order the prospective jurors notified by telephone *or mail* by the clerk of the court."

Approved March 26, 1979.

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CHAPTER NO. 314

AN ACT TO REVISE THE LAW REGARDING CONFLICTS OF INTEREST OF SCHOOL BOARD TRUSTEES; AMENDING SECTION 20-9-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-204, MCA, is amended to read:

"20-9-204. Conflicts of interests, letting contracts, and calling for bids. (1) It is unlawful for any trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract *made by him in his official capacity or by the board of trustees of which he is a member*; or

(b) be employed in any capacity by the school district of which he is trustee.

(2) For the purposes of subsection (1):

(a) "pecuniary interest" does not include holding an interest of 10% or less in a corporation;

(b) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions which are in the business of loaning or receiving money when such investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services other than salaried services or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of such lack of availability are entered in the minutes of the board meeting at which the contract is considered.

(3) Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of $4,000, the work done or the purchase made shall be by contract. Each such contract must be let to the lowest responsible bidder after advertisement for bids. Such advertisement shall be published in the newspaper which will give notice to the largest number of people of the district as determined by the trustees. Such advertisement shall be made once each week for 2 consecutive weeks and the second publication shall be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section shall be void.

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(4) Whenever bidding is required, the trustees shall award the contract to the lowest responsible bidder, except that the trustees may reject any or all bids.

(5) With regard to contracting for work or supplies, the board of trustees of a community college district are subject to 20-15-104."

Approved March 26, 1979.

CHAPTER NO. 315

AN ACT TO ALLOW INSPECTION OF PASSENGER ELEVATORS AND ESCALATORS BY CERTIFIED INSPECTORS OF INSURANCE COMPANIES AND MAINTENANCE COMPANIES; PROVIDING FOR CERTIFICATION BY THE DEPARTMENT OF ADMINISTRATION; AND REQUIRING REPORTS BY COMPANIES TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTION 50-60-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-60-101, MCA, is amended to read:

"50-60-101. Definitions. As used in parts 1 through 4 *and [sections 2 through 4]* of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The word "building" shall be construed as though followed by the words "or part or parts thereof".

(2) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(3) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(4) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(5) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(6) "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement

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of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(7) "Local legislative body" means the council or commission charged with governing the municipality.

(8) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection (9) of this section.

(9) (a) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality.

(b) Upon request, the council may approve extension of the jurisdictional area to include:

(i) all or part of the area within 4 ½ miles of the corporate limits of a municipality;

(ii) all of any platted subdivision which is partially within 4 ½ miles of the corporate limits of a municipality; and

(iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, which is partially within 4 ½ miles of the corporate limits of a municipality.

(c) Distances shall be measured in a straight line in a horizontal plane.

(10) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

(11) "Public place" means any place which a municipality or state maintains for the use of the public or a place where the public has the right to go and be.

(12) "Recreational vehicle" means anything defined as a recreational vehicle in the edition of NFPA No. 501C or ANSI A119.2 most recently adopted by the state in accordance with 50-60-401.

(13) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(14) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

Section 2. **Inspection of passenger elevators and escalators — fees.** (1) All passenger elevators and escalators in public places may be inspected by the department to insure compliance with the requirements of the state building code. The department shall establish and charge a reasonable and uniform fee for the inspections that may not exceed the expense of providing the inspection.

(2) In lieu of inspection by the department, inspections of passenger elevators and escalators to assure compliance with the state building code may be made by:

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(a) a maintenance company representative certified by the department who regularly maintains or services the elevator or escalator equipment; or

(b) an insurance company representative certified by the department who regularly inspects an elevator or escalator insured by the company against public liability and who maintains a service record of the elevator or escalator.

(3) When an inspection of a passenger elevator or escalator is made pursuant to subsection (2), a copy of the condition report must be provided to the owner and must be sent to the department.

Section 3. **Department to adopt inspection standards — certification of inspectors.** (1) The department shall adopt standards for passenger elevator and escalator inspections that assure compliance with the requirements of the state building code.

(2) The department shall adopt rules for the certification of maintenance and insurance company inspectors who may inspect passenger elevators and escalators pursuant to [section 2].

Section 4. **When inspection of elevators not necessary.** Elevators that do not carry passengers do not need to be inspected by the department.

Approved March 26, 1979.

CHAPTER NO. 316

AN ACT TO CHANGE THE BOARD OF DENTISTRY TO INCLUDE A DENTAL HYGIENIST; REQUIRING MEMBERS OF THE BOARD TO BE ENGAGED IN PRACTICE WHILE ON THE BOARD; REQUIRING THE GOVERNOR TO FILL VACANCIES ON THE BOARD WITHIN 30 DAYS; REDEFINING A QUORUM FOR BOARD MEMBERS; AMENDING SECTIONS 2-15-1606 AND 37-4-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1606, MCA, is amended to read:

"2-15-1606. Board of dentistry. (1) There is a board of *dentistry*.

(2) The board consists of *five dentists and one dental hygienist, all* appointed by the governor. The Montana dental association *and the Montana dental hygienists' association* shall *each* present to the governor, within 15 days after its regular annual meeting, a list of not less than five candidates from which appointments for vacancies on the board occurring during the ensuing year may be made. At all times at least three members of the board shall be appointed from the list of candidates submitted by the Montana dental association *and one member shall be appointed from the list submitted by the Montana dental hygienists' association.* Each member shall be licensed to practice *a dental profession* in this state, shall

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have actively practiced in this state for at least 5 continuous years immediately before his appointment, *and shall be actively engaged in practice while serving on the board.* Each member shall be a citizen of the United States and a resident of this state.

(3) Each member shall serve for a term of 5 years. The governor may remove a member only for neglect or cause.

(4) The governor shall fill any vacancy within 30 days.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 37-4-202, MCA, is amended to read:

"37-4-202. Meetings — notice — quorum — records. (1) The board shall meet at least once each year in this state at the call of the president and secretary-treasurer. Five days' notice must be given by the department to board members of the time and place of the meeting of the board.

(2) Meetings held for the purpose of examining candidates for a license to practice dentistry in this state may not exceed 6 days.

(3) *Four* members of the board constitute a quorum for the transaction of business. Its proceedings are open to public inspection in cases of public interest.

(4) Money collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

(5) The department shall keep a complete record of meetings and proceedings of the board and shall keep a complete account of moneys received and disbursements made by the department."

Approved March 26, 1979.

CHAPTER NO. 317

AN ACT TO PROVIDE THAT THE HIGHWAY PATROL SHALL PAY A SALARY BENEFIT TO OFFICERS INJURED IN THE PERFORMANCE OF THEIR DUTIES; TO PROVIDE FOR ASSIGNMENT OF SUCH AN OFFICER TO LIGHT DUTY OR, WITH HIS CONSENT, TO ANOTHER POSITION IN THE DEPARTMENT OF JUSTICE; AND TO PROVIDE FOR RETIREMENT CREDIT AND TRANSFERS OF RETIREMENT CREDIT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Payment of salary benefit to officers injured in performance of duty.** (1) A member of the highway patrol who, in the performance of his duties, suffers an injury which necessitates medical or other remedial treatment and which renders him unable to perform his

duties shall be paid the full amount of his regular salary as a salary benefit until one of the following occurs:

(a) He ceases to be disabled.

(b) A period of 1 year elapses after the date of the injury.

(c) Although disabled, he is ordered returned to light duty by the chief of the highway patrol.

(d) Although disabled, he accepts a transfer position within the department of justice.

(e) He waives his benefit.

(2) The department of justice shall set off the amount of any workers' compensation award actually received against the salary benefit payable under this section.

Section 2. **Determination of eligibility for salary benefit.** (1) The highway patrol chief shall determine whether an injury incurred by an officer was incurred in the performance of his duties and whether an injury so incurred resulted in a disability.

(2) In determining the nature and extent of an officer's injuries and the extent of any recovery, the chief shall seek and consider the medical opinion of a qualified physician who has examined the injured officer. The chief may seek a second medical opinion in his discretion.

Section 3. **Periodic medical examinations — waiver of right to salary benefit.** (1) The chief may appoint a physician to examine the officer from time to time. If, in the physician's opinion, the injured officer has sufficiently recovered to perform light duties or his regular duties, the physician shall certify that fact.

(2) An injured officer who unreasonably refuses to accept medical treatment or hospital care or to permit a medical examination under subsection (1) or [Section 2(2)] waives any salary benefit to which he might otherwise be entitled under [Section 1].

Section 4. **Discontinuation of salary benefit when retirement allowance granted.** Payment of a salary benefit under [Section 1] shall be discontinued if the injured officer is disabled for an indefinite period and is granted a disability retirement allowance under Title 19, chapter 6. If an officer is indefinitely disabled and does not apply for a disability retirement allowance, application therefor may be made by the chief.

Section 5. **Assignment to light duty or another position within department of justice.** (1) The chief, taking into consideration the medical opinions he has received, may determine at any time that an injured officer is able to perform light police duty consistent with his status as a law enforcement officer and may order the officer assigned to such light duty. If the officer refuses to perform the light duty, payment of the salary benefit under [Section 1] shall be discontinued.

(2) The chief may order an injured officer transferred from the highway patrol to another position within the department of justice. An officer

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may decline to accept a transfer under this subsection with no loss of salary benefit.

Section 6. **Effect on probationary status.** If the injured officer is on probationary status at the time he becomes injured, the balance of his probationary time shall be suspended until he returns to regular duty or is discharged for cause.

Section 7. **Subrogation.** The state has a cause of action for reimbursement of sums it has paid to an officer as a salary benefit and for medical treatment and examinations against any third party against whom the officer has a cause of action for the injury which necessitated the payments by the state.

Section 8. **Contribution for retirement — length of service credit — transfer of retirement contributions and length of service credit.** (1) When an officer receives compensation under [section 1], the officer's contribution for retirement under 19-6-402 must be paid on the compensation received under [section 1] and the state's contribution for retirement under 19-6-404 must be paid on the compensation received under [section 1].

(2) The time for which contributions are paid under [section 1] shall be credited to the length of service computed for retirement purposes under 19-6-302.

(3) When a disabled officer who qualifies for benefits under [section 1] accepts a transfer under [section 5] to a nonhighway patrol position within the department of justice that is covered under the Public Employees' Retirement System Act, all of the officer's length of service credited with the Montana patrolmen's retirement system shall be transferred to the public employees' retirement system in the officer's credit and the officer's accumulated contributions and the state's adjusted contributions, with accrued interest, credited to the officer in the Montana highway patrolmen's retirement account shall be transferred to the public employees' retirement account in the officer's credit. The state's "adjusted contributions" means an amount equal to the amount that would have been contributed by the state had the transferred service been employment covered under the public employees' retirement system.

Approved March 26, 1979.

CHAPTER NO. 318

AN ACT TO AMEND SECTION 61-3-403, MCA, TO REQUIRE A COUNTY DESIGNATION STICKER ON PERSONALIZED LICENSE PLATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-403, MCA, is amended to read:

"61-3-403. Color and design of personalized plates — county designation. *(1)* The personalized license plates shall be the same color

and design as regular passenger motor vehicle license plates and shall consist of numbers or letters, or any combination thereof not exceeding eight positions and not less than two positions, provided that there are no conflicts with existing passenger, commercial, trailer, motorcycle, or special license plate series under this title.

(2) Upon the issuance of personalized license plates or upon the reregistration of any motor vehicle assigned personalized license plates that do not bear a county designation or no longer bear the correct county designation, the division shall provide nonremovable stickers bearing the appropriate county designation which must be affixed to the license plates in use in accordance with instructions by the division."

Approved March 26, 1979.

CHAPTER NO. 319

AN ACT TO AMEND SECTION 33-4-502, MCA, TO INCREASE THE SPECIFIC DOLLAR LIMITATION ON THE MAXIMUM AMOUNT OF INSURANCE RETAINED BY AN INSURER ON A SINGLE RISK FROM $25,000 TO $35,000.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-4-502, MCA, is amended to read:

"33-4-502. Limit of risk. (1) The maximum amount of insurance which an insurer shall retain on a single risk, after deduction of applicable reinsurance, shall not exceed 10% of the admitted assets of the insurer or *$35,000*, whichever is the larger amount.

(2) For the purposes of this section, a "single risk" as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophic perils includes all properties insured by the same insurer which are reasonably susceptible to loss or damage from the same fire or the same occurrence of such other hazard insured against."

Approved March 26, 1979.

CHAPTER NO. 320

AN ACT RELATING TO DANGEROUS DRUGS; AMENDING SECTION 50-32-222, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-32-222, MCA, is amended to read:

"50-32-222. Specific dangerous drugs included in Schedule I. The dangerous drugs listed in this section are included in Schedule I:

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(1) any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation: acetylmethadol, allylprodine, alphacetylmethadol, alphameprodine, alphamethadol, benzethidine, betacetylmethadol, betameprodine, betamethadol, betaprodine, clonitazene, dextromoramide, dextrorphan, diampromide, diethylthiambutene, dimenoxadol, dimepheptanol, dimethylthiambutene, dioxaphetyl butyrate, dipipanone, ethylmethylthiambutene, etonitazene, etoxeridine, furethidine, hydroxypethidine, ketobemidone, levomoramide, levophenacylmorphan, morpheridine, noracymethadol, norlevorphanol, normethadone, norpipanone, phenadoxone, phenampromide, phenomorphan, phenoperidine, piritramide, proheptazine, properidine, racemoramide, and trimeperidine;

(2) any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: acetorphine, acetyldihydrocodeine, benzylmorphine, codeine methylbromide, codeine-n-oxide, cyprenorphine, desomorphine, dihydromorphine, etorphine, heroin, hydromorphinol, methyl-desorphine, methyldihydromorphine, morphine methylbromide, morphine methylsulfonate, morphine-n-oxide, myrophine, nicocodeine, nicomorphine, normorphine, phoclodine, and thebacon;

(3) any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic drugs, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3, 4-methylenedioxy amphetamine, 5-methoxy-3, 4-methylenedioxy amphetamine, 3, 4, 5-trimethoxy amphetamine, bufotenine, diethyltryptamine, dimethyltryptamine, 4-methyl 1-2, 5-dimethoxylamphetamine, ibogaine, lysergic acid diethylamide, marihuana, mescaline, peyote, n-ethyl-3-piperidyl benzilate, n-methyl-3-piperidyl benzilate, psilocybin, psilocyn, tetrahydrocannabinols, and 2, 5-dimethoxyamphetamine. *If prescription or administration is authorized by the Federal Food, Drug and Cosmetic Act, then any material, compound, mixture, or preparation containing tetrahydrocannabinols shall automatically be rescheduled from Schedule I to Schedule II.*"

Approved March 26, 1979.

CHAPTER NO. 321

AN ACT TO REESTABLISH THE STATE BANKING BOARD UNDER EXISTING STATUTORY AUTHORITY AND RULES; PROVIDING FOR SENATE CONFIRMATION OF BOARD MEMBERS; AMENDING SECTIONS 2-8-103 AND 2-15-1803, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, will terminate the state banking board and require a performance evaluation of the board by the legislative audit committee; and

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WHEREAS, as a result of the performance evaluation, the legislative audit committee recommends that the state banking board be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The state banking board is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of public accountants, department of professional and occupational licensing, created by 2-15-1641;

(c) board of architects, department of professional and occupational licensing, created by 2-15-1651;

(d) state electrical board, department of professional and occupational licensing, created by 2-15-1654;

(e) board of professional engineers and land surveyors, department of professional and occupational licensing, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the investment commissioner, state auditor's office, created by 2-15-1901;

(h) board of landscape architects, department of professional and occupational licensing, created by 2-15-1652;

(i) board of county printing, department of community affairs, created by 2-15-1102;

(j) board of plumbers, department of professional and occupational licensing, created by 2-15-1655;

(k) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(l) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(m) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

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(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(n) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(t) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(u) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

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(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horse racing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish and game, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631;

(j) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(k) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agency shall terminate on July 1, 1985: state banking board, department of business regulation, created by 2-15-1803."

Section 3. Section 2-15-1803, MCA, is amended to read:

"2-15-1803. State banking board — composition — allocation. (1) There is a state banking board.

(2) The board is composed of seven members, including the director of business regulation who is the chairman of the board. The remaining six members of the board shall be appointed with consideration given banks of small, medium, and large size and to geographical distribution. At least one banker member and one public member shall be appointed from each congressional district of the state. Two of the six members shall be active officers in state banks of Montana, one shall be an active officer of a national bank doing business in Montana, and three shall be members of the public, none of whom shall be an officer, director, or shareholder of any state or national bank.

(3) The members shall be appointed by the governor *with the consent of the senate* for terms of 3 years. Vacancies shall be filled by appointment for the unexpired term. No member other than the director of business regulation may serve more than two consecutive terms.

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(4) The board is allocated to the department for administrative purposes only as provided in 2-15-121."

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 26, 1979.

CHAPTER NO. 322

AN ACT TO RAISE THE MANDATORY MINIMUM SENTENCE FOR DELIBERATE HOMICIDE FROM 2 YEARS TO 10 YEARS; RESTRICTING DEFERMENT OR SUSPENSION OF THE MANDATORY MINIMUM SENTENCES ESTABLISHED IN THIS ACT; AMENDING SECTIONS 45-5-102, 46-18-201, AND 46-18-222, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-102, MCA, is amended to read:

"45-5-102. Deliberate homicide. (1) Except as provided in 45-5-103(1), criminal homicide constitutes deliberate homicide if:

(a) it is committed purposely or knowingly; or

(b) it is committed while the offender is engaged in or is an accomplice in the commission of, an attempt to commit, or flight after committing or attempting to commit robbery, sexual intercourse without consent, arson, burglary, kidnapping, felonious escape, or any other felony which involves the use or threat of physical force or violence against any individual.

(2) A person convicted of the offense of deliberate homicide shall be punished by death or life imprisonment as provided in 46-18-301 through 46-18-310 or by imprisonment in the state prison for a term of not less than *10* years or more than 100 years, except as provided in 46-18-222."

Section 2. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 90 days;

(iii) conditions for probation;

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(iv) restitution;

(v) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(vi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions during the period of suspended sentence. Such reasonable restrictions may include:

(i) jail base release;

(ii) jail time not exceeding 90 days;

(iii) conditions for probation;

(iv) restitution;

(v) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(vi) any combination of the above.

(c) impose a fine as provided by law for the offense;

(d) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(e) impose any combination of subsections (1)(b), (1)(c), and (1)(d).

(2) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, shall not be a credit against the sentence unless the court orders otherwise.

(3) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2), 45-9-102(3), and 45-9-103(2).

(4) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended."

Section 3. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by *subsections (3) and (4) of* 46-18-201, 46-18-221(3), and 46-18-502(2) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

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(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution;

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor; or

(5) where applicable, no serious bodily injury was inflicted on the victim."

Section 4. **Saving clause.** This act applies only to offenses committed after the effective date of this act.

Approved March 26, 1979.

CHAPTER NO. 323

AN ACT REMOVING THE CITIZENSHIP REQUIREMENT FOR A PHYSICIAN'S CERTIFICATE TO PRACTICE MEDICINE IN THIS STATE AND ADDING THE REQUIREMENT OF BEING ABLE TO COMMUNICATE IN ENGLISH; AMENDING SECTIONS 37-3-303 AND 37-3-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-303, MCA, is amended to read:

"37-3-303. Practice authorized by physician's certificate. The physician's certificate authorizes the holder to perform one or more of the acts embraced in 37-3-102(1)(a) in a manner reasonably consistent with his training, skill, and experience."

Section 2. Section 37-3-305, MCA, is amended to read:

"37-3-305. Qualifications for licensure. (1) No person may be granted a physician's certificate to practice medicine in this state unless he:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training which is at least the equivalent of 1 year internship;

(d) has made a personal appearance before the board unless such appearance has been specifically waived by the board; *and*

(e) is able to communicate, in the opinion of the board, in the English language.

(2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(3) No person may be granted a temporary license to practice medicine in this state unless he:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training which is at least the equivalent of 1 year internship;

(d) has made a personal appearance before at least one member of the board; *and*

(e) is able, in the opinion of the board, to communicate in the English language."

Approved March 26, 1979.

CHAPTER NO. 324

AN ACT TO AUTHORIZE THE DEPARTMENT OF HIGHWAYS TO ADMINISTER RAIL PLANNING ACTIVITIES; AMENDING SECTION 60-2-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-2-201, MCA, is amended to read:

"**60-2-201. General powers of department.** (1) The department may plan, lay out, alter, construct, reconstruct, improve, repair, and maintain highways on the federal-aid systems and state highways.

(2) The department may cooperate and contract with counties and municipalities to provide assistance in performing these functions on other highways and streets.

(3) The department may review and approve projects for the installation of public works on state highway rights-of-way and authorize a county or municipality to let contracts related to such improvements.

(4) The department shall adopt necessary rules for the construction, repair, maintenance, and marking of state highways and bridges.

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(5) The department may administer rail planning activities."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 26, 1979.

CHAPTER NO. 325

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO LANDSCAPE ARCHITECTURE; TO REESTABLISH THE BOARD OF LANDSCAPE ARCHITECTS; TO PROVIDE FOR TWO PUBLIC MEMBERS ON THE BOARD AND REQUIRE THE CHAIRMAN TO BE A PUBLIC MEMBER; TO REMOVE QUALIFICATIONS PREREQUISITE TO ADMISSION TO THE EXAMINATION; AMENDING SECTIONS 2-8-103, 2-15-1652, 37-66-101, 37-66-103, 37-66-201, AND 37-66-304 THROUGH 37-66-307, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Board reestablished.** The board of landscape architects created by 2-15-1652 is reestablished for a period of 6 years pursuant to 2-8-122.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of public accountants, department of professional and occupational licensing, created by 2-15-1641;

(c) board of architects, department of professional and occupational licensing, created by 2-15-1651;

(d) state banking board, department of business regulation, created by 2-15-1803;

(e) state electrical board, department of professional and occupational licensing, created by 2-15-1654;

(f) board of professional engineers and land surveyors, department of professional and occupational licensing, created by 2-15-1653;

(g) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(h) office of the investment commissioner, state auditor's office, created by 2-15-1901;

(i) board of county printing, department of community affairs, created by 2-15-1102;

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(j) board of plumbers, department of professional and occupational licensing, created by 2-15-1655;

(k) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(l) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(m) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(n) board of osteopathic physicians, department of professsional and occupational licensing, created by 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

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(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(t) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(u) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horse racing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish and game, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631;

(j) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(k) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agency terminates on July 1, 1985: the board of landscape architects created by 2-15-1652."

Section 3. Section 2-15-1652, MCA, is amended to read:

"2-15-1652. Board of landscape architects. (1) There is a board of landscape architects.

(2) The board consists of five members. Members of the board shall be appointed by the governor and must be residents of this state. *Three members must be* landscape architects *licensed under* Title 37, chapter 66. *Two* members must be *representatives of the public who are not engaged in the practice of landscape architecture.*

(3) The board is allocated to the department of professional and occupational licensing for administrative purposes only as prescribed in 2-15-121.

(4) Terms are for 4 years. Each member shall hold office until the appointment and qualification of his successor. Vacancies occurring prior to the expiration of the term shall be filled in the same manner as original appointments. No member may serve more than 8 consecutive years."

Section 4. Section 37-66-101, MCA, is amended to read:

"37-66-101. Short title. This chapter shall be known and cited as the "Landscape *Architecture* Registration and Licensing Act"."

Section 5. Section 37-66-103, MCA, is amended to read:

"37-66-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of landscape architects.

(2) "Department" means the department of professional and occupational licensing.

(3) "Landscape architect" means a person who holds a certificate to practice landscape architecture in the state of Montana under the provisions of this chapter.

(4) "*Landscape* architecture" means performing services in *conjunction with all aspects of the planning and design of the exterior environment for human use and environmental protection. It includes regional planning of natural resources, urban and rural planning and design, institutional design, park and recreation planning and design, and the preparation of project master plans. It is the design discipline specifically oriented to addressing the problems involved in adapting man's uses of land to the characteristics of the exterior environment both functionally and aesthetically. It includes the preparation of contract documents, construction specifications, construction cost estimates, and project contracts. It includes contract negotiations, project management, and construction management. The term does* not include the design of structures or facilities with separate and self-contained purposes that are ordinarily included in the practice of engineering or architecture and *does* not include the making of land surveys or final land plats for official approval or recording."

Section 6. Section 37-66-201, MCA, is amended to read:

"37-66-201. Organization — compensation. (1) At its first meeting of every calendar year, the board shall elect from *among* its *public representative* members a *chairman*, who may appoint a secretary. The secretary may or may not be a member of the board.

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(2) In carrying out the provisions of this chapter, the only reimbursement members of the board may receive is for travel expenses, as allowed in 2-18-501 through 2-18-503, as amended, incurred in the performance of board duties."

Section 7. Section 37-66-304, MCA, is amended to read:

"**37-66-304. Qualifications not required.** Each applicant *must be admitted to the examination without prerequisite qualifications.*"

Section 8. Section 37-66-305, MCA, is amended to read:

"**37-66-305. Examinations.** (1) Examinations for licensure shall be given by the board at least once each year.

(2) Each applicant for licensure as a landscape architect is required to establish by examination his competency to practice the profession of landscape architecture.

(3) The *examination* given *must* be *the uniform national examination prescribed* by the *council of landscape architectural boards.*"

Section 9. Section 37-66-306, MCA, is amended to read:

"**37-66-306. Reciprocity.** The board may certify for licensure without examination an applicant who is legally registered as a landscape architect in any other state or country *and who is certified by the council of landscape architectural registration boards.*"

Section 10. Section 37-66-307, MCA, is amended to read:

"**37-66-307. Annual renewal — withdrawal — deposit of fees.** (1) Certification of licensure or renewal of registration expire on the last day of June following their issuance or renewal. Renewal may be effected during the month of June by payment to the department of the required fee. The board shall issue current renewal registration to each landscape architect promptly upon payment of the annual renewal registration fee.

(2) Any registrant in good standing, upon ceasing to practice landscape architecture, may suspend his license by giving written notice to the board. Thereafter, he may resume practice upon payment of the then-current fee and upon approval by the board.

(3) All fees received under the provisions of this chapter shall be deposited in an earmarked revenue fund by the department. The moneys collected shall be used by the department to carry out the purpose, duties, and responsibilities of the chapter, subject to 37-1-101(6)."

Section 11. **Grandfather clause.** The board shall issue a license without oral or written examination to any person who was practicing landscape architecture on the effective date of the act originally creating the board (July 1, 1975). However, if a person practicing landscape architecture on the effective date of the act originally creating the board was denied licensure because of requirements which are deleted by [this act], then such person shall be licensed without oral or written examination under the provisions of [this act].

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Section 12. **Transition.** Section 3 does not affect the term of office of a person who is a member of the board of landscape architects on July 1, 1979, and he shall serve the remainder of his unexpired term. All appointments made and vacancies filled after July 1, 1979, must be in accordance with section 3.

Section 13. **Effective date.** Sections 1 and 2 are effective on passage and approval.

Approved March 26, 1979.

CHAPTER NO. 326

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO WATER USE; AMENDING SECTIONS 85-6-108, 85-7-1507, 85-7-1612, 85-7-1904, 85-7-1906, 85-7-2204, 85-8-101, 85-8-102, 85-8-118, 85-8-119, 85-8-201, AND 85-8-624, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-6-108, MCA, is amended to read:

"85-6-108. Exemption from payment of fees. Any water users' association organized in conformity with the requirements of the laws of the United States and of the state of Montana, under the Reclamation Act of June 17, 1902, which, under the articles of incorporation, is authorized to furnish water only to its stockholders shall be exempt from the payment of any *license fee* and from the payment of any annual *license* tax and, upon filing its articles of incorporation with the secretary of state, shall be required to pay only a fee of $40 for the filing and recording of such articles of incorporation and the issuance of certificate of incorporation."

Section 2. Section 85-7-1507, MCA, is amended to read:

"85-7-1507. Conflict of interest — criminal penalty. No commissioner or any other officer named in this *chapter* may in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board or in the profits derived therefrom. For any violation of this provision, such officer is guilty of a misdemeanor and his conviction thereof shall work forfeiture of his office and he shall be punished as provided in 45-7-401."

Section 3. Section 85-7-1612, MCA, is amended to read:

"85-7-1612. Board of control — powers and duties. (1) The board of control established under and by virtue of this part shall be the operating agent of the contracting districts for the operation and maintenance of irrigation and/or drainage works and the delivery of water therefrom.

(2) The board shall make and execute all necessary contracts; employ and appoint such agents, officers, and employees as may be required; and prescribe their duties.

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(3) The board shall have the authority and power to institute and maintain any and all actions and proceedings *and* suits at law or in equity, necessary or proper in order to fully carry out the provisions of this chapter or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this part or acquired in pursuance thereof. In all courts, suits, or proceedings, the board may sue, appear, and defend in person or by its attorneys and in the name of such board of control.

(4) The board may adopt rules and bylaws governing the calling and holding of meetings of the board; the manner of transacting business thereat; and the publishing or posting of the orders, resolutions, and proceedings of the board. It shall be the duty of *the* board to pass or adopt bylaws and rules for the apportionment and distribution of water to the lands of the contracting districts and for the protection and preservation of the works and other property of the districts. All orders and resolutions shall be passed or adopted by a majority of the members of the board of control by a "yea" and "nay" vote, to be entered upon the records of the board.

(5) *The* board *of control* shall have power generally to do and perform all other acts as shall be necessary or appropriate to fully carry out the purposes of this part."

Section 4. Section 85-7-1904, MCA, is amended to read:

"85-7-1904. Acquisition of water and waterworks by board. (1) The board shall have power and authority to:

(a) appropriate water in the name of the district;

(b) acquire by purchase, lease, or contract water and water rights; additional waters and supplies of water; canals, reservoirs, dams, and other works already constructed or in the course of construction; and

(c) acquire by purchase, lease, contract, condemnation, or other legal means:

(i) lands and rights in lands for rights-of-way, for reservoirs, for the storage of needful waters, and for dam sites and necessary appurtenances; and

(ii) such other lands and property as may be necessary for the construction, use, maintenance, repair, improvement, enlargement, and operation of any district system of irrigation works.

(2) The board shall have the privilege, if desired, to contract with the owner or owners of such canals, reservoirs, dams, and other works so purchased and in the course of construction for the completion thereof.

(3) No purchase, lease, or contract for purchase of any water, water rights, canals, reservoirs, reservoir sites, dam sites, irrigation works, or other property of any nature or kind or for the making or purchasing of surveys, maps, plans, estimates, and specifications or for the purchase of machinery for pumping plants or for the erection of buildings, aqueducts, and other structures necessarily used in connection with such pumping

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plants, for a price or rental in excess of $80,000, shall be final or binding upon the district, nor shall said sum be paid without the written consent or petition of at least a majority in number and acreage of the holders of title or evidence of title to the lands within the district. Any splitting or division of such purchase, lease, or contract with the purpose or intention of avoiding or circumventing the provisions of this section shall render such divided or split contract or contracts void."

Section 5. Section 85-7-1906, MCA, is amended to read:

"85-7-1906. Relations with United States. (1) For the purpose of acquiring control over government land within the district and of complying with the provisions of the act of congress of August 11, 1916, the board shall have authority to make such investigations and base thereon such representations and assurances to the secretary of the interior as may be requisite.

(2) The board may enter into any obligation or contract with the United States:

(a) for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water therefrom and the necessary drainage works;

(b) for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands, under the provisions of the *federal* Reclamation Act *of June 17, 1902*, all acts amendatory thereof or supplementary thereto, and the rules and regulations established thereunder; or

(c) for a water supply under any act of congress providing for or permitting such contract.

(3) In case contract has been or may hereafter be made with the United States as herein provided, bonds of the district may be deposited with the United States at 90% of their par value, to the amount to be paid by the district to the United States under any such contract. The interest on said bonds of the district and regularly paid to the United States is to be applied as provided in such contract. If bonds of the district are not so deposited, it shall be the duty of the board of commissioners to include, as part of any levy or assessment provided for in 85-7-2101 or 85-7-2132, an amount sufficient to meet each year all payments accruing under the terms of any such contract. The board may accept, on behalf of the district, appointment of the district as fiscal agent of the United States or authorization of the district by the United States to make collections of *money* for or on behalf of the United States in connection with any federal reclamation project, whereupon the district shall be authorized to so act and to assume the duties and liabilities incident to such action. The board shall have full power to do all things required by the federal statutes now or hereafter enacted in connection therewith and all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto, including the power to require the prompt payment of all charges as prerequisite to water service."

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Section 6. Section 85-7-2204, MCA, is amended to read:

"85-7-2204. Written consent of owners — acknowledgment and recording requirements. Whenever any written consent is required to be given by or obtained from the owner or owners of any lands by any of the provisions of any of the sections of this *chapter*, such written consent must be acknowledged before some officer authorized to take acknowledgments and shall be filed and recorded in the office of the clerk and recorder of the county in which such lands are situated, and a certified copy thereof must be filed in the office of the clerk of the court in the county in which the proceedings for the organization of such district were instituted. The provisions of this section shall not apply to any petition provided for by this *chapter*, and all such petitions may be signed in any number of original parts with the same effect as though all signatures had been affixed to one instrument."

Section 7. Section 85-8-101, MCA, is amended to read:

"85-8-101. Petition for creation of district. (1) Whenever a majority of the owners of lands within any district of land who shall represent one-third in area of the land within said district to be reclaimed or benefited or whenever the owners of more than one-half of the lands within such district desire to construct one or more drains, ditches, levees, waste ditches, or other works across the lands of others or to straighten, widen, deepen, or otherwise alter any natural stream or watercourse not navigable, for the promotion of the public health or welfare and the drainage of *the* lands and removal of surface waters therefrom; or desire to maintain and keep in repair any such drain, ditch, or levee heretofore constructed under any law of this state, such owners may file, in the district court of any county in which the lands or any part of them shall lie, a petition setting forth:

(a) the proposed name of *the* drainage district;

(b) the necessity of the proposed work;

(c) a general description of the proposed starting points, routes, and termini of the proposed drain, ditches, and levees;

(d) a general description of the lands proposed to be included in *the* district;

(e) the names of the owners of all lands in *the* district, when known.

(2) If the purpose of *the* petitioners is the enlargement, repair, and maintenance of a ditch, levee, or other work heretofore constructed under any law of this state, *the* petition shall give a general description of the same, with such particulars as *are considered* important. *The* petition shall pray for the organization of a drainage district by the name and with the boundaries proposed and for the appointment of commissioners for the execution of such proposed work, according to the provisions of this and the following sections.

(3) (a) Any lands, the title to which is in the state and which are within the boundaries of any drainage district heretofore created or which may be hereafter created, may be included in any such drainage district

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in the same manner as is by law provided for adding other lands to drainage districts whenever it is found necessary to include lands in drainage districts as provided by the preceding subsections.

(b) *All* copies of petitions or notices required by law to be served on account of such lands being included in such drainage districts shall be served on the president of the board having control of such lands in the same manner as is hereinafter provided for the service of petitions and notices on other owners of lands in the district in which said lands are situated."

Section 8. Section 85-8-102, MCA, is amended to read:

"85-8-102. Amendment and circulation of petition — court consideration. No petition having as many signers as are required by 85-8-101 may be declared void, but the court may at any time permit the petition to be amended in form and substance to conform to the facts, if the facts justify the organization of a drainage district. Several similar petitions for the organization of the same district may be circulated and, when filed, together shall be regarded as one petition having as many signers as there are separate signers on the several filed petitions who own lands within the proposed drainage district. All petitions for the organization of the district filed prior to the hearing on the petition shall be considered by the court the same as if filed with the first petitions placed on file, and the signatures thereon shall be counted in determining whether sufficient landowners have signed the petition."

Section 9. Section 85-8-118, MCA, is amended to read:

"85-8-118. Determination of sufficiency of petition. The court shall hear and determine whether or not the petition contains the signatures of a majority of the owners of lands within the proposed district who are of lawful age and who represent one-third in area of the lands proposed to be affected by said work or the signatures of the owners of more than one-half of such lands and shall determine all questions of law arising on said contest. The district court in which such petition shall be filed or the judge thereof may adjourn the hearing on *the* petition from time to time for want of sufficient notice, to give time to prepare for trial, or for other good cause."

Section 10. Section 85-8-119, MCA, is amended to read:

"85-8-119. Receiving affidavits on question of petition sufficiency. The affidavits of any 10 or more of the signers of *the* petition, stating that they have examined it and are acquainted with the locality of *the* district and that *the* petition is signed by a sufficient number of owners of lands in *the* district to satisfy 85-8-101, may be taken by the court or judge as prima facie evidence of the facts therein stated. The affidavit of any petitioner or other landowner before *the* court or represented before the court *asserting* his ownership of lands *in the district, properly described, is* sufficient evidence to the court of such facts."

Section 11. Section 85-8-201, MCA, is amended to read:

"85-8-201. Dissolution of districts. Whenever the owners of more than one-half of the lands within any drainage district organized under the

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provisions of this chapter shall present to the district court having jurisdiction of *the* drainage district a petition signed by them, praying that such drainage district be dissolved, the judge of *the* court shall cause notice of such petition, together with a copy of *the* petition, to be served upon the commissioners of *the* district, directing them to show cause on a day certain, not less than 15 or more than 30 days from the date of the filing of *the* petition, why *the* petition should not be granted. The judge, at the time of receiving the petition, shall make an order forbidding the commissioners from incurring any further expense or proceeding with the work of constructing a drain. On *the* day of hearing the court shall hear the same, and if it appears that the owners of more than one-half of the lands in *the* drainage district have signed *the* petition, it shall be granted. Thereupon, the court shall make an order directing the commissioners to file a written report, under oath, setting forth the amount of the debts and obligations of *the* drainage district. Within 30 days after such report is filed, the court shall cause *an assessment to be levied* against all lands in *the* district on the basis of the final report of the commissioners, as confirmed by the court, and if no final report has been made, then on an area basis. The court shall also enter judgment dissolving *the* district and authorize the commissioners to settle the business of the district on the basis of the final report of *the* commissioners or on the area basis as confirmed by this court, *the* commissioners to render their services for same without pay."

Section 12. Section 85-8-624, MCA, is amended to read:

"85-8-624. Assessments on improvements — taxpayers' approval, limitations, and election procedures. (1) It shall require a vote of the persons on the assessment rolls in any existing district to make Chapter 409, Laws of 1973, applicable to such districts.

(2) Nothing in Chapter 409, Laws of 1973, confers upon districts created for drainage purposes only the authority to levy assessments on benefits to improvements.

(3) The election provided for by subsection (1) shall be governed by the following rules:

(a) Notice of the election shall be as provided in 85-8-303, except that the form of the ballot shall be as hereinafter provided.

(b) The manner of conducting the election shall be as provided in 85-8-304.

(c) The qualifications of electors shall be as provided in 85-8-305, except that, in addition to persons holding title or evidence of title to lands within the district, any person as therein defined who does not own land within the district but has been assessed or will have his improvements assessed under Chapter 409, Laws of 1973, or who will be assessed for benefits received shall be entitled to one vote. Commissioners shall prepare a list of such persons and give them notice as provided in 85-8-303.

(d) The commissioners of any district in existence prior to March 21, 1973, who wish to hold an election to determine if the district shall be governed by Chapter 409, Laws of 1973, shall at any regular or special meeting adopt a resolution calling for an election to determine whether or not

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the voters of said district wish to be governed by Chapter 409, Laws of 1973. The resolution shall contain a short summary of the changes made by Chapter 409, Laws of 1973, and shall include the summary as part of the notice provided for by 85-8-303. In addition, the commission shall provide copies of Chapter 409, Laws of 1973, to any person interested in obtaining a copy of the same and the notice to the persons in the district calling the election shall describe where and how copies may be obtained. The commissioners may authorize a reasonable charge for providing said copies, not to exceed 20 cents per page.

(e) The ballot shall include the summary as provided for in the preceding subsection and the form of the ballot shall conform as closely as possible to that *provided for in Title 13, chapter 27.*

(f) A simple majority of those who cast valid ballots shall determine the outcome of the election."

Approved March 27, 1979.

CHAPTER NO. 327

AN ACT TO ADD "SEWAGE EFFLUENT" TO THE DEFINITION OF WATER AS USED IN TITLE 85, CHAPTER 2, MCA; AND AMENDING SECTION 85-2-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use" means a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses. A use of water for slurry to export coal from Montana is not a beneficial use. Slurry is a mixture of water and insoluble matter.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means the certificate of water right issued by the department under 85-2-210, subsections (1) and (2) of 85-2-306, and 85-2-315.

(5) "Declaration" means the declaration of an existing right filed with the department under 85-2-203.

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(6) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(7) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(8) "Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(9) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(10) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

(11) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(12) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(13) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including *but not limited to* geothermal water, diffuse surface water, *and sewage effluent.*

(14) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Approved March 27, 1979.

CHAPTER NO. 328

AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR CONVERTING SHARES OF A CORPORATION ON MERGER OR CONSOLIDATION; AMENDING SECTIONS 35-1-801 AND 35-1-802, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-1-801, MCA, is amended to read:

"35-1-801. Procedure for merger. (1) Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

(2) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(a) the names of the corporations proposing to merge and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

(b) the terms and conditions of the proposed merger;

(c) the manner and basis of converting the shares of each corporation into shares or other securities or obligations of the surviving corporation *or any other corporation or, in whole or in part, into cash or other property*;

(d) a statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger;

(e) such other provisions with respect to the proposed merger as are deemed necessary or desirable."

Section 2. Section 35-1-802, MCA, is amended to read:

"35-1-802. Procedure for consolidation. (1) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(2) The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

(a) the names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(b) the terms and conditions of the proposed consolidation;

(c) the manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation *or any other corporation or, in whole or in part, into cash or other property*;

(d) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter;

(e) such other provisions with respect to the proposed consolidation as are deemed necessary or desirable."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 27, 1979.

CHAPTER NO. 329

AN ACT TO PROTECT EMPLOYERS FROM CLAIMS FOR CONTRIBUTION OR INDEMNITY ASSERTED BY A THIRD PERSON; AMENDING SECTION 39-71-411, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-411, MCA, is amended to read:

"39-71-411. Provisions of chapter exclusive remedy — nonliability of insured employer. For all employments covered under the

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Workers' Compensation Act or for which an election has been made for coverage under the chapter, the provisions of the chapter are exclusive. Except as provided in part 5 of this chapter for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death or personal injury to any employees covered by the Workers' Compensation Act *or for any claims for contribution or indemnity asserted by a third person from whom damages are sought on account of such injuries or death.* The Workers' Compensation Act binds the employee himself, and in case of death binds his personal representative and all persons having any right or claim to compensation for his injury or death, as well as the employer and the servants and employees of such employer and those conducting his business during liquidation, bankruptcy, or insolvency."

Approved March 27, 1979.

CHAPTER NO. 330

AN ACT TO AMEND SECTION 69-12-108, MCA, TO REDUCE THE MINIMUM PENALTY FEE FOR SUBSEQUENT OFFENSE VIOLATIONS BY MOTOR CARRIERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-108, MCA, is amended to read:

"69-12-108. Violations. Any motor carrier subject to the provisions of Chapter 184, Laws of 1931, as amended, or, whenever any such motor carrier is a corporation, any director or officer thereof; any receiver, trustee, lessee, agent, or persons acting for or employed by such corporation; any person, corporation, or association or officer, agent, or employee thereof; or any broker of property or officer, agent, or employee thereof who violates or fails to comply with or who procures, aids, or abets in the violation of any provision of Chapter 184, Laws of 1931, as amended, or who fails to obey, observe, or comply with any lawful order, decision, rule, direction, demand, or requirement of the commission or any part of provisions thereof shall:

(1) be subject to a civil penalty to be collected and deposited to the general fund by the commission after notice and hearing in an amount not less than $25 or more than $500 for the first offense and not less than *$25* or more than $1,000 for each subsequent offense; or

(2) be subject, upon conviction in a justice's court, to a fine of not less than $25 or more than $500 for the first offense and not less than *$25* or more than $1,000 for each subsequent offense."

Approved March 27, 1979.

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CHAPTER NO. 331

AN ACT TO AMEND SECTION 69-12-203, MCA, TO PERMIT MOTOR CARRIER SUPERVISORS TO REQUEST PRODUCTION OF DOCUMENTS RELATING TO THE DRIVER OF A VEHICLE AND IN SO DOING TO EXTEND THE EXISTING AUTHORITY OF THE HIGHWAY PATROL AND THE DEPARTMENT OF HIGHWAYS TO HAVE THE SAME POWER WITH RESPECT TO DRIVERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-203, MCA, is amended to read:

"69-12-203. Supervisor of motor carriers. (1) The commission shall appoint a supervisor of motor carriers who shall have general responsibility to it for enforcement of the provisions of this chapter. The supervisor shall be either an attorney admitted to practice law in Montana or a person qualified by at least 5 years of suitable experience and training in appropriate phases of the motor carrier industry. He shall serve at the pleasure of the commission and at an annual salary to be set by the commission.

(2) The supervisor shall direct all enforcement activities in behalf of the commission, including the investigation and prosecution of violations of Chapter 184, Laws of 1931, as amended, or the rules or orders prescribed thereunder by the commission.

(3) The supervisor and whatever field inspectors may be employed by the commission to assist him shall be deemed peace officers for the purpose of making arrests in connection with violations of Chapter 184, Laws of 1931, as amended, and issuing summonses, accepting bail, and serving warrants of arrest. The supervisor and field inspectors are empowered to make reasonable inspections of cargoes carried by commercial motor vehicles and require production of manifests, bills of lading, leases, and other documents relating to the cargo, *driver,* routing, or ownership of such vehicles. *The scope of the inspections is limited to the enforcement of the provisions of Title 69, chapter 12."*

Approved March 27, 1979.

CHAPTER NO. 332

AN ACT TO RAISE THE BONDED INDEBTEDNESS LIMIT FOR COUNTY HIGH SCHOOLS TO EQUAL THE LIMIT FOR OTHER HIGH SCHOOL DISTRICTS; AMENDING SECTIONS 7-7-2203 AND 7-14-2524, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-2203, MCA, is amended to read:

"7-7-2203. Limitation on amount of bonded indebtedness. (1) Except as provided in subsections (2) and (3), no county shall issue bonds

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for any purpose which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 2 ½ % of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the issuance of such bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants, will exceed 2 ½ % but will not exceed *29%* of the value of such taxable property, when necessary to do so, for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes.

(3) The foregoing limitation shall not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932."

Section 2. Section 7-14-2524, MCA, is amended to read:

"7-14-2524. Limitation on amount of bonds issued — excess void. (1) Except as otherwise provided hereafter and in 7-7-2203 and 7-7-2204, no county shall issue bonds which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 2 ½ % of the value of the taxable property therein. The taxable property shall be ascertained by the last assessment for state and county taxes prior to the issuance of such bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants *except county high school bonds,* will exceed 2 ½ % but will not exceed 5% of the value of such taxable property when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county, *except county high school bonds,* shall not exceed 5% of the value of the taxable property within the county as ascertained by the last preceding general assessment.

(4) All bonds issued by any county in excess of the limitations herein fixed shall be null and void."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 27, 1979.

CHAPTER NO. 333

AN ACT TO CLARIFY RESPONSIBILITIES AND PROCEDURES FOR CLOSING OUT DEFUNCT STATE AGENCIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Department" means the department of administration created in 2-15-1001.

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(2) "State agency" means any state office, board, bureau, commission, department, or agency but does not include any agency operated by a city, town, county, school district, or other political subdivision.

Section 2. **Closing out defunct state agencies — procedures.** Unless otherwise provided by law, the following procedures apply whenever a state agency is terminated by operation of law, is abolished by executive or legislative action, ceases to function, or otherwise becomes defunct:

(1) The department becomes the receiver of all real and personal property of the agency, including all books, records, and accounts, and shall determine all remaining assets and liabilities of the defunct agency. The department shall inventory all personal property of the agency and may reassign the property to other state agencies or otherwise dispose of it as provided in Title 18, chapter 6, part 1.

(2) The department must pay any creditors of the defunct state agency from the funds remaining in the agency's current budget. However, if insufficient funds remain to settle all outstanding accounts, then the department shall prorate all claims in the ratio of their amount to the total cash available. The department shall seek a supplemental appropriation from the next regular session of the legislature to pay the remaining balance of the creditors' claims. Any funds remaining after payment to all creditors of the defunct agency must be deposited by the department into the general fund.

Approved March 27, 1979.

CHAPTER NO. 334

AN ACT ESTABLISHING UNIFORM AGE REQUIREMENTS FOR ENTRANCE INTO ALL PUBLIC SCHOOLS IN THE STATE OF MONTANA; PROVIDING AN EFFECTIVE DATE; AND AMENDING SECTIONS 20-1-101, 20-5-101, 20-7-117, AND 20-9-313, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-1-101, MCA, is amended to read:

"20-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Agricultural experiment station" means the agricultural experiment station established at Montana state university.

(2) "Average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district.

(3) "The board of public education" is the board created by Article X, section 9, subsection (3) of the 1972 Montana constitution and 2-15-1507.

(4) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2) of the 1972 Montana constitution and 2-15-1505.

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(5) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2) of the 1972 Montana constitution and 2-15-1506.

(6) "County superintendent" means the county government official who is the school officer of the county.

(7) "District superintendent" means any person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(8) "Postsecondary vocational-technical center" means a school used principally for the provision of postsecondary vocational-technical education to persons who qualify as postsecondary vocational-technical pupils. These centers are designated by the board of public education upon direction by the legislature. All other public or private schools are hereby prohibited from using this title.

(9) "Postsecondary vocational-technical education" means vocational-technical education of postsecondary vocational-technical pupils which is conducted by a postsecondary vocational-technical center or other programs as designated by the board of public education. Postsecondary vocational-technical education shall include the 13th and 14th year and beyond but will not include work toward a baccalaureate degree.

(10) "Postsecondary vocational-technical pupil" means a person who has completed or left school, is at least 16 years of age, and is available for study in preparation for entering the labor market, for reentering the labor market, or for employment stability or advancement in employment.

(11) "Principal" means any person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher shall be construed as including a principal, as herein defined.

(12) "Pupil" means any child who is 6 years of age or older *on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3)* but has not yet reached his 21st birthday and who is enrolled in a school established and maintained under the laws of the state of Montana at public expense.

(13) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

(14) "Regents" means the board of regents of higher education.

(15) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and shall include any food service

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financially assisted through funds or commodities provided by the United States government.

(16) "The state board of education" is the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1) of the 1972 Montana constitution.

(17) "State university" means the Montana state university, located at Bozeman.

(18) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the constitution of Montana.

(19) "System" means the Montana university system.

(20) "Teacher" means any person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher shall also include any person for whom an emergency authorization of employment of such person has been issued under the provisions of 20-4-111.

(21) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

(22) "Textbook dealer" means any party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state of Montana.

(23) "Trustees" means the governing board of a district.

(24) "University" means the university of Montana, located at Missoula.

(25) "Vocational education" means the instruction to prepare or improve the pupil for gainful employment that does not require a baccalaureate or higher degree. This definition of vocational education shall include guidance and prevocational, related, or technical instruction necessary to prepare the pupil for further vocational education or for entry into employment."

Section 2. Section 20-5-101, MCA, is amended to read:

"20-5-101. Admittance of child to school. (1) The trustees shall assign and admit any child to a school in the district when the child is:

(a) 6 years of age or older *on or before September 10 of the year in which the child is to enroll* but has not yet reached his 21st birthday;

(b) a resident of the district; and

(c) otherwise qualified under the provisions of this title to be admitted to such school.

(2) The trustees of any district shall have the authority to assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

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(3) The trustees of any district shall be empowered to admit a child who does not meet the age requirements if in their judgment there are exceptional circumstances which merit waiving the age provision of this section."

Section 3. Section 20-7-117, MCA, is amended to read:

"20-7-117. Five-year-old schooling and preschool programs. (1) The trustees of an elementary district may establish a program capable of accommodating, at a minimum, all the children in the district who will be 5 years old on or before *September 10 of* the school year for which the program is to be conducted *or has been enrolled by special permission of the board of trustees.* The program shall be an integral part of the elementary school and shall be financed and governed accordingly, provided that to be eligible for inclusion in the calculation of ANB pursuant to 20-9-311, a child must have reached the age of 5 on or before *September 10 of* the school year covered by the calculation *or has been enrolled by special permission of the board of trustees.*

(2) The trustees of an elementary school district may establish and operate a free preschool program for children between the ages of 3 and 5 years. When such preschool programs are established, they shall be an integral part of the elementary school and shall be governed accordingly. Financing of preschool programs shall not be supported by moneys available from state equalization aid."

Section 4. Section 20-9-313, MCA, is amended to read:

"20-9-313. Circumstances under which the regular average number belonging may be increased. The average number belonging of a school for a given school fiscal year, calculated in accordance with the ANB formula prescribed in 20-9-311, may be increased when:

(1) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average number belonging for such school shall be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction.

(2) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average number belonging for such high school shall be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend such high school.

(3) a district anticipates an increase in the average number belonging due to the closing of any private or public school in the district or a neighboring district. The estimated increase in average number belonging shall be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

(4) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging shall be based on estimates of increased enrollment approved by the superintendent of

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public instruction and shall be computed in the manner prescribed by 20-9-314.

(5) for the initial year of operation of a program established under 20-7-117(1), the ANB to be used for budget purposes is the same as one-half the number of 5-year-old children residing in the district as of *September 10* of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction;

(6) a special full-time pupil, as defined in 20-9-311, in a given school year will no longer be considered a special full-time pupil in the ensuing school year (the superintendent of public instruction may grant one ANB for such pupil for the ensuing school year); or

(7) a high school district provides early graduation for any student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment. The increase shall be established by the trustees as though the student had attended to the end of the school year and shall be approved, disapproved, or adjusted by the superintendent of public instruction."

Section 5. **Effective date.** This act is effective on July 1, 1980.

Approved March 27, 1979.

CHAPTER NO. 335

AN ACT REVISING THE REPORT REQUIRED BY SECTION 2-7-102, MCA, TO A BIENNIAL REPORT; AMENDING SECTION 2-7-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-7-102, MCA, is amended to read:

"2-7-102. Biennial reports by state agencies — submission to members of the legislature — publication. (1) Before September 1 of each *odd-numbered* year, each state agency shall submit a written report to the governor of its activities during the immediately preceding fiscal *biennium*.

(2) Each report shall contain information prescribed by the governor describing fully the activities of the state agency. Reports shall contain recommendations from each state agency for improvements in programs administered by it.

(3) State agency reports shall be filed in the governor's office and are open for inspection by any person.

(4) From the reports submitted to him the governor shall:

(a) delete extraneous or duplicated data;

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(b) standardize the presentation of data to the extent feasible and desirable;

(c) request pertinent additional information he wishes included in the report;

(d) prepare a report for submission to the *members of the* legislature.

(5) Except as provided in subsection (6) of this section, the governor may authorize the publication of a state agency report in pamphlet form. The report in pamphlet form shall be published and distributed by the state agency responsible for reporting.

(6) An elective official may publish an annual report in pamphlet form, in addition to the report to the governor required by subsection (1) of this section, without permission from the governor.

(7) Copies of each report published as provided in subsections (4), (5), and (6) of this section shall be distributed as follows:

(a) two copies to the secretary of state;

(b) two copies to the legislative council;

(c) two copies to the legislative auditor;

(d) one copy to each member of the legislature;

(e) two copies to the budget director;

(f) two copies to the librarian of the state historical society;

(g) at least four copies to the state publications distribution center of the state library and additional copies as requested by the state library;

(h) additional distribution in the discretion of the governor or state agency."

Approved March 27, 1979.

CHAPTER NO. 336

AN ACT CLARIFYING THE AUDIT REQUIREMENTS FOR THIRD-CLASS SCHOOL DISTRICTS THAT DO NOT MAINTAIN A HIGH SCHOOL; AMENDING SECTIONS 2-7-503 AND 20-9-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-7-503, MCA, is amended to read:

"2-7-503. Annual audits of local governmental entities. (1) The department shall audit the affairs of all:

(a) counties;

(b) incorporated cities and towns;

(c) *first- and second-class school districts and third-class* school districts *that maintain a high school; and*

(d) school district extracurricular fund for pupil functions;

(e) irrigation districts;

(f) conservancy districts;

(g) fire districts and volunteer fire departments in unincorporated areas, towns, and villages supported by a mill levy;

(h) fire department relief associations.

(2) Each audit shall be made annually and shall cover the immediately preceding fiscal year of the governmental entity.

(3) Each annual audit shall be initiated not later than 12 months from the close of the fiscal year for which the audit is conducted.

(4) In addition to the annual audits required by this section, the department may at any time conduct a special audit of the affairs of any governmental entity referred to in this part.

(5) The fee for the special audit shall be a charge based upon the costs incurred by the department in the conduct of such special audit. The audit fee herein provided shall be paid by the governmental entity to the state treasurer and credited to the state general fund."

Section 2. Section 20-9-203, MCA, is amended to read:

"20-9-203. Examination of district accounting records. (1) The accounting records of all *first- and second-class school districts and third-class school* districts *that maintain a high school* shall be audited annually by the department of community affairs in accordance with 2-7-503.

(2) Annually and at such other times as directed by the board of county commissioners or trustees, the county auditor or the county treasurer if there is no county auditor shall audit the accounting records of each third-class district that does not maintain a high school. Such district shall deliver all accounting records to the auditing county official no later than July 15 for the audit of the financial activity of the last completed school fiscal year. The auditing county official shall examine the accounting records, prepare an audit report, and:

(a) return the accounting records to the district no later than August 15;

(b) send a copy of the audit report to the chairman of the trustees; and

(c) file copies of the audit report with the county superintendent and the county clerk and recorder."

Section 3. **Effective date.** This act is effective upon passage and approval.

Approved March 27, 1979.

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CHAPTER NO. 337

AN ACT TO PERMIT THE BOARD OF DENTISTS TO ESTABLISH EXAMINATION STANDARDS AND PROCEDURES AND TO ESTABLISH EXAMINATION, LICENSE, RENEWAL, AND REINSTATEMENT FEES FOR DENTISTS AND DENTAL HYGIENISTS COMMENSURATE WITH COSTS OR WITHIN CERTAIN LIMITS; TO ESTABLISH CERTAIN REQUIREMENTS FOR APPLICATIONS FOR LICENSURE; TO INCREASE THE LATE RENEWAL FEE FROM $3 TO $10; TO PERMIT JURISPRUDENCE EXAMINATIONS TO BE GIVEN AND REGIONAL TESTING SERVICES TO BE UTILIZED; AND TO EXEMPT BONA FIDE FACULTY MEMBERS PERFORMING DENTAL PROCEDURES IN A TEACHING FUNCTION AND TO EXEMPT STUDENTS PERFORMING DENTAL PROCEDURES IN AN ASSIGNED TEACHING CURRICULUM FROM CERTAIN REQUIREMENTS; AMENDING SECTIONS 37-4-103, 37-4-301, 37-4-307, 37-4-402, AND 37-4-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-4-103, MCA, is amended to read:

"37-4-103. Exemptions. (1) A dental laboratory or dental technician is not practicing dentistry under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician or surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' bureau or to a legal practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists or to a licensed dental hygienist performing an act authorized under 37-4-401 or 37-4-405.

(3) Nothing in this chapter prevents a bona fide faculty member of a school, college, or department of a university recognized and approved by the board from performing dental procedures necessary to his teaching functions. Nothing in this chapter prevents students from performing dental procedures under the supervision of a bona fide instructor of a school, college, or department of a university recognized and approved by the board, provided such dental procedures are a part of the assigned teaching curriculum."

Section 2. Section 37-4-301, MCA, is amended to read:

"37-4-301. Examination — qualifications — fees — certification. (1) *Applicants for licensure shall take and pass an examination in order to be licensed. The examination shall consist of a written part, a*

practical or clinical part, and an oral interview with the board which may include questions pertaining to the practice of dentistry. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(2) *Acceptance by the board of such written and practical examination shall be conditioned on evidence that the examination is sufficiently thorough to test the fitness of the applicant to practice dentistry.* It shall include, written in the English language, questions on anatomy, histology, physiology, chemistry, pharmacology and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, orthodontics and endodontics, and any additional subjects pertaining to dental service.

(3) *The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing any such examination procedures.*

(4) Applicants *for licensure shall submit an application, which shall include, when required:*

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) three affidavits of good moral character;

(d) certificate of graduation from a board-approved dental school;

(e) an examination fee commensurate with costs and set by the board;

(f) a licensure fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant.

(5) *Applications must be submitted no less than 20 days prior to the board interview and jurisprudence examination.*

(6) *Applicants may not take the jurisprudence examination or the oral interview without first having completed all other parts of the examination.*

(7) *Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass his first examination, if otherwise qualified, may take a subsequent examination upon payment of a fee commensurate with costs and set by the board.*

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures.

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(9) The board may in its discretion permit a dental student who has successfully completed his junior year in a recognized dental school and who files proof satisfactory to the board that he has the preliminary education described in this section to take a written examination in the subjects he has completed. Satisfactory grades secured shall be credited on the final examination of the student. The board shall require a fee commensurate with costs and set by the board for this examination, which shall apply on the final examination taken by the applicant."

Section 3. Section 37-4-307, MCA, is amended to read:

"37-4-307. Annual renewal fee — absent registered dentist — default. (1) A licensed dentist practicing within this state shall annually pay to the department before March 1, as a *renewal* fee for the year, *a* sum *set by the board and not to exceed $50.* The board may increase or decrease the annual *renewal* fee to maintain in the earmarked revenue fund at all times an amount, to be known as the emergency fund, to be used for the purpose of administering, policing, and enforcing this chapter. The emergency fund shall be maintained at an approximate level of $2,500. Notice of the change in the amount of *renewal* fees shall be given to each dentist registered in this state by the department.

(2) If a registered dentist absents himself from the state for a period of 1 or more years or does not engage in active practice within this state, he may continue his license in good standing by *a* payment *set by the board* each year, *not to exceed $25,* or at the discretion of the board, he may be reinstated on the payment of a fee of *$25* for each year's absence. The annual payments shall be made prior to March 1 of each year, and a receipt or certificate shall be issued by the department.

(3) In case of default in payment of the annual *renewal* fee by a dentist, his license shall be revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last-known address of the party failing to comply with this requirement, as the address appears on the records of the department, constitutes sufficient notice of revocation of license, but no license may be revoked for nonpayment if the dentist notified pays the *renewal* fee plus a late payment penalty of *$10* before or at the time fixed for consideration of revocation. The department may maintain in the name of this state a suit to collect *renewal* fees and penalties applicable and to recover from the delinquent dentist the cost of the action, including reasonable attorneys' fees.

(4) No license fee or tax may be imposed on dentists by a municipality or any other subdivision of the state."

Section 4. Section 37-4-402, MCA, is amended to read:

"37-4-402. License — examination. (1) The department may issue licenses for the practice of dental hygiene to qualified applicants to be known as dental hygienists.

(2) Except as provided in subsections (1), (2), and (3) of 37-4-404, no person may engage in the practice of dental hygiene or practice as a dental hygienist in this state until he has passed an examination approved by the

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board under rules it considers proper and has been issued a license by the department.

(3) *Applicants for licensure shall take and pass an examination in order to be licensed. The examination shall consist of a written part, a practical or clinical part, and an oral interview with the board which may include questions pertaining to the practice of dental hygiene. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.*

(4) The board *has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing any such examination procedures.*

(5) *Applicants for licensure shall submit an application, which shall include, when required:*

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) two affidavits of good moral character;

(d) certificate of graduation from a board-approved dental hygiene school;

(e) an examination fee commensurate with costs and set by the board;

(f) a licensure fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant.

(6) *Applications must be submitted no less than 20 days prior to the board interview and jurisprudence examination.*

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass his first examination, if otherwise qualified, may take a subsequent examination on payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures."

Section 5. Section 37-4-406, MCA, is amended to read:

"37-4-406. Annual renewal fee — revocation of license. (1) Before March 1 of each year, a licensed dental hygienist shall pay to the department a *renewal* fee *set by the board, not to exceed $25.* In default of payment, the board may, after hearing and on 30 days' notice, revoke the license of the hygienist in default; but the payment of the *renewal* fee on or before the time of hearing, with an additional sum *set* by the board,

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not *to exceed $10*, excuses the default. The department may collect the fee by suit.

(2) The board may likewise revoke or suspend the license of a dental hygienist for violating this chapter."

Approved March 27, 1979.

CHAPTER NO. 338

AN ACT TO AMEND SECTION 70-1-408, MCA, TO CLARIFY THE STATEMENT OF THE RULE AGAINST PERPETUITIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-1-408, MCA, is amended to read:

"70-1-408. When interest must vest — rule against perpetuities. (1) No interest in real or personal property *is* good unless it must vest, *if at all,* not later than 21 years after some life in being at the creation of the interest and any period of gestation involved in the situation to which the limitation applies. The lives selected to govern the time of vesting must not be so numerous or so situated that evidence of their deaths is likely to be unreasonably difficult to obtain.

(2) It is intended by the enactment of this statute to make effective in this state the American common-law rule against perpetuities."

Approved March 27, 1979.

CHAPTER NO. 339

AN ACT TO AMEND SECTION 46-5-202, MCA, TO PERMIT THE APPLICATION FOR A SEARCH WARRANT TO BE MADE BY A SWORN TELEPHONIC STATEMENT WHICH IS ELECTRONICALLY RECORDED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-5-202, MCA, is amended to read:

"46-5-202. Grounds for search warrant. *(1)* Any judge may issue a search warrant upon the written *or telephonic* application of any person, made under oath or affirmation before the judge, which:

(a) states that an offense has been committed;

(b) states facts sufficient to show probable cause for issuance of the warrant;

(c) particularly describes the place or things to be searched; and

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(d) particularly describes the things to be seized.

(2) Whenever the application is made by telephone, the applicant's telephonic oath or affirmation is considered to have been made before the judge, and the sworn or affirmed telephonic testimony must be electronically recorded by the judge on a recording device in the custody of the judge when the application is made. The recording must be retained in the court records and transcribed verbatim, including the time and date of recording, as soon as possible thereafter.

(3) Whenever a law enforcement officer wishes to obtain a search warrant by telephone, he shall first contact the county attorney or a deputy county attorney. If the county attorney or deputy county attorney is convinced that a warrant is justified and that the circumstances require its immediate issuance, he shall telephone the judge and state that he is convinced that the warrant should be issued by telephone. The judge shall then telephone the officer at the number provided by the county attorney or deputy county attorney, and the officer shall make his application as provided in subsection (2). If the judge approves a warrant, the officer shall sign the warrant with his own name and the judge's name. A search warrant issued upon the telephonic request of a person other than the county attorney or a deputy county attorney is not valid unless the procedure provided for in this subsection is followed.

(4) A search warrant issued upon any telephonic request is invalid unless it is subsequently signed by the issuing judge or his successor."

Approved March 27, 1979.

CHAPTER NO. 340

AN ACT TO GENERALLY REVISE AND CLARIFY SECTION 20-9-312, MCA, RELATING TO SPECIAL FUNDING FOR 7TH AND 8TH GRADE MIDDLE SCHOOLS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-312, MCA, is amended to read:

"20-9-312. Maximum general fund budget for grades seven and eight. The ANB calculated for grades 7 and 8 shall be *funded* at the high school rate provided that the school meets the standards for accreditation of a middle school. When such pupils are actually enrolled in an elementary school, the amount of the general fund budget per ANB *is determined from the high school schedule using the total ANB of the elementary school.* To determine the total *ANB* of such an elementary school, the 7th and 8th grade pupils shall be included in such total."

Approved March 27, 1979.

CHAPTER NO. 341

AN ACT TO ALLOW AND REGULATE DEFERRAL CHARGES BY MONTANA CONSUMER LOAN LICENSEES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Deferral charge permitted — nature of deferral charge.** Notwithstanding the provisions of 32-5-301 and 32-5-302, if the contract so provides, a consumer loan licensee may, at any time, grant a deferral and make deferral charges as provided in [section 2]. A deferral postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled or as previously deferred for a period equal to the deferral period. The deferral period is that period during which no installment is scheduled to be paid by reason of the deferral.

Section 2. **Deferral charge — rate.** The deferral charge for a 1-month period may not exceed an amount equal to the difference between the refund which would be required for prepayment in full under subsection (5) of 32-5-301 as of the scheduled due date of the first deferred installment and the refund which would be required for prepayment in full as of 1 month prior to such date. A proportionate charge may be made for deferrals for periods of more or less than 1 month. A deferral charge is earned pro rata on a daily basis during the deferral period and is fully earned on the last day of the deferral period. Should a loan be prepaid during a deferral period the licensee shall make or credit to the borrower a pro rata refund of the unearned deferral charge in addition to any refund or credit made pursuant to subsection (5) of 32-5-301.

Section 3. **Deferral prohibited when default charge has been collected.** No installment payment upon which a default charge has been collected may be deferred unless the default charge is refunded to the borrower or credited to the deferral charge.

Section 4. **Collection of deferral charge.** A deferral charge may be collected at the time it accrues or any time thereafter.

Approved March 27, 1979.

CHAPTER NO. 342

AN ACT TO PROVIDE FOR A 10-DAY RESCISSION PERIOD ON DISABILITY INSURANCE POLICIES ISSUED BY INSURANCE COMPANIES AND MEMBERSHIP CONTRACTS ISSUED BY HEALTH SERVICE CORPORATIONS; AMENDING SECTION 33-22-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-201, MCA, is amended to read:

"33-22-201. Format and content. No policy of disability insurance shall be delivered or issued for delivery to any person in this state unless it otherwise complies with this code and complies with the following:

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(1) The entire money and other considerations therefor shall be expressed therein.

(2) The time when the insurance takes effect and terminates shall be expressed therein.

(3) It shall purport to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed 19 years, and any other person dependent upon the policyholder.

(4) The style, arrangement, and overall appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers shall be plainly printed in lightfaced type of a style in general use, the size of which shall be uniform and not less than 10 point with a lowercase, unspaced alphabet length not less than 120 point.

(5) The "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions.

(6) The exceptions and reductions of indemnity shall be set forth in the policy and, other than those contained in 33-22-204 through 33-22-231, shall be printed, at the insurer's option, either included with the benefit provision to which they apply or under an appropriate caption such as "Exceptions" or "Exceptions and Reductions", except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies.

(7) Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof.

(8) The policy shall contain no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of or reference to a statement of rates or classification of risks or short-rate table filed with the commissioner.

(9) Each individual disability policy, except for a single-premium nonrenewable policy, issued for delivery in this state on or after January 1, 1980, shall contain a notice stating in substance that if the person to whom the policy is issued is not satisfied for any reason, he is permitted to return the policy within 10 days of its delivery, or such longer period as the policy may provide, and to have refunded the amount of the premium paid. A policy returned pursuant to this subsection is void from the beginning."

Section 2. **Right of rescission.** Each membership contract, other than a group contract, issued for delivery in this state on or after January 1, 1980, shall contain a notice stating in substance that if the person to

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whom the contract is issued is not satisfied for any reason, he is permitted to return the contract within 10 days of its delivery, or such longer period as the contract may provide, and to have refunded the amount of the premium paid. A contract returned pursuant to this section is void from the beginning.

Section 3. **Codification.** It is intended that section 2 be codified as an integral part of Title 33, chapter 30, part 10, and the provisions of Title 33, chapter 30 apply to section 2.

Approved March 28, 1979.

CHAPTER NO. 343

AN ACT TO PROVIDE FOR THE REGULATION AND REGISTRATION OF PERSONS WHO COLLECT CHARGES OR PREMIUMS OR ADJUST OR SETTLE CLAIMS ON LIFE OR HEALTH INSURANCE POLICIES OR ANNUITIES OF RESIDENTS OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Administrator defined.** As used in [this act], the term "administrator" means any person, corporation, partnership, or association who collects charges or premiums from residents of this state in connection with life or health insurance coverage or annuities or who adjusts or settles claims on such coverage but does not include:

(1) an employer on behalf of its employees or on behalf of the employees of one or more subsidiary or affiliated corporations of such employer;

(2) a union on behalf of its members;

(3) an insurance company which is either licensed in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business or health service corporation as defined in 33-30-101;

(4) a life or health agent who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(5) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(6) a trust established in conformity with 29 U.S.C. 186, its trustees, or agents and employees acting thereunder;

(7) a trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees, or employees acting thereunder;

(8) a custodian acting pursuant to a custodian account which meets the requirements of section 401(f) of the Internal Revenue Code or its agents and employees;

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(9) a bank, credit union, or other financial institution which is subject to supervision or examination by federal or state banking authorities;

(10) a credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized it to do so, provided such company does not adjust or settle claims; or

(11) a person who adjusts or settles claims in the normal course of his practice or employment as an attorney at law and who does not collect charges or premiums in connection with life or health insurance coverage or annuities.

Section 2. **Written agreement required.** (1) No person may act as an administrator without a written agreement between the person and the insurer. The written agreement shall be retained as part of the official records of both the administrator and the insurer for the duration of the agreement and for 5 years thereafter. The written agreement shall contain provisions which include the requirements of [sections 4 through 10] insofar as these requirements relate to the functions performed by the administrator.

(2) The agreement shall contain a provision with respect to the underwriting or other standards pertaining to the business underwritten by such insurer.

(3) Whenever a policy is issued to a trustee, a copy of the trust agreement and any amendments thereto shall be furnished to the insurer by the administrator and shall be retained as part of the official records of both the administrator and the insurer for the duration of the policy and for 5 years thereafter.

Section 3. **Maintenance of information.** For the duration of the agreement required by [section 2] and for 5 years thereafter, each administrator shall maintain at its principal administrative office adequate books and records of all transactions between the administrator, insurers, and insured persons. These books and records shall be maintained in accordance with prudent standards of insurance recordkeeping. The commissioner of insurance shall have access to these books and records for examination, audit, or inspection. Any trade secrets contained in the books and records, including but not limited to the identity and addresses of policyholders and certificate holders, shall be confidential, except that the commissioner may use such information in any proceedings instituted against the administrator. The insurer retains the right to continuing access to those books and records of the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement between the insurer and the administrator.

Section 4. **Approval of advertising.** An administrator may use only such advertising pertaining to the business underwritten by an insurer as is approved by the insurer in advance of its use.

Section 5. **Collection of charges and premiums.** (1) All insurance charges or premiums collected by an administrator on behalf of or for an insurer or insurers and return premiums received from such insurer or

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insurers are held by the administrator in a fiduciary capacity. These funds shall be immediately remitted to the person or persons entitled thereto or shall be deposited promptly in a fiduciary bank account established and maintained by the administrator. If deposited charges or premiums were collected on behalf of or for more than one insurer, the administrator shall require the bank in which the fiduciary account is maintained to keep records clearly recording the deposits in and withdrawals from such account on behalf of or for each insurer. The administrator shall promptly obtain and keep copies of all these records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to deposits and withdrawals on behalf of or for the insurer.

(2) The administrator shall not pay any claim by withdrawals from the fiduciary account. Withdrawals from the fiduciary account shall be made, as provided in the written agreement between the administrator and the insurer, for:

(a) remittance to an insurer entitled thereto;

(b) deposit in an account maintained in the name of such insurer;

(c) transfer to and deposit in a claims paying account, with claims to be paid as provided in [section 7];

(d) payment to a group policyholder for remittance to the insurer entitled thereto;

(e) payment to the administrator of its commission, fees, or charges; or

(f) remittance of return premiums to the person or persons entitled thereto.

Section 6. **Treatment of payments.** Whenever an insurer utilizes the services of an administrator under the terms of a written contract as required in [section 2], the payment to the administrator of any premiums or charges for insurance by or on behalf of the insured is considered to be received by the insurer and the payment of return premiums or claims by the insurer to the administrator is not considered payment to the insured or claimant until the payments are received by the insured or claimant. This section does not limit any right of the insurer against the administrator resulting from the administrator's failure to make payments to the insurer, insureds, or claimants.

Section 7. **Payment of claims.** All claims paid by the administrator from funds collected on behalf of the insurer shall be paid only on drafts of and as authorized by such insurer.

Section 8. **Delivery of documents.** Any policies, certificates, booklets, termination notices, or other written communications delivered by the insurer to the administrator for delivery to its policyholders shall be delivered by the administrator promptly after receipt of instructions from the insurer to do so.

Section 9. **Claim adjustment and settlement.** With respect to any policies where an administrator adjusts or settles claims, the compensation

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to the administrator with regard to the policies shall in no way be contingent on claim experience. This section does not prevent the compensation of an administrator from being based on premiums or charges collected or number of claims paid or processed.

Section 10. **Bonding requirements.** Every administrator shall be bonded. The amount of the bond shall be not less than 10% of the amount of total funds handled and not less than $1,000, but need not be more than $500,000 unless a larger amount has been agreed to between the insurer and the administrator. For fixing the amount of the bond, the amount of funds handled shall be determined by the total funds handled by the administrator during the preceding year or, if no funds were handled during the preceding year, the amount of funds reasonably estimated to be handled during the current calendar year by the administrator. The bond shall provide protection to the insurer or insurers against loss by reason of acts of fraud or dishonesty and may include individual bonds or schedule or blanket forms of bonds. Only one bond shall be required of the administrator for all insureds which utilize the services of the administrator, unless provided otherwise in the written agreement between the insurer and the administrator.

Section 11. **Insured persons to be notified of availability of administrator.** Whenever the services of an administrator are utilized, the administrator shall provide a written notice, approved by the insurer, to insured individuals, advising them of the identity of and relationship between the administrator, the policyholder, and the insurer. Whenever an administrator collects funds, the administrator shall identify and state, separately in writing, to the person paying to the administrator any charge or premium for insurance coverage the amount of such charge or premium specified by the insurer for the insurance coverage.

Section 12. **Certificate of registration.** (1) Except as provided in [section 13], no person may act as or hold himself out to be an administrator in this state unless he holds a certificate of registration as an administrator.

(2) An application for a certificate of registration must be accompanied by a fee of $100. The commissioner of insurance shall issue the certificate unless he finds that the applicant is not competent, trustworthy, financially responsible, or of good personal and business reputation or that the applicant has had a previous application for an insurance license denied for cause within 5 years.

(3) The certificate of registration is renewable annually on the date of issue. A request for renewal must be accompanied by a renewal fee of $100.

(4) The certificate of registration may be suspended or revoked if, after notice and hearing, the commissioner finds that the administrator has violated any of the requirements of [sections 2 through 11] or that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

(5) Unless the certification requirement is waived, any administrator who acts as such without the certificate of registration is subject to a fine of not less than $500 or more than $1,500.

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Section 13. **Waiver of certification requirements.** The commissioner of insurance may waive the requirements of [section 12] for any person or class of persons. The factors taken into account in granting such waiver shall include but are not limited to:

(1) whether the person acting as an administrator is primarily in a business other than that of administrator;

(2) whether the financial strength and history of the organization indicates stability in its continuity of doing business;

(3) whether the regular duties being performed as an administrator are such that the covered persons are not likely to be injured by a waiver of such requirements.

Approved March 28, 1979.

CHAPTER NO. 344

AN ACT TO REVISE THE LICENSE FEE SCHEDULE RELATING TO THE INSURANCE INDUSTRY AND TO REVISE THE TERMINOLOGY FOR RENEWAL LICENSES; AMENDING SECTIONS 33-2-708, 33-17-218, AND 33-17-231, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-708, MCA, is amended to read:

"33-2-708. Fees and licenses. (1) The commissioner shall collect in advance and the persons so served shall so pay to the commissioner the following fees and licenses:

(a) certificates of authority:

(i) for filing applications for original certificate of authority, articles of incorporation (except as provided in subsection (b), below) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with such application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers ..... $ 30.00

(B) foreign insurers 300.00

(ii) annual continuation of certificate of authority 300.00

(iii) reinstatement of certificate of authority 25.00

(b) articles of incorporation:

(i) filing original articles of incorporation of domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 10.00

(c) filing bylaws or amendment thereto where required 5.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority 25.00

(e) *resident* agent's license:

(i) application for original license, including issuance of license, if issued *(life and/or disability)* 10.00

(ii) application for original license, including issuance of license, if issued (other than life and/or disability *10.00*

(iii) appointment of agent, each insurer 5.00

(iv) annual renewal, each insurer 5.00

(v) temporary license 10.00

(f) nonresident agent's license:

(i) application for original license, including issuance of license, if issued *(life and/or disability)* .....:.....100.00

(ii) application for original license, including issuance of license, if issued (other than life and/or disability) *100.00*

(iii) appointment of agent, each insurer 5.00

(iv) annual renewal, each insurer *5.00*

(g) solicitor's license:

(i) application for original license, including issuance of license, if issued 5.00

(ii) annual *renewal* of license 5.00

(h) examination for license as agent or solicitor, each examination 10.00

(i) surplus line agent's license:

(i) application for original license and for issuance of license, if issued 25.00

(ii) annual renewal of license 25.00

(j) adjuster's license:

(i) application for original license and for issuance of license, if issued 10.00

(ii) annual renewal of license 10.00

(k) insurance vending machine license, each machine, each year .. 10.00

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(l) commissioner's certificate under seal (except when on certificates of authority or licenses) 3.00

(m) copies of documents on file in the commissioner's office, per page ..... .50

(n) policy forms:

(i) filing each policy form 25.00

(ii) filing each application, rider, endorsement, amendment, insert page, schedule or rates, and clarification of risks 10.00

(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days 50.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fees and licenses received by him under this section."

Section 2. Section 33-17-218, MCA, is amended to read:

"33-17-218. Continuance and expiration of licenses. (1) All solicitor and adjuster licenses issued under this chapter, all agent licenses as to life and/or disability insurance only, and all nonresident agent licenses shall continue in force until expired, suspended, revoked, or terminated but subject to payment to the commissioner annually on or before May 1 of the applicable *renewal* fee as stated in 33-2-708, accompanied by written request for continuation. Such request for continuation as to agent licenses for life insurance and/or disability insurance only shall be made by the insurer in the form of an alphabetical list in duplicate of the names and addresses of its agents whose licenses are to be continued in this state, accompanied by payment of the annual *renewal* fee therefor as provided in 33-2-708. At the same time the insurer shall also file with the commissioner an alphabetical list in duplicate of the names and addresses of all its agents whose licenses in this state are not to remain in effect. Section 33-17-231(5) shall apply as to any licenses so terminated by the insurer. As to a solicitor's license, such request shall be signed by the agent by whom the licensee is employed.

(2) Any license referred to in subsection (1) as to which such fee and request for continuation are not received by the commissioner as required in such subsection (1) shall be deemed to have expired as of midnight on May 31 next following. Request for continuation of any such license and/or payment of the *renewal* fee therefor which is received by the commissioner after such May 1 and prior to the next following June 15 may be accepted and effectuated by the commissioner, in his discretion, if accompanied by an annual *renewal* fee in twice the amount otherwise required.

(3) The license of an agent as to property, casualty, or surety insurance shall continue in force as long as there is in effect as to such agent as shown by the commissioner's records an appointment or appointments, as agent of authorized insurers, covering collectively all of the kinds of insurance included in the agent's license. Upon termination of all of such an

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agent's agency appointments as to a particular kind of insurance and failure to secure and file with the commissioner a new appointment as to such kind of insurance within 90 days thereafter, the agent's license shall automatically thereupon expire and terminate as to such kind of insurance and the licensee shall promptly deliver his license to the commissioner for reissuance, without fee or charge, as to the kinds of insurance covered by the agent's remaining appointments.

(4) This section shall not apply to temporary licenses issued under 33-17-216."

Section 3. Section 33-17-231, MCA, is amended to read:

"33-17-231. Appointment of agents — continuation and termination. (1) Each insurer appointing an agent in this state as to property, casualty, or surety insurance shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the agent for the insurer, and pay the fee therefor as stated in 33-2-708. If the appointment includes casualty insurance, the agent may be appointed by the same insurer also as to disability insurance without requiring an additional appointment or appointment fee.

(2) Subject to annual continuation by the insurer not later than May 31, each such appointment shall remain in effect until the agent's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer or agent.

(3) Annually, prior to May 1, each insurer shall file with the commissioner an alphabetical list in duplicate of the names and addresses of all its agents whose appointments in this state are to remain in effect, accompanied by payment of the annual *renewal* fee as provided in 33-2-708. At the same time the insurer shall also file with the commissioner an alphabetical list in duplicate of the names and addresses of all its agents whose appointments in this state are not to remain in effect.

(4) Subject to the agent's contract rights, an insurer may terminate an agency appointment at any time. The insurer shall promptly give written notice of such termination to the commissioner and to the agent where reasonably possible. The commissioner may require of the insurer reasonable proof that the insurer has given such notice to the agent.

(5) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to the termination and the cause thereof. Any information or statement contained in the notice of termination shall be privileged and shall not be admissible as evidence in any action or proceeding against the insurer or any representative thereof by or in behalf of any person affected by such termination."

Approved March 28, 1979.

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CHAPTER NO. 345

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO INSURANCE AGENTS, SOLICITORS, ADJUSTERS, AND CONSULTANTS; AMENDING SECTIONS 33-17-204, 33-17-211, 33-17-212, 33-17-214, 33-17-216, 33-17-218, 33-17-231, 33-17-401, 33-17-404, 33-17-1101, 33-17-1103, 33-17-1111, AND 33-22-813, MCA; AND REPEALING SECTION 33-17-215, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-17-204, MCA, is amended to read:

"33-17-204. Licensing of organizations — requisites. (1) A *partnership* or corporation *may* be licensed as an *insurance* agent. *Each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation, personally engaged in this state in soliciting or negotiating insurance policies, shall be registered with the commissioner in conjunction with the partnership or corporation* license and shall qualify as an individual. *An* additional license fee *shall be paid for* each individual *registered in conjunction with the partnership or corporation license.*

(2) A license shall not be issued to a *partnership* or corporation unless the transaction of business under the license is within the purposes stated in the partnership agreement or the articles *of incorporation.*

(3) The *partnership or corporate* licensee shall promptly notify the commissioner of *each change relative to the individuals* designated in the license."

Section 2. Section 33-17-211, MCA, is amended to read:

"33-17-211. Application for license. (1) Application for an agent or solicitor license shall be made to the commissioner by the applicant and be signed and sworn to by the applicant before a notary public or other person authorized by law to take acknowledgments of deeds.

(2) The commissioner shall designate and prepare forms for application for license which shall require full answers to such questions as may reasonably be necessary to determine the applicant's identity, residence, personal history, business record, experience and training in insurance, purpose for which the license is to be used, and other facts as required by the commissioner to determine whether the applicant meets the applicable qualifications for the license applied for.

(3) If for an agent's license, the application shall state the kinds of insurance proposed to be transacted and be accompanied by written appointment of the applicant as agent by an authorized insurer, subject to issuance of the license.

(4) If for a solicitor's license, the application shall be accompanied by written appointment of applicant as solicitor by a licensed agent, subject to issuance of the license.

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(5) If the applicant for an agent license is a firm or corporation, the application shall show, in addition, the names of all members, officers, and directors and shall designate each individual who is to exercise the powers to be conferred by the license upon the firm or corporation. Each such individual so designated shall furnish information as to himself, as part of the application, as though for an individual license.

(6) If the applicant for an agent license is an agents' association pursuant to 33-17-205, the application shall show the names and residence addresses of the association's officers and trustees.

(7) If for license as either agent or solicitor, the application shall also show whether applicant was ever previously licensed to transact any kind of insurance in this state or elsewhere; whether any such license was ever refused, suspended, or revoked; whether any insurer, general agent, or agent, in the case of a solicitor application, claims applicant to be indebted to it and, if so, the details thereof and the defenses, if any, of the applicant thereto; *and* whether applicant ever had an agency contract canceled and the facts thereof.

(8) The commissioner shall require as part of the application for license the certificate of an officer or representative of the insurer proposed to be represented, in the case of applicants for license as agent, or of the proposed employing agent, in the case of applicants for license as solicitor, as to whether the applicant is known to such officer or representative, whether the insurer or agent has investigated the character and business record of the applicant and the uses to be made of the license, if granted, and his opinion, based on such investigation, as to applicant's trustworthiness and competence and whether the applicant will use the license principally for the purpose of insuring the applicant's own risks or interests and those of the applicant's relatives or employer.

(9) All such applications shall be accompanied by the applicable license fee, appointment of agent fee where applicable, examination fee where required under 33-17-212, all in the respective amounts stated in 33-2-708."

Section 3. Section 33-17-212, MCA, is amended to read:

"33-17-212. Examination required. (1) After completion and filing of the application for license as required under 33-17-211, the commissioner shall subject each applicant for license as agent or solicitor, unless exempted therefrom under subsection (5) below, to a personal written examination as to his competence to act as such agent or solicitor.

(2) If the applicant is a firm or corporation, the examination shall be so taken by each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license.

(3) Examination of an applicant for an agent's license shall cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

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(b) disability insurance;

(c) property insurance; for the purposes of this provision, "marine" insurance shall be deemed to be included in "property" insurance;

(d) casualty insurance;

(e) vehicle insurance;

(f) surety insurance;

(g) credit life and disability insurance.

(4) Examination of an applicant for a solicitor's license shall cover all the kinds of insurance, other than life, as to which the appointing agent is licensed.

(5) This section shall not apply to, and no such examination shall be required of:

(a) any individual lawfully licensed as an agent or solicitor as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and thereafter continuing to be so licensed;

(b) any applicant for license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months next preceding date of application unless such previous license was suspended, revoked, or continuation thereof refused by the commissioner;

(c) any applicant for license as nonresident agent, subject to reciprocal arrangements as provided for in this code;

(d) all applicants for license as agent for an insurer that confines its business in this state substantially to the insuring of the property, interests, and risks of farmers, if exempted from examination by the commissioner, in his discretion, upon written request of the insurer;

(e) transportation ticket agents of common carriers applying for license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on such common carrier, as incidental to their duties as such transportation ticket agents;

(f) agents' associations applying for license under 33-17-205;

(g) title insurance agents."

Section 4. Section 33-17-214, MCA, is amended to read:

"33-17-214. Issuance of license — contents. (1) The commissioner shall promptly issue *the license* applied for to *the person* qualified therefor in accordance with this chapter. *There is a license for life or disability insurance and a separate license for kinds of insurance other than life or disability.*

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(2) The license shall state the name and address of the licensee, date of issue, general conditions relative to expiration or termination, kind of insurance covered, and *such other information as the commissioner considers proper.*

(3) The license *of a partnership or corporation* shall also state the name of each individual authorized to exercise the license powers.

(4) The license *of a solicitor* shall state the name and address of the agent to be represented."

Section 5. Section 33-17-216, MCA, is amended to read:

"33-17-216. Temporary agent licenses — fee. (1) The commissioner may issue a temporary license as agent to or with respect to an individual qualified therefor only as to age, residence, and trustworthiness and without requiring such individual to take an examination, in the following cases:

(a) to the surviving spouse or next of kin or to the administrator or executor, or the employee of such administrator or executor, of a licensed agent becoming deceased;

(b) to the spouse, next of kin, employee, or legal guardian of a licensed agent disabled by sickness, injury, or insanity;

(c) to an employee of a firm, or officer or employee of a corporation, licensed as agent, upon the death or disability of an individual designated in the license to exercise the powers thereof;

(d) to the designee of a licensed agent entering upon active service in the armed forces of the United States of America.

(2) The temporary license shall be issued upon application filed with the commissioner in such form and containing such information as the commissioner may reasonably require and upon payment of the applicable fee as stated in 33-2-708.

(3) The temporary license shall be for a period of not over 90 days, subject to extension by the commissioner in his discretion for an additional period of not more than 90 days, except that such a license issued pursuant to subsection (1)(a) above may be continued without payment of additional fee until the executor or administrator disposes of the insurance business but not to exceed a period of 15 months. Temporary license issued to the next of kin under such subsection (1)(a) shall not be extended for an additional term or terms after appointment and qualification of such an administrator or executor.

(4) The fee paid for the temporary license may be applied upon the fee required for any permanent license issued to the licensee upon or prior to expiration of the temporary license and covering the same kinds of insurance."

Section 6. Section 33-17-218, MCA, is amended to read:

"33-17-218. Continuance and expiration of licenses. (1) All solicitor and adjuster licenses shall continue in force until expired, suspended, revoked, or terminated but subject to payment to the commissioner annually on or before May 1 of the applicable *renewal* fee as stated

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in 33-2-708, accompanied by written request for such *renewal. A request for renewal of a solicitor's license* shall be signed by the agent by whom the licensee is employed.

(2) The license of an agent shall continue in force *subject to the provisions of 33-17-231 and, unless suspended or revoked,* as long as there is in effect as to such agent, as shown by the commissioner's records, an appointment as agent of *an* authorized *insurer*, covering all of the kinds of insurance included in the agent's license. Upon termination of all of *the* agent's agency appointments *for* a particular kind of insurance and failure to secure and file with the commissioner a new appointment *for* such kind of insurance within 90 days thereafter, the agent's license shall automatically terminate as to such kind of insurance.

(3) This section shall not apply to temporary licenses issued under 33-17-216."

Section 7. Section 33-17-231, MCA, is amended to read:

"33-17-231. Appointment of agents — continuation and termination. (1) Each insurer appointing an agent in this state shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the agent for the insurer, and pay the fee therefor as stated in 33-2-708.

(2) Subject to annual continuation by the insurer not later than May 31, each such appointment shall remain in effect until the agent's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer or agent.

(3) Annually, prior to May 1, each insurer shall file with the commissioner an alphabetical list in duplicate of the names and addresses of all its agents whose appointments in this state are to remain in effect, accompanied by payment of the annual *renewal* fee as provided in 33-2-708. At the same time the insurer shall also file with the commissioner *a termination report* of all agents whose appointments in this state are not to remain in effect.

(4) Subject to the agent's contract rights, an insurer may terminate an agency appointment at any time. The insurer shall promptly give written notice of such termination to the commissioner and to the agent where reasonably possible. The commissioner may require of the insurer reasonable proof that the insurer has given such notice to the agent.

(5) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to the termination and the cause thereof. Any information or statement contained in the notice of termination shall be privileged and shall not be admissible as evidence in any action or proceeding against the insurer or any representative thereof by or in behalf of any person affected by such termination."

Section 8. Section 33-17-401, MCA, is amended to read:

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"33-17-401. Nonresident agent — reciprocity. The commissioner may license as an agent a person, *partnership, or corporation* otherwise qualified under this code but not a resident of this state if pursuant to the laws of the state of his residence a similar privilege is extended to persons resident in Montana."

Section 9. Section 33-17-404, MCA, is amended to read:

"33-17-404. Countersigning coverage of residents. A nonresident agent shall not sign or countersign policies covering subjects of insurance located or to be performed in Montana. *Except as provided in 33-17-1111, these* policies must be countersigned by a licensed resident agent."

Section 10. Section 33-17-1101, MCA, is amended to read:

"33-17-1101. Place of business — display of license — records. (1) Every agent shall have and maintain a place of business accessible to the public. Such place of business shall be that wherein the licensee principally conducts transactions under his license. The address of such place shall appear upon the license, and the licensee shall promptly notify the commissioner of any change thereof. Nothing in this section *prohibits* maintenance of such place of business in the licensee's place of residence.

(2) The *license* of the licensee and the *license* of *each solicitor* appointed by and representing the licensee shall be conspicuously displayed in such place of business in a part thereof customarily open to the public.

(3) The agent shall keep at his place of business complete records pertaining to transactions under his license and the licenses of his solicitors, for a period of at least 3 years after completion of the respective transactions."

Section 11. Section 33-17-1103, MCA, is amended to read:

"33-17-1103. Exchange of business — sharing commissions. (1) An agent may, occasionally only, place an insurance coverage with an insurer as to which he is not then licensed or appointed as an agent, and the insurer shall accept such business, only when placed through *an* agent, *licensed under this chapter and appointed by* the insurer. Both agents involved in such an exchange of business must be licensed as to all of the kinds of insurance represented by the coverage so placed.

(2) The agents involved in a lawful exchange of business under subsection (1) above may divide between them the commission or compensation payable on account of such coverage.

(3) No agent or solicitor shall directly or indirectly share his commissions or other compensation received or to be received by him on account of a transaction under his license with any person not also licensed under this chapter as to the same kind or kinds of insurance involved in such transactions, except as provided in 33-17-1113. This provision shall not affect payment of the regular salaries due employees of the licensee or the distribution in regular course of business of compensation and profits

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among members or stockholders if the licensee is a firm or corporation or use of funds for family or personal purposes.

(4) This section does not apply as to those transactions with surplus lines agents which are lawful under 33-2-306 or as to life or disability insurance placed as provided in 33-17-1104."

Section 12. Section 33-17-1111, MCA, is amended to read:

"33-17-1111. Resident agent required — countersignature — records — exceptions. (1) No authorized insurer shall issue a policy covering a subject of insurance resident, located, or to be performed in Montana unless:

(a) the policy is written through a licensed agent, resident in Montana, of the insurer; or

(b) the policy is written through a nonresident agent and the policy or countersignature endorsement attached thereto is countersigned by *a resident licensed* agent.

(2) No such countersignature shall be made in blank. The agent may by express written authorization given in advance delegate to his salaried clerical employee the power to so countersign in the name of the agent such contracts or classes of contracts as are designated in such authorization so long as the initials of such employee are written below the agent's name on such countersignature, but the agent shall not thereby delegate or have power to delegate to any other person the power or authority to bind an insurer with respect to any risk not already bound by the agent or other person having clear authority from the insurer so to bind. The agent shall be responsible for all of the acts of such employee within the scope of the authority so delegated. The agent shall keep a record of each and all coverages countersigned by him or by his authority.

(3) This section shall not apply to:

(a) reinsurance;

(b) life insurance, disability insurance, or annuity contracts;

(c) insurance of the rolling stock, vessels, or aircraft of any common carrier in interstate or foreign commerce or of any vehicle principally garaged and used in another state or covering any liability or other risks incident to the ownership, maintenance, or operation thereof;

(d) insurance of property in course of transportation interstate or in foreign trade or any liability or risk incident thereto;

(e) insurance of wet marine and transportation risks;

(f) countersignature to policies issued through agents compensated only by salary or issued by insurers not using agents in the general solicitation of business;

(g) bid bonds, as required under Title 18, chapter 1, part 2.

(4) Violation of this section shall not invalidate any contract otherwise valid as between the insurer and the insured."

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Section 13. Section 33-22-813, MCA, is amended to read:

"33-22-813. Sale area — agents. (1) Any form of policy approved by the commissioner for an association shall be offered throughout Montana to all persons 65 and older and their spouses, and the coverage of any person insured under such a form of policy shall not be cancelable except for nonpayment of premiums unless the coverage of all persons insured under such form of policy is also canceled.

(2) *A* person licensed to transact disability insurance as an insurance agent may transact extended health insurance and may be paid a commission thereon."

Section 14. **Repealer.** Section 33-17-215, MCA, is repealed.

Approved March 28, 1979.

CHAPTER NO. 346

AN ACT TO REVISE THE LAW RELATING TO STANDARD VALUATION AND STANDARD NONFORFEITURE IN LIFE INSURANCE; PROVIDING FOR ADOPTION OF ANNUITY MORTALITY TABLES AND PERMISSIBLE INTEREST RATES IN VALUATION OF ANNUITY AND INSURANCE CONTRACTS; ADDING PROVISIONS RELATING TO NONFORFEITURE IN INDIVIDUAL DEFERRED ANNUITIES; AND AMENDING SECTIONS 33-2-523 THROUGH 33-2-526, 33-20-201, 33-20-206, AND 33-20-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-523, MCA, is amended to read:

"33-2-523. Contracts on or after the operative date of 33-20-213 — valuation. (1) This section shall apply to only those policies and contracts issued on or after the operative date of 33-20-213, except as otherwise provided in 33-2-524 for group annuity and pure endowment contracts issued prior to that date.

(2) Except as otherwise provided in 33-2-524, the minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation *methods* defined in 33-2-525 *and 32-2-526(3), 5% interest for group annuity and pure endowment contracts and* 3 ½ % interest *for all other such policies and contracts* or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after March 17, 1973, 4% interest *for such policies issued prior to July 1, 1979, and 4 ½% interest for such policies issued on or after July 1, 1979,* and the following tables:

(a) for all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the commissioner's 1941 standard ordinary mortality table for such policies issued prior to the operative date of 33-20-206, as amended, and

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the commissioner's 1958 standard ordinary mortality table for such policies issued on or after that operative date, except that for any category of such policies issued on female risks, modified net premiums and present values, referred to in 33-2-525 *and 33-2-526*, may be calculated, at the option of the insurer with the approval of the commissioner, according to an age younger than the actual age of the insured;

(b) for all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 standard industrial mortality table for such policies issued prior to the operative date of 33-20-207, as amended, and the commissioner's 1961 standard industrial mortality table for such policies issued on or after that operative date;

(c) for individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 standard annuity mortality table or, at the option of the insurer, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner;

(d) for group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the group annuity mortality table for 1951, any modification of such table approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

(e) (i) for total and permanent disability benefits in or supplementary to ordinary policies or contracts:

(A) for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit;

(B) for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the insurer, the class 3 disability table (1926); and

(C) for policies issued prior to January 1, 1961, the class 3 disability table (1926);

(ii) any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(f) (i) for accidental death benefits in or supplementary to policies:

(A) for policies issued on or after January 1, 1966, the 1959 accidental death benefits table;

(B) for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the insurer, the intercompany double indemnity mortality table; and

(C) for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table;

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(ii) either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(g) for group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the commissioner."

Section 2. Section 33-2-524, MCA, is amended to read:

"33-2-524. Individual and group annuity and pure endowment contracts — valuation. (1) The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on *or after* the operative date of this section, as defined herein, and for all annuities and pure endowments purchased on or after that operative date, under group annuity and pure endowment contracts shall be the commissioner's reserve valuation *methods* defined in 33-2-525 and the following tables and interest rates:

(a) for individual annuity and pure endowment contracts issued prior to *July 1, 1979*, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table or any modification of this table approved by the commissioner and 6% interest for single premium immediate annuity contracts and 4% interest for all other individual annuity and pure endowment contracts;

(b) *for individual single premium immediate annuity contracts issued on or after July 1, 1979, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table or any modification of this table approved by the commissioner and 7 ½% interest;*

(c) for individual annuity and pure endowment contracts issued on or after July 1, 1979, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table or any modification of this table approved by the commissioner and 5 ½% interest for single premium deferred annuity and pure endowment contracts and 4 ½% interest for all other such individual annuity and pure endowment contracts;

(d) for all annuities and pure endowments purchased prior to *July 1, 1979*, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table or any modification of the table approved by the commissioner and 6% interest;

(e) for all annuities and pure endowments purchased on or after *July 1, 1979*, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table or any modification of this table approved by the commissioner and 7 ½% interest.

(2) After March 17, 1973, any insurer may file with the commissioner a written notice of its election to comply with the provisions of subsection

(1) after a specified date before January 1, 1979, which shall be the operative date of subsection (1) for such insurer. An insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1979."

Section 3. Section 33-2-525, MCA, is amended to read:

"33-2-525. Commissioner's reserve valuation method. (1) *Except as otherwise provided in subsection (3) and 33-2-526(3), reserves* according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:

(a) a net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age 1 year higher than the age at issue of such policy;

(b) a net 1-year term premium for such benefits provided for in the first policy year.

(2) Reserves according to the commissioner's reserve valuation method for *the following shall be calculated by a method consistent with the principles of this section, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums:*

(a) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;

(b) group annuity and pure endowment contracts *purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended;*

(c) disability and accidental death benefits in all policies and contracts; and

(d) all other benefits, except life insurance and endowment benefits in life insurance policies *and benefits provided by all other annuity and pure endowment contracts.*

(3) (a) Subsection (3)(b) applies to any annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended.

(b) Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations required by the terms of such contract that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate or rates specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values."

Section 4. Section 33-2-526, MCA, is amended to read:

"33-2-526. Limits — options — minimum reserves. (1) In no event shall an insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the *methods* set forth in 33-2-525 *and subsection (3) of this section* and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(2) Reserves for any category of policies, contracts, or benefits as established by the commissioner may be calculated at the option of the insurer according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used *for policies and contracts, other than annuity and pure endowment contracts,* shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

(3) If *in any contract year* the gross premium charged by any life insurer on any policy or contract is less than the *valuation* net premium for the policy or contract *calculated by the* method used in calculating the reserve thereon, *but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the*

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mortality table, rate of interest, and method actually used for such policy or contract or the reserve calculated by the method actually used for such policy or contract but using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium."

Section 5. Section 33-20-201, MCA, is amended to read:

"33-20-201. Short title. This part shall be known as *the* "Standard Nonforfeiture Law *for Life Insurance*"."

Section 6. Section 33-20-206, MCA, is amended to read:

"33-20-206. Mortality tables — policies issued after operative date. (1) In the case of ordinary policies issued on or after the operative date of this section as defined herein, all adjusted premiums and present values referred to in this part shall be calculated on the basis of the *commissioner's* 1958 standard ordinary mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that:

(a) such rate of interest shall not exceed 3 ½ % per annum, except that a rate of interest not exceeding 4% per annum may be used for policies issued on or after March 17, 1973, and prior to *July 1, 1979, and a rate of interest not exceeding 5 ½% a year may be used for policies issued on or after July 1, 1979*;

(b) for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than *6* years younger than the actual age of the insured;

(c) in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the *commissioner's* 1958 extended term insurance table;

(d) for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(2) After July 1, 1961, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date of this section for such insurer), this section shall become operative with respect to the ordinary policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1966."

Section 7. Section 33-20-207, MCA, is amended to read:

"33-20-207. Industrial policies — mortality tables. (1) In the case of industrial policies issued on or after the operative date of this section as defined herein, all adjusted premiums and present values

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referred to in this part shall be calculated on the basis of *commissioner's* 1961 standard industrial mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that:

(a) such rate of interest shall not exceed 3 ½% per annum except that a rate of interest not exceeding 4% per annum may be used for policies issued on or after March 17, 1973, and prior to *July 1, 1979, and a rate of interest not exceeding 5 ½% a year may be used for policies issued on or after July 1, 1979*;

(b) in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the *commissioner's* 1961 industrial extended term insurance table;

(c) for insurance issued on a substandard basis the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(2) After February 22, 1965, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1968. After the filing of such notice, then upon such specified date (which shall be the operative date of this section for such insurer), this section shall become operative with respect to the industrial policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1968."

Section 8. **Short title.** [Sections 8 through 20] shall be known as the "Standard Nonforfeiture Law for Individual Deferred Annuities".

Section 9. **Application.** [Sections 8 through 20] do not apply to any reinsurance, group annuity purchased under a retirement plan, or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity or to any contract which is delivered outside this state through an agent or other representative of the company issuing the contract.

Section 10. **Nonforfeiture provisions.** In the case of contracts issued on or after the operative date of [sections 8 through 20] as defined in [section 20], no contract of annuity except as stated in [section 9] shall be delivered or issued for delivery in this state unless it contains in substance the following provisions or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(1) that upon cessation of payment of considerations under a contract the company will grant a paid-up annuity benefit on a plan stipulated in

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the contract of such value as is specified in [sections 13 through 16, and 18];

(2) that if a contract provides for a lump-sum settlement at maturity or at any other time, than upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in [sections 13, 14, 16, and 18]. The company shall reserve the right to defer the payment of such cash surrender benefit for a period of 6 months after demand therefor with surrender of the contract.

(3) a statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits;

(4) a statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract.

Section 11. **Exception.** Notwithstanding the requirements of [section 10], any deferred annuity contract may provide that if no consideration has been received under a contract for a period of 2 full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from consideration paid prior to such period would be less than $20 monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

Section 12. **Minimum nonforfeiture amounts.** (1) The minimum values as specified in [sections 13 through 16, and 18] of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(2) (a) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of 3% a year of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of 3% a year and the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by existing additional amounts credited by the company to the contract.

(b) The net consideration for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and

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shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of $30 and less a collection charge of $1.25 per consideration credited to the contract during that contract year. The percentages of net consideration shall be 65% of the net consideration for the first contract year and 87 ½% of the net consideration for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65% of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net consideration in all prior contract years for which the percentage was 65%.

(3) With respect to contracts providing for fixed schedule consideration, minimum nonforfeiture amounts shall be calculated on the assumption that consideration is paid annually in advance and shall be defined as for contracts with flexible payments of consideration which are paid annually with two exceptions:

(a) The portion of the net consideration for the first contract year to be accumulated shall be the sum of 65% of the net consideration for the first contract year plus 22 ½% of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

(b) The annual contract charge shall be the lesser of $30 or 10% of the gross annual consideration.

(4) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible payments of consideration except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to 90% and the net consideration shall be the gross consideration less a contract charge of $75.

Section 13. **Present value to equal minimum nonforfeiture amount.** Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

Section 14. **Cash surrender benefits.** For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than 1% higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any

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existing additional amounts credited by the company to the contract. No cash surrender benefit may be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

Section 15. **Paid-up annuity benefits.** For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity may not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for or changed to a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, the present value of a paid-up annuity benefit may not be less than the minimum nonforfeiture amount at that time.

Section 16. **Maturity date.** For the purpose of determining the benefits calculated under [sections 14 and 15], in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date is the latest date for which election is permitted by the contract but may not be later than the anniversary of the contract next following the annuitant's 70th birthday or the 10th anniversary of the contract, whichever is later.

Section 17. **Statement of noninclusion of certain death benefits.** Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

Section 18. **Adjusted benefit.** Any paid-up annuity, cash surrender, or death benefits available at any time other than on the contract anniversary under any contract with fixed scheduled consideration shall be calculated with allowance for the lapse of time and the payment of any scheduled consideration beyond the beginning of the contract year in which cessation of payment of consideration under the contract occurs.

Section 19. **Calculation of benefits — special benefits excluded.** For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross consideration paid with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of [sections 13 through

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16, and 18], additional benefits payable in the event of total and permanent disability or as reversionary annuity or deferred reversionary annuity benefits or as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amount paid-up annuity, cash surrender, and death benefits.

Section 20. **Operative date.** After July 1, 1979, any company may file with the commission a written notice of its election to comply with the provisions of this section after a specified date before July 1, 1981. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such company, this section shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be July 1, 1981.

Approved March 28, 1979.

CHAPTER NO. 347

AN ACT TO REVISE THE LAWS RELATING TO HEALTH CARE FACILITIES, DEFINING HEALTH CARE FACILITIES TO INCLUDE AMONG OTHER ENTITIES HOME HEALTH AGENCIES AND ADULT DAY-CARE CENTERS AND ELIMINATING EXISTING LAWS DEALING WITH HOME HEALTH AGENCIES; PROVIDING FOR A CERTIFICATE OF NEED AND FOR REVIEW OF APPLICATIONS FOR CERTIFICATES OF NEED AND APPEAL PROCEDURES, PROVIDING GUIDELINES FOR DENIAL, SUSPENSION, OR REVOCATION OF HEALTH CARE FACILITY LICENSES; PROVIDING FOR CIVIL PENALTIES; AMENDING SECTIONS 50-5-101, 50-5-103 THROUGH 50-5-106, 50-5-108, 50-5-109, 50-5-201, 50-5-204, 50-5-207, 50-5-301, 50-5-302, 50-5-304 THROUGH 50-5-307, 50-5-402, 50-5-404, 50-5-405, 50-5-408, AND 50-5-411, MCA; AND REPEALING SECTIONS 50-5-102, 50-5-205, 50-5-206, 50-5-209, 50-5-303, 50-5-401, 50-5-412, AND 50-7-101 THROUGH 50-7-309, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through *4* of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adult day-care center" means a facility, free-standing or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(2) "Affected persons" means the applicant, members of the public who are to be served by the proposal, health care facilities located in the geographic area affected by the application, agencies which establish rates for health care facilities, and agencies which plan or assist in planning for such facilities, including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act.

(3) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(4) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(5) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(6) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking.

(7) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(8) "Federal acts" means federal statutes for the construction of health care facilities.

(9) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(10) "Health care facility" means *any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.*

(11) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

(12) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(13) "Hospital" means a facility *providing,* by or under the supervision of licensed physicians, services for medical diagnosis, treatment, *rehabilitation,* and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, *emergency care, or any other service*

as allowed by state licensing authority. A hospital *has* an organized medical staff *which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides* 24-hour nursing care by licensed *registered* nurses. *This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.*

(14) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, *with the following subdefinitions:*

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(15) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(16) (a) "Long-term care facility" means a *facility or part thereof* which provides skilled nursing care *or intermediate nursing care* to a total of two or more persons or personal care to more than three persons who are not related to the owner or administrator by blood or marriage, *with these degrees of care* defined as follows:

(i) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(ii) "Intermediate *nursing* care" *means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.*

(iii) *"Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.*

(b) Hotels, motels, *boarding homes*, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not long-term care facilities.

(17) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(18) "New institutional health services" means:

(a) the construction, development, or other establishment of a health care facility which did not previously exist;

(b) any expenditure by or on behalf of a health care facility within a 12-month period in excess of $150,000, which, under generally accepted accounting principles consistently applied, is a capital expenditure. Whenever a health care facility or a person on behalf of a health care facility makes an acquisition under lease or comparable arrangement or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be considered a capital expenditure subject to review.

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(c) a change in bed capacity of a health care facility which increases or decreases the total number of beds, redistributes beds among various service categories, or relocates such beds from one physical facility or site to another over a 2-year period by more than 10 beds or 10% of the total licensed bed capacity, whichever is less;

(d) health services which are offered in or through a health care facility and which were not offered on a regular basis in or through such health care facility within the 12-month period prior to the time such services would be offered or the deletion by a health care facility of a service previously offered;

(e) the expansion of a geographic service area of a home health agency.

(19) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(20) "Observation bed" *means* a bed *occupied for not more than 6 hours* by a patient recovering from surgery or other treatment.

(21) "Offer" means the holding out by a health care facility that it can provide specific health services.

(22) "Outpatient facility" means *a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.*

(23) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(24) "Person" means *any* individual, firm, partnership, association, *organization, agency, institution,* corporation, *trust, estate,* or governmental unit, *whether organized for profit or not.*

(25) "Public health center" means a publicly owned facility *providing* health services, including laboratories, clinics, and administrative offices.

(26) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons *by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.*

(27) "Resident" means a person who is in a long-term care facility for *intermediate or* personal care.

(28) "State plan" means the state medical facility plan provided for in part 4."

Section 2. Section 50-5-103, MCA, is amended to read:

"50-5-103. Rules and standards. (1) The department shall promulgate *and* adopt rules and minimum standards *for implementation of parts 1 through 4.*

(2) *Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.*

(3) The department shall extend a reasonable time for compliance with rules *for parts 1 through 4* after adoption."

Section 3. Section 50-5-104, MCA, is amended to read:

"50-5-104. Certain exemptions for spiritual healing institution. Parts 1 through 3 and rules and standards adopted by the department may not authorize the supervision, regulation, or control of care or treatment of persons in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination. However, a license is required and *the* minimum standards *referred to in 50-5-103(2)* apply."

Section 4. Section 50-5-105, MCA, is amended to read:

"50-5-105. Discrimination prohibited. *(1) All phases of the operation of a health care facility shall be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental handicap, or political ideas.*

(2) No person who operates a facility may discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient shall continue and remain unaffected."

Section 5. Section 50-5-106, MCA, is amended to read:

"50-5-106. Records and reports required of health care facilities — confidentiality. *Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department.* Information received by the department or board through reports, *inspections*, or provisions of parts 1 *and 2* may not be disclosed in a way which would identify *patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provision of 45-7-401, unless the disclosure was authorized in writing by the patient, his guardian, or his agent. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state. Applications by health care facilities for certificates of need and any information relevant to review of these applications, pursuant to part 3, shall be accessible to the public.*"

Section 6. Section 50-5-108, MCA, is amended to read:

"50-5-108. Injunction. The department, on advice of the attorney general, may *bring* an action for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or

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operation of a facility which is *in violation of any provision of parts 1 or 4 of this chapter.*"

Section 7. Section 50-5-109, MCA, is amended to read:

"**50-5-109. Penalty.** A person who violates provisions of parts 1 *or 4* is guilty of a misdemeanor. On conviction he shall be fined not more than $100 for the first offense and not more than $300 for each subsequent offense."

Section 8. Section 50-5-201, MCA, is amended to read:

"**50-5-201. License requirements.** *(1) A licensee who contemplates construction of or alteration or addition to a health care facility shall submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.*

(2) No person may operate a *health care* facility unless *the facility is* licensed by the department. Licenses shall be for 1 year unless issued for a shorter period. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(3) Upon discontinuance of the operation or of transfer of ownership of a facility, the license must be returned to the department.

(4) Licenses shall be displayed in a conspicuous place near *the admitting office of the facility.*"

Section 9. Section 50-5-204, MCA, is amended to read:

"**50-5-204. Issuance and renewal of licenses.** (1) On receipt of a new or renewal application, the department or its authorized agent shall inspect the facility. If minimum standards are met and the proposed staff is qualified, the department shall issue a license for 1 year. If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community. *The minimum standards which home health agencies must meet in order to be licensed shall be as outlined in 42 U.S.C. 1395 x(o), as amended, and in rules implementing it which add minimum standards.*

(2) Licensed premises shall be open to inspection, and access to all records shall be granted at all reasonable times."

Section 10. Section 50-5-207, MCA, is amended to read:

"**50-5-207. Denial, suspension, or revocation of health care facility license — provisional license.** *(1)* The department may deny, suspend, or revoke a *health care* facility license if *any of the following circumstances exist:*

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

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(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without his consent.

(h) Any provision of parts 1 through 3 is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined minimum standards are not being met.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3."

Section 11. **Civil penalty — injunction.** (1) A person who violates the terms of [Title 50, chapter 5, part 2,] is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may bring an action to enjoin a violation of any provision of [Title 50, chapter 5, part 2], in addition to or exclusive of the remedy in subsection (1).

Section 12. Section 50-5-301, MCA, is amended to read:

"50-5-301. When application is required. *Unless an application has been submitted to and a certificate of need granted by the department, no person may initiate any of the following:*

(1) a new institutional health service as defined in 50-5-101;

(2) any expenditure by or on behalf of a health care facility in excess of $150,000 made in preparation for the offering or development of a new institutional health service and any arrangement or commitment made for financing the offering or development of the new institutional health service. Expenditures made in the preparation for the offering of a new institutional health service shall include expenditures for architectural

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designs, preliminary plans, working drawings, specifications, studies, and surveys."

Section 13. Section 50-5-302, MCA, is amended to read:

"50-5-302. Application and review process. *(1) Any person intending to initiate an activity for which a certificate of need is required shall submit a letter of intent to the department. After receipt, the department shall send the applicant a form requiring the submission of information considered necessary by the department to determine if the proposed activity meets the standards in 50-5-304. The form and content of the notification of intent and applications for certificates of need shall be prescribed by rule by the department.*

(2) Within 15 calendar days after receipt of the application, the department shall determine whether it contains sufficient information to determine if the proposed activity meets the standards in 50-5-304. If the application is found incomplete, the department shall request additional information.

(3) After the application has been designated complete, notification must be sent to the applicant and all other affected persons regarding the department's projected review of the application and the review period time schedule. The review period for the application may be no longer than 90 calendar days after the notice is sent unless a longer period is agreed to by the applicant. During the review period a public hearing may be held if requested by one or more affected persons.

(4) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or reject the application. The department shall notify the applicant and affected persons of its decision."

Section 14. Section 50-5-304, MCA, is amended to read:

"50-5-304. Review criteria, required findings, and standards. *The department shall by rule promulgate and utilize, as appropriate, specific criteria for reviewing certificate of need applications under this chapter, including but not limited to the following considerations and required findings:*

(1) the relationship of the health services being reviewed to the applicable health systems plan and annual implementation plan developed pursuant to Title XV of the Public Health Service Act, as amended;

(2) the relationship of services reviewed to the long-range development plan, if any, of the person providing or proposing the services;

(3) the need that the population served or to be served by the services has for the services;

(4) the availability of less costly quality equivalent or more effective alternative methods of providing such services;

(5) the immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the health service;

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(6) the relationship and financial impact of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided;

(7) the availability of resources, including health manpower, management personnel, and funds for capital and operating needs for the provision of services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services;

(8) the relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

(9) the special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health profession schools, multidisciplinary clinics, and specialty centers.

(10) the special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII of the Public Health Service Act. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services.

(11) the special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;

(12) in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project;

(13) the distance, convenience, cost of transportation, and accessibility of health services for persons who live outside urban areas in relation to the proposal; and

(14) any other criteria, required findings, or requirements for reviewing certificate of need applications cited in the federal regulations found in Title 42, CFR, Part 123, as amended."

Section 15. Section 50-5-305, MCA, is amended to read:

"50-5-305. Period of validity of approved application. *A certificate of need shall terminate 1 year after the date of issuance unless:*

(1) the applicant has commenced construction if the project provides for construction or has incurred an enforceable capital expenditure commitment for projects not involving construction; or

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(2) the certificate of need validity period is extended by the department for one additional period of 6 months, upon showing good cause by the applicant for the extension."

Section 16. Section 50-5-306, MCA, is amended to read:

"50-5-306. Right to hearing and appeal. *(1) The applicant or a health systems agency designated pursuant to Title XV of the Public Health Service Act may request and shall be granted a public hearing before the department to reconsider its decision, if the request is received by the department within 30 calendar days after the decision is announced. Any other affected person may, for good cause, request the department to reconsider its decision at such a hearing. The department shall grant the request if the affected person submits the request in writing showing good cause as defined in rules adopted by the department and if the request is received by the department within 30 calendar days after the decision is announced. The public hearing to reconsider shall be held, if warranted or required, within 30 calendar days after its request. The department shall make its final decision and written findings of fact and conclusions of law in support thereof within 45 days after the conclusion of the reconsideration hearing. The hearing shall be conducted in accordance with 2-4-601 through 2-4-623.*

(2) An aggrieved applicant or a health systems agency designated pursuant to Title XV of the Public Health Service Act may appeal the department's final decision to the board by filing a written notice of appeal stating the specific findings of fact and conclusions of law being appealed and the grounds. The notice of appeal must be received by the board within 30 calendar days after formal notice of the department's final decision was issued. The board shall give public notice of the appeal within 10 days, and the hearing shall be held within 30 days after receipt of the notice of appeal.

(3) The scope of the hearing before the board is limited to a review of the record upon which the department made its decision. The board, upon request of any party to an appeal before the board, shall hear oral arguments and receive written briefs. Within 45 calendar days after the conclusion of the public hearing, the board shall make and issue its decision, supported by written findings of fact and conclusions of law. The board may affirm the department's decision or remand it for further proceedings. The board may reverse or modify the department's decision if the appellant's rights have been prejudiced for any of the reasons found in 2-4-704.

(4) The final decision of the board shall be considered the decision of the department for purposes of an appeal to district court. Any affected person may appeal this decision to the district court as provided in Title 2, chapter 4, part 7.

(5) The department may by rule prescribe in greater detail the hearing and appellate procedures."

Section 17. Section 50-5-307, MCA, is amended to read:

"50-5-307. Civil penalty — injunction. *(1) A person who violates the terms of 50-5-301 is subject to a civil penalty of not less than $1,000*

or more than $10,000. Each day of violation constitutes a separate offense. The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may bring an action to enjoin a violation of 50-5-301, in addition to or exclusive of the remedy in subsection (1)."

Section 18. **Special circumstances.** In the event of destruction of any part of a health care facility as a result of fire, storm, civil disturbance, or any act of God, the department may issue a certificate of need for only the replacement of the previously existing facility or portion thereof.

Section 19. Section 50-5-402, MCA, is amended to read:

"**50-5-402. Administration of state medical facility plan.** The department is the principal state agency for establishing and administering a statewide plan for construction, modernization, alteration, equipment, maintenance, or operation of a *health care* facility for provision of care, treatment, diagnosis, rehabilitation, training, or related service. *This plan is to be known as the state medical facility plan.*"

Section 20. Section 50-5-404, MCA, is amended to read:

"**50-5-404. Duties of department.** The department shall:

(1) prescribe minimum standards for the maintenance and operation of *health care* facilities receiving federal aid for construction under the state plan;

(2) inventory existing hospital, medical, and related *health care* facilities;

(3) survey the need for construction or alteration of *health care facilities*;

(4) develop and administer a state plan for the construction and alteration of public and other nonprofit *health care* facilities;

(5) if desirable, enter into agreements for the utilization of facilities and services of other departments, agencies, and institutions, public or private;

(6) accept and deposit with the state treasurer and spend any grant made to meet costs of carrying out this part;

(7) prepare and review a construction program in accordance with federal requirements that will provide adequate *health care* facilities to people in the state providing, as far as possible, for distribution throughout the state to make all types of services reasonably *available* to all persons;

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(8) submit to federal agencies state plans, including those for the *health care* facilities construction program and modifications of it providing for the establishment and operation of *health care* facilities construction activities in accordance with federal requirements;

(9) make application to the appropriate federal agency for funds to assist in carrying out the survey and planning activities;

(10) after approval of a plan by the appropriate federal agency, publish a description in newspapers having general circulation throughout the state and make the plan available upon request to all persons or organizations;

(11) inspect construction or alteration projects approved by the appropriate federal agency and, if satisfactory, certify that work has been performed on the project or purchases made in accordance with approved plans and specifications and that payment of federal funds is due to the applicant;

(12) require reports and make inspections and investigations as necessary or required by the federal agency;

(13) contract with consultants for services which are performed on a part-time or fee-for-service basis not involving administrative duties."

Section 21. Section 50-5-405, MCA, is amended to read:

"50-5-405. Contracts with federal agencies. The department may enter into contracts and agreements with agencies of the federal government to secure the benefit of federal programs to provide adequate *health care* facilities and services."

Section 22. Section 50-5-408, MCA, is amended to read:

"50-5-408. Applications for construction projects. Applications for *health care* facilities construction projects may be submitted by a state agency, a political subdivision, or by any public or nonprofit agency authorized to construct and operate a *health care* facility."

Section 23. Section 50-5-411, MCA, is amended to read:

"50-5-411. Consolidated applications. (1) Boards of county commissioners of two or more counties may submit a consolidated application for a single *health care* facility or health center serving each of the counties included in the application.

(2) Any statutes investing counties with powers to construct, maintain, and operate *health care* facilities directly or by lease or contract may be utilized for this joint action.

(3) All statutes governing submission of questions of establishing a *health care* facility, *health care* facility construction, issuance of bonds, *or* method of operation and requiring a majority vote of taxpayers on the questions shall apply.

(4) Concurrent and joint action of two or more counties and approval by a majority of the voters in each county is required to authorize the issuance of bonds, construction, and contracts under a consolidated plan."

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Section 24. **Saving clause.** This act does not affect certificate of need applications received and declared complete or granted by the department before the effective date of this act.

Section 25. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 26. **Codification.** (1) It is intended that section 11 of this act be codified as an integral part of Title 50, chapter 5, part 2; and the provisions contained in Title 50, chapter 5, parts 1 through 4, apply to section 11 of this act.

(2) It is intended that section 18 of this act be codified as an integral part of Title 50, chapter 5, part 3; and the provisions contained in Title 50, chapter 5, parts 1 through 4, apply to section 18 of this act.

Section 27. **Repealer.** Sections 50-5-102, 50-5-205, 50-5-206, 50-5-209, 50-5-303, 50-5-401, 50-5-412, and 50-7-101 through 50-7-309, MCA, are repealed.

Approved March 28, 1979.

CHAPTER NO. 348

AN ACT TO REVISE AND CLARIFY THE PROCEDURE EMPLOYERS IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM MUST FOLLOW IN PROVIDING MONTHLY REPORTS AND MONTHLY DEPOSITS OF CONTRIBUTIONS TO THE SYSTEM; TO PROVIDE A PENALTY FOR LATE DEPOSITS; AND AMENDING SECTIONS 19-3-802 AND 19-3-804, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-802, MCA, is amended to read:

"**19-3-802. Payment of contributions by state agencies — accompanying reports — penalty.** *(1)* No later than the *15th* day of each month *or 5 working days after payroll warrants have been issued for the last normal pay period of the previous month, whichever is later,* the state auditor *and each agency of the state which is not paid through the state central payroll system shall remit to the public employees' retirement system* all contributions required of *each employer* and its employees under this chapter on the basis of compensation paid during the previous month, including any contributions payable with respect to members absent in the armed forces of the United States. *These remittances shall be accompanied by such reports as the board requires.*

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or $10 a day, whichever

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is greater, from the appropriation account of the reporting agency by submission of a claim to the state treasurer. The board may, in its discretion, waive the interest penalty."

Section 2. Section 19-3-804, MCA, is amended to read:

"**19-3-804. Payment of contributions by contracting employer — accompanying reports — penalty.** *(1) No later than the 15th* day of each month, each contracting employer shall remit to the public employees' retirement system all contributions required of the employer and its employees under this chapter on the basis of compensation paid during the previous month. These remittances shall be accompanied by such reports as are required by rules of the board.

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or $10 a day, whichever is greater. The board may, in its discretion, waive the interest penalty. The collection may be made by either of the following means:

(a) by an action therefor in a court of competent jurisdiction against the employer;

(b) by deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state."

Approved March 28, 1979.

CHAPTER NO. 349

AN ACT PERMITTING THE TRUSTEES TO NEGOTIATE RENEWAL SCHOOL BUS CONTRACTS WITHOUT CALLING FOR BIDS IF CONTRACT COST INCREASES DO NOT EXCEED 8%; AMENDING SECTION 20-10-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-10-125, MCA, is amended to read:

"**20-10-125. Bid letting for contract bus — payments under transportation contract.** (1) Before any contract with a private party for the provision of school bus transportation is awarded, the trustees shall:

(a) secure bids by publishing during a period of 21 days at least three calls for bids in a newspaper of the county that will give notice to the largest number of people of the district or in the official newspaper of the county; the trustees shall let the contract to the lowest responsible bidder, and the trustees shall have the right to reject any and all bids; or

(b) negotiate a new contract with the current school bus contractor provided the negotiated contract costs do not exceed by more than *8%* per

year the basic costs of the previous year's contract and provided the duration of the negotiated contract is no longer than the duration of the previous contract. Such a negotiated contract can be entered into only at a public meeting of the trustees at which meeting the patrons of the district may appear and be heard. Notice of the meeting must have been published in a newspaper of wide circulation within the district at least 1 week prior to the meeting.

(2) The provisions of this section for awarding a contract for school bus transportation shall be subject to the provisions of 20-9-204.

(3) The trustees shall not expend any moneys of the district for school bus transportation by a private party or for individual transportation unless:

(a) a contract for such transportation services has been completed; and

(b) such contracted services for school bus transportation by a private party have been actually furnished except that the failure to perform may be excused by the trustees for reasons not under the control of the contractor; or

(c) such contracted services for individual transportation have been actually furnished as confirmed by the actual attendance of school by the eligible transportees and recorded on the school attendance records or, in the case of a supervised correspondence course or supervised home study, as confirmed by the trustees; except that the contracted services furnished one way on any school day shall be reimbursed at one-half the daily contract amount."

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved March 28, 1979.

CHAPTER NO. 350

AN ACT TO AMEND SECTION 15-70-301, MCA, TO PROVIDE THAT THE DEFINITION OF "SPECIAL FUEL DEALER" INCLUDES ANY PERSON PROVIDING A FACILITY FROM WHICH MORE THAN ONE SPECIAL FUEL USER OBTAINS SPECIAL FUEL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-301, MCA, is amended to read:

"15-70-301. Definitions. As used in this part, the following definitions shall apply:

(1) "Bond" means:

(a) a bond duly executed by a special fuel dealer or special fuel user as principal with a corporate surety qualified under the laws of Montana, which bond shall be payable to the state of Montana, conditioned upon

faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of such special fuel dealer or special fuel user arising out of this part; or

(b) a deposit with the state treasurer by the special fuel dealer or special fuel user under such terms and conditions as the department of revenue may prescribe of a like amount of lawful money of the United States or bonds or other obligations of the United States or the state of Montana or of any county thereof of an actual market value not less than the amount so fixed by the department.

(2) "Department" means the department of revenue.

(3) "Motor vehicle" means any vehicle which is self-propelled upon the highways.

(4) "Person" means and includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation; whenever used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, means and includes the partners or members thereof and, as applied to joint-stock companies and corporations, the officers thereof.

(5) "Public roads and highways of this state" shall mean all streets, roads, highways, and related structures as have been or shall be built and maintained with appropriated funds of the United States and which have been or shall be built and maintained with funds of the state of Montana or any political subdivision thereof or which have been or shall be dedicated to public use or have been acquired by eminent domain or have been acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(6) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles propelled upon the public highways or streets within the state of Montana.

(7) "Special fuel dealer" means any person in the business of handling special fuel who delivers any part thereof into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him *or any person who provides any facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by such dealer.* For this purpose the term "fuel supply tank or tanks" does not include cargo tanks even though fuel is withdrawn directly therefrom for propulsion of the vehicle.

(8) "Special fuel user" means any person other than a county, incorporated city or town, or school district of this state who consumes in this state special fuel for the propulsion of motor vehicles owned or controlled by him upon the highways of this state.

(9) "Use" means either the receipt, delivery, or placing of special fuels by a special fuel dealer into the fuel supply tank or tanks of any motor

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vehicle not owned or controlled by him while such vehicle is within this state or the consumption by a special fuel user of special fuels in propulsion of a motor vehicle on the highways of this state."

Approved March 28, 1979.

CHAPTER NO. 351

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO SECURITIES REGULATION; AMENDING SECTIONS 30-10-103 THROUGH 30-10-105, 30-10-201, 30-10-210, 30-10-303, AND 30-10-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means *securities* commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but "salesman" does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by subsections (1), (2), (3), (9), (10), or (11) of 30-10-104;

(b) effecting transactions exempted by 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, officer, or director of a broker-dealer or issuer is a "salesman" only if he otherwise comes within this definition.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) a salesman, issuer, bank, savings institution, trust company, or insurance company; *or*

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

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(4) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(5) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(a) a bank, savings institution, trust company, or insurance company;

(b) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(c) a broker-dealer;

(d) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;

(e) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(f) a person who has no place of business in this state if his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(g) such other persons not within the intent of this subsection (5) as the commissioner may by rule or order designate.

(6) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(7) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(8) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(9) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

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(c) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(10) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(11) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period.

(12) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico."

Section 2. Section 30-10-104, MCA, is amended to read:

"30-10-104. Exempt securities. Sections 30-10-202 through 30-10-207 *do* not apply to any of the following securities:

(1) any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; *provided, however, 30-10-202 through 30-10-207 apply to a security issued by* any of the foregoing *that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such enterprise or any security of which it is the issuer is within any of the exemptions enumerated in subsections (2) through (9) of this section;*

(2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

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(3) any security issued by and representing an interest in or a debt of or guaranteed by any bank organized under the laws of the United States or any bank, savings institution, or trust company organized or chartered as such and under the jurisdiction and supervision of the superintendent of banks of any state;

(4) any security issued by and representing an interest in or a debt of or guaranteed by any federal savings and loan association or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any insurance or endowment policy or annuity contract or optional annuity contract issued by a corporation subject to the supervision of the insurance commissioner;

(6) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(7) any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is:

(a) subject to the jurisdiction of the interstate commerce commission;

(b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;

(c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

(d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility, if other securities issued by such railroad or public utility would be exempt under this subsection;

(8) any security *that meets all of the following conditions:*

(a) if the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;

(b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the 3 years immediately preceding the offering date;

(c) neither the issuer nor a significant subsidiary has had a material default during the last 7 years (or the issuer's existence if less than 7 years) in the payment of:

(i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

(ii) rentals under leases with terms of 3 years or more;

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(d) the issuer has had consolidated net income (before extraordinary items and the cumulative effect of accounting changes) of at least $1 million in 4 of its last 5 fiscal years including its last fiscal year; and if the offering is of interest bearing securities, has had for its last fiscal year such net income, but before deduction for income taxes and depreciation, of at least 1 ½ times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year" as used in this subsection (8)(d), means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement of the offering.

(e) if the offering is of stock or shares, other than preferred stock or shares, such securities have voting rights and such rights include the right to have at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law;

(f) if the offering is of stock or shares, other than preferred stock or shares, such securities are owned beneficially or of record on any date within 6 months prior to the commencement of the offering by at least 1,200 persons and on such date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least $3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(9) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes *if the issuer pays a fee of $50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within such 20-day period*;

(10) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction and which evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited or any guarantee of such paper or of any such renewal, when such commercial paper is sold to the banks or insurance companies;

(11) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(12) any security for which registration is not necessary for protection of investors, as determined by the commissioner by order. The commissioner may charge a fee of $50 for granting the exemption by order."

Section 3. Section 30-10-105, MCA, is amended to read:

"30-10-105. Exempt transactions. Except as in this section expressly provided, 30-10-201 through 30-10-207 shall not apply to any of the following transactions:

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(1) any *nonissuer* isolated transaction, whether effected through a broker-dealer or not;

(2) (a) any nonissuer distribution of an outstanding security by a registered broker-dealer if:

(i) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years, or during the existence of the issuer and any predecessors if less than 3 years, in the payment of principal, interest, or dividends on the security;

(b) the commissioner may by order deny or revoke the exemption specified in this subsection (2) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order.

(3) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties as such;

(6) any transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

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(8) any transaction pursuant to an offer directed by the offerer to not more than 10 persons (other than those designated in subsection (7) of this section) in this state during any period of 12 consecutive months, whether or not the offerer or any of the offerees is then present in this state, if:

(a) the seller reasonably believes that all the buyers are purchasing for investment; and

(b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the Federal Securities and Exchange Act of 1933 as amended;

(9) any offer or sale of a preorganization certificate or subscription if:

(a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

(b) the number of subscribers does not exceed 10; and

(c) no payment is made by any subscriber;

(10) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection;

(11) any offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either law;

(12) any offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner, in his discretion, does not disallow the offer in writing within 10 days of such filing;

(13) the issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

(14) any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets."

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Section 4. Section 30-10-201, MCA, is amended to read:

"30-10-201. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter; or

(c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.

(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. *A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to* file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in *an amount determined by the commissioner*, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(5) The application shall contain whatever information the commissioner requires.

(6) If no denial order is in effect and no proceeding is pending under subsection (8) of this section, registration becomes effective at noon of the 30th day after an application is filed. The commissioner may specify an earlier effective date, and he may by order defer the effective date for an additional 60 days. The effective day after the filing of any amendment shall be noon of the 30th day thereafter unless otherwise accelerated by the commissioner.

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(7) Registration of a broker-dealer, salesman, or investment adviser shall be effective until March 1 following such registration and may be renewed. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(8) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(9) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(10) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

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(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesman or the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but:

(i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on; and

(ii) he may not enter any order under this subsection (f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under subsection *(10)* of this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected. The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(11) Upon the entry of the order under subsection *(10)* of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

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(12) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, or salesman or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application."

Section 5. Section 30-10-210, MCA, is amended to read:

"30-10-210. Examination costs. (1) Any issuer or broker-dealer who is investigated or examined in connection with a registration under parts 1 through 3 of this chapter shall reimburse the commissioner or any of his duly authorized agents, officers, or employees for actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, as necessarily incurred on account of the examination, all at reasonable rates customary therefor and as established and adopted by the commissioner upon July 1, 1961, and annually thereafter upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to his written authorization. No person shall pay and no examiner shall accept any additional emolument on account of any such examination.

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received hereunder. *The commissioner may give written authorization for payment of the examination costs referred to in subsection (1) by the person examined directly to the examiner.*

(3) If any issuer or broker-dealer fails to pay the charges and expenses referred to above, the same shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid shall be a first lien upon all of the assets and property in this state of such issuer or broker-dealer and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund. Failure of such issuer or broker-dealer to pay such charges and expenses shall also work a forfeiture of his or its right to do business in this state under parts 1 through 3 of this chapter."

Section 6. Section 30-10-303, MCA, is amended to read:

"30-10-303. Unlawful representation concerning registration or exemption. Neither the fact that an application for registration under 30-10-201*(4)* or a registration statement under 30-10-203, 30-10-204, or 30-10-205 has been filed nor the fact that a person or security is effectively registered constitutes a finding by the commissioner that any document filed under parts 1 through 3 of this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits of qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make or cause to be made to any prospective purchaser, customer, or client any representation inconsistent with this section."

Section 7. Section 30-10-305, MCA, is amended to read:

"30-10-305. Injunctions and other remedies. *(1)* Whenever it appears to the commissioner that any person has engaged or is about to

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engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder, he may in his discretion:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that remains in effect until 10 days after any hearing is held or that becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. *If the commissioner prevails, he is entitled to reasonable attorneys' fees as fixed by the court.*

(2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for such violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against him under 30-10-307."

Section 8. **Name change.** Whenever the term "investment commissioner", relating to the investment commissioner, state auditor's office, created by 2-15-1901, appears in the MCA, it means "securities commissioner". The code commissioner is empowered and instructed to change all such references to "investment commissioner" to "securities commissioner".

Approved March 28, 1979.

CHAPTER NO. 352

AN ACT TO REQUIRE MOTOR CARRIER RULES TO REFLECT DIFFERENCES BETWEEN ALL CARRIER CLASSES, INCLUDING CLASS D, AND TO PERMIT CLASS D CARRIERS TO LEASE POWER EQUIPMENT; AMENDING SECTIONS 69-12-205 AND 69-12-611, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-205, MCA, is amended to read:

"69-12-205. Rules to reflect differences between carrier classes. All rules in relation to schedules, service, tariffs, rates, facilities, accounts, and reports shall have due regard for the differences existing

between Class A, Class B, Class C, *and Class D* motor carriers, as herein defined, and shall be just, fair, and reasonable to the said classes of motor carriers in their relations to each other and to the public. In fixing the tariff or rates to be charged by Class A and Class B motor carriers for the carrying of persons and/or property, the commission shall take into consideration the kind and character of service to be performed, the public necessity therefor, and the effect of such tariff and rates upon other transportation agencies, if any, and shall, as far as possible, avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier."

Section 2. Section 69-12-611, MCA, is amended to read:

"69-12-611. Leasing of power equipment. (1) All Class A, B, C, *and D* carriers subject to the jurisdiction of the commission may lease power equipment for the purpose of performing transportation movements within the state. The leasing of such power units must be in writing and effective only upon specific approval of the commission. Movement of such leased units without prior approval of the commission is prohibited.

(2) All leases must contain:

(a) the full names and addresses of negotiating parties;

(b) a complete description of each vehicle involved;

(c) provision that the sole possession, responsibility, control, and direction of each vehicle and its driver resides with the lessee for the entire term of the lease;

(d) provision that the lessee assumes full responsibility for all regulatory fees;

(e) amount of compensation to be paid for use of the vehicle while under the lease and the method by which such compensation is determined;

(f) the renewal conditions of the lease, if any; and

(g) the term length of the lease.

(3) A copy of the lease, certified by the commission, must be maintained in each leased vehicle at all times. Each power unit so leased must display in a conspicuous place on both sides of such vehicle the identity and address of the lessor and lessee and the certificate number under which the power unit is operating.

(4) The leasing of power units by an authorized carrier to a noncertificated carrier is prohibited."

Approved March 28, 1979.

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CHAPTER NO. 353

AN ACT TO AMEND SECTION 69-12-407, MCA, TO SUBJECT CLASS C AND CLASS D MOTOR CARRIERS TO RECORDKEEPING AND REPORTING REQUIREMENTS OF THE SECTION AND TO PERMIT THE EXTENSION OF FILING DEADLINES FOR GOOD CAUSE BY THE COMMISSION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-407, MCA, is amended to read:

"69-12-407. Records and reports. (1) All records, books, accounts, and files of every Class A, Class B, *Class C, and Class D* motor carrier in this state, so far as the same shall relate to the business of transportation conducted by such motor carrier, shall at all times be subject to examination by the commission or by any authorized agent or employee of the commission. The commission shall prescribe a uniform system of accounts and uniform reports covering the operations of such Class A, Class B, *Class C, and Class D* motor carriers, and every motor carrier authorized to operate as such in accordance with the provisions of this chapter shall keep its records, books, and accounts according to such uniform system, insofar as possible.

(2) *Before April 1* of each year, *unless this deadline has been extended for good cause by the commission,* every motor carrier authorized to engage in such business shall file with the commission a report, under oath, on a form prescribed and furnished by the commission. Those carriers filing an annual report with the interstate commerce commission shall, in addition to filing the report prescribed by the public service commission, submit to the public service commission a copy of the annual report filed with the interstate commerce commission. In addition to such annual reports every motor carrier shall prepare and file with the commission, at the time or times and in the form to be prescribed by the commission, annual reports, special reports, and statements giving to the commission such information as it shall require in order to perform its duties under this chapter."

Approved March 28, 1979.

CHAPTER NO. 354

AN ACT TO AMEND SECTION 69-3-501, MCA, TO PROVIDE THAT A MINIMUM REVENUE BE DERIVED FROM MONTANA SOURCES BY CERTAIN UTILITIES IN ORDER TO SUBJECT THE ISSUANCE OF SECURITIES AND CREATION OF LIENS BY THE UTILITY TO REGULATION BY THE PUBLIC SERVICE COMMISSION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-501, MCA, is amended to read:

"69-3-501. Regulation of issuance of securities and creation of liens by utilities. (1) *Whenever a* public utility furnishing electric or

gas service in the state *has revenue derived from sources in Montana which exceeds $5 million or 5% of its gross revenue, the utility's right* to issue, assume, or guarantee securities and to create liens on its property *in* the state is *subject* to the regulation and supervision of the commission, as set forth in this part.

(2) *The* public utility, when authorized by order of the commission and not otherwise, may issue stocks and stock certificates and may issue, assume, or guarantee other securities payable at periods of more than 12 months *thereafter* for the following purposes:

(a) the acquisition of property;

(b) the construction, completion, extension, or improvement of its facilities;

(c) the improvement or maintenance of its service;

(d) the discharge or lawful refunding of its obligations;

(e) the reimbursement of money actually expended for said purposes from income or from other money; or

(f) any other purpose approved by the commission."

Approved March 28, 1979.

CHAPTER NO. 355

AN ACT TO WAIVE THE QUALIFICATION REQUIREMENTS OF THE COUNTY SUPERINTENDENT OF SCHOOLS WHEN SUCH OFFICE IS CONSOLIDATED WITH ANOTHER COUNTY OFFICE AND TO PROVIDE FOR CONTRACTING OF SERVICES IN SUCH CASE; AMENDING SECTION 20-3-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-201, MCA, is amended to read:

"20-3-201. Election and qualifications. (1) A county superintendent shall be elected in each county of the state unless a county manager form of government has been organized in the county. The county superintendent shall be elected at the general election preceding the expiration of the term of office of the incumbent.

(2) Any person shall be qualified to assume the office of county superintendent who:

(a) is a qualified elector;

(b) holds a valid teacher certificate issued by the superintendent of public instruction; and

(c) has not less than 3 years of successful teaching experience.

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(3) When the office of county superintendent of schools is consolidated with another county office within the county, the requirements of subsection (2) shall be waived. Unless the officeholder has the qualifications of subsection (2), he shall, with the approval of the governing body, contract for the services of a person with those qualifications to perform the duties required of county superintendents in counties where the office has not been consolidated."

Approved March 28, 1979.

CHAPTER NO. 356

AN ACT TO PERMIT SUPERVISORY LAW ENFORCEMENT PERSONNEL TO CONTROL TELEPHONE COMMUNICATIONS TO AND FROM A PERSON HOLDING HOSTAGES AND TO LIMIT THE LIABILITY OF TELEPHONE COMPANY OFFICIALS; AMENDING SECTION 45-8-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-213, MCA, is amended to read:

"45-8-213. Privacy in communications. (1) *Except as provided in [section 2], a* person commits the offense of violating privacy in communications if he knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with any person by telephone and uses any obscene, lewd, or profane language, suggests any lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of any person (the use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend);

(b) uses a telephone to attempt to extort money or any other thing of value from any person or to disturb by repeated telephone calls the peace, quiet, or right of privacy of any person at the place where the telephone call or calls are received;

(c) records or causes to be recorded any conversation by use of a hidden electronic or mechanical device which reproduces a human conversation without the knowledge of all parties to the conversation. Subsection (c) does not apply to duly elected or appointed public officials or employees when the transcription or recording is done in the performance of official duty, to persons speaking at public meetings, or to persons given warning of the recording.

(d) by means of any machine, instrument, or contrivance or in any other manner:

(i) reads or attempts to read any message or learn the contents thereof while it is being sent over a telegraph line;

(ii) learns or attempts to learn the contents of any message while it is in a telegraph office or is being received thereat or sent therefrom; or

(iii) uses, attempts to use, or communicates to others any information so obtained;

(e) discloses the contents of a telegraphic message or any part thereof addressed to another person without the permission of such person, unless directed to do so by the lawful order of a court; or

(f) opens or reads or causes to be read any sealed letter not addressed to himself without being authorized to do so by either the writer of the letter or the person to whom it is addressed or, without the like authority, publishes any of the contents of the letter knowing the same to have been unlawfully opened.

(2) A person convicted of the offense of violating privacy in communications shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

Section 2. **Control of telephone communications to and from a person holding hostages — nonliability of telephone company officials.** A supervisory law enforcement official who has jurisdiction in a geographical area where hostages are being held and who has probable cause to believe that the holder of the hostages is committing a crime may order a previously designated telephone security employee or other telephone company official to arrange to cut, reroute, or divert telephone lines in order to prevent the holder of the hostages from communicating with any person other than a law enforcement officer or an individual authorized by a law enforcement officer. The serving telephone company within the geographical area of a law enforcement agency shall designate a telephone company security employee or other telephone company official and an alternate to provide all required assistance to law enforcement officials to carry out the purposes of this section. A telephone security employee or other telephone company official acting in good faith under an order given pursuant to this section does not commit the offense of violating privacy in communications and is not liable in any civil action brought as a result of such good faith actions.

Section 3. **Codification.** Section 2 is intended to be codified as an integral part of Title 69, chapter 6.

Approved March 28, 1979.

CHAPTER NO. 357

AN ACT TO CLARIFY THE MEANING OF PERSONS AND FAMILIES OF LOWER INCOME UNDER THE HOUSING ACT OF 1975 AND TO PROVIDE FOR THE CONSIDERATION OF AVAILABLE FINANCIAL RESOURCES; AMENDING SECTION 90-6-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-103, MCA, is amended to read:

"90-6-103. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

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(1) "Board" means the board of housing created in 2-15-1008.

(2) "Bond" means any bonds, notes, debentures, interim certificates, or other evidences of financial indebtedness issued by the board pursuant to this part.

(3) "Capital reserve account" means the capital reserve account provided for in 90-6-107.

(4) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(5) "Federally insured mortgage" means a mortgage loan for land development or residential housing insured or guaranteed by the United States or a governmental agency or instrumentality thereof or a commitment by the United States or a governmental agency or instrumentalities thereof to insure such a mortgage.

(6) "Federally insured security" means an evidence of indebtedness insured or guaranteed as to repayment of principal and interest by the United States or an instrumentality thereof.

(7) "Governmental agency" means any department, division, public corporation, public agency, political subdivision, or other public instrumentality of the state, the federal government, any other state or public agency, or any two or more thereof.

(8) "Housing development" means any work or undertaking financed in whole or in part under this part for the primary purpose of acquiring, constructing, or rehabilitating dwelling accommodations for persons or families of lower income in need of housing. An undertaking may include any buildings, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable in connection therewith, including but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and other nonhousing facilities as the board determines to be necessary, convenient, or desirable.

(9) "Housing development costs" means the sum total of all costs incurred in a housing development approved by the board as reasonable and necessary, including but not limited to:

(a) cost of land acquisition and any buildings thereon, including payments for options, deposits, or contracts to purchase properties on the proposed housing development site or payments for the purchase of properties;

(b) cost of site preparation, demolition, and clearing;

(c) architectural, engineering, legal, accounting, corporation, and other fees paid or payable in connection with the planning, execution, and financing of the housing development and the finding of an eligible mortgagee or mortgagees for the housing development;

(d) cost of necessary studies, surveys, plans, and permits;

(e) insurance, interest, financing, tax and assessment costs and other operating and carrying costs during construction;

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(f) cost of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery, apparatus, and similar facilities related to the real property;

(g) cost of land improvements, including landscaping and offsite improvements, whether or not the costs have been paid in cash or in a form other than cash;

(h) necessary expenses in connection with initial occupancy of the housing development;

(i) a reasonable profit and risk fee in addition to job overhead to the general contractor and, if applicable, a limited profit housing sponsor;

(j) an allowance established by the board for working capital and contingency reserves and reserves for any anticipated operating deficits during construction and initial occupancy;

(k) costs of other items, including tenant relocation, as the board determines to be reasonable and necessary for the housing development, less any and all net rents and other net revenues received from the operation of the real and personal property on the development site during the construction.

(10) "Housing sponsor" means individuals, joint ventures, partnerships, limited partnerships, trusts, firms, associations, corporations, governmental agencies, limited-profit housing sponsors, nonprofit corporations, or other legal entities or any combination thereof that are:

(a) approved by the board;

(b) qualified either to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development;

(c) subject to the rules of the board and other terms and conditions set forth in this part.

(11) "Lending institution" means any public or private entity or governmental agency approved by the board maintaining an office in this state and authorized by law to make or participate in making residential mortgages in the state.

(12) "Limited-profit housing sponsor" means a corporation, trust, partnership, association, other entity, or an individual restricted as to distribution of income and regulated as to rents, charges, rate of return, and methods of operation as the board determines necessary to carry out this part.

(13) "Mortgage" means a mortgage deed, deed of trust, or other instrument which shall constitute a valid lien on real property in fee simple or on a leasehold under a lease having a remaining term at the time the mortgage is acquired, which does not expire for at least that number of years beyond the maturity date of the obligation secured by the mortgage established by the board as necessary to protect its interest as mortgagee.

(14) "Mortgage loan" means an interest bearing obligation secured by a mortgage on land and improvements in the state.

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(15) "Nonprofit housing sponsor" means a housing cooperative formed under Title 35, chapter 15, or a nonprofit corporation formed under Title 35, chapter 2, restricted as to distribution of income and regulated as to rents, charges, rate of return, and methods of operation as the board determines necessary, and whose articles of incorporation provide in addition that:

(a) the organization has been organized exclusively to provide housing developments for persons and families of lower income;

(b) all the income and earnings of the organization shall be used exclusively for housing development purposes and no part of the net income or net earnings of the organization shall inure to the benefit or profit of any private individual, firm, corporation, partnership, or association;

(c) the organization is in no manner controlled or under the direction or acting in the substantial interest of any private individual, firm, partnership, or association seeking to derive profit or gain therefrom or seeking to eliminate or minimize losses in any transactions therewith, except that the limitations shall apply to members of a cooperative only to the extent provided by rules of the board;

(d) the operations of the organization may be supervised by the board and the organization will enter into agreements with the board to regulate planning, development, and management of any housing development undertaken by the organization and the disposition of the property or other interests of the organization.

(16) "Persons and families of lower income" means persons and families with insufficient personal or family income *or other financial resources* who require assistance under this part, as determined by the board, taking into consideration:

(a) the amount of the total personal and family income, *assets, and other financial resources* available for housing needs;

(b) the size of the family;

(c) the eligibility of persons and families under federal housing assistance of any type based on lower income or a functional or physical disability;

(d) the ability of persons and families to compete successfully in the normal housing market and to pay the amount at which private enterprise is providing decent, safe, and sanitary housing;

(e) the availability and cost of housing in particular areas; and

(f) needs of particular persons or families due to age or physical handicaps.

(17) "Rehabilitation" means the repair, reconstruction, or improvement of an existing structure to provide decent, safe, and sanitary housing or to conform housing with state or local health, building, fire prevention, and safety codes as determined by the board."

Section 2. **Prior transactions not impaired.** Nothing herein affects or impairs any provision of resolutions, indentures, loans, contracts, bonds,

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or notes adopted, entered into or issued before the effective date of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 28, 1979.

CHAPTER NO. 358

AN ACT DIRECTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO DEVELOP AND IMPLEMENT A PLAN FOR COMPLETING A STATEWIDE SOIL SURVEY AND MAPPING PROGRAM AND PROVIDING FOR THE DISPOSITION OF FUNDS FOR DEVELOPMENT OF THE SOIL SURVEY PLAN.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Montana Soil Survey Act".

Section 2. **Purpose.** (1) The legislature finds that the soils of the state of Montana are one of its most basic and precious natural resources and that detailed knowledge of soil capabilities and adaptability is essential for:

(a) making wise land use decisions;

(b) preparing plans for cities, towns, counties, planning boards, farmers, foresters, industrial developers, and residential developers;

(c) locating and designing buildings, highways, reservoirs, and recreation areas; and

(d) protecting our forest, range, and agricultural lands.

(2) Pursuant to these findings, it is the intention of the legislature to accelerate the survey and mapping of the state's soil resources, to set a goal of completing the soil survey and mapping program.

Section 3. **Direction to state agencies.** (1) The department of natural resources and conservation shall develop a plan for completing the soil survey and mapping program in cooperation with and according to the standards set forth by the national cooperative soil survey program and the Montana state agricultural experiment station.

(2) The soil survey plan shall identify all projected local participation, all funds available from state and federal agencies, including planning grants, and any and all additional equipment, personnel, facilities, supplies, maps and such other material necessary to complete the soil survey and mapping program.

(3) The soil survey plan shall determine geographic areas without modern soil survey information and shall establish in cooperation with the

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national cooperative soil survey program priorities for completing soil surveys based upon the needs of the geographic areas.

(4) The department of natural resources and conservation shall oversee the plan for completing the soil survey and mapping program and shall report annually on its progress to the governor and legislature not later than January 1 of each year, beginning in 1981.

Section 4. **Creation of soil survey advisory council.** (1) The director of the department of natural resources and conservation shall appoint a soil survey advisory council to assist and cooperate with the department in formulation and oversight of the plan for completing the soil survey and mapping program. The soil survey advisory council shall consist of representatives of local, state, and federal agencies and private organizations having needs for or who could contribute expertise for the soil surveys and the mapping program.

(2) The director of the department of natural resources and conservation shall serve as chairman of the soil survey advisory council.

(3) The soil survey advisory council shall meet at least once a year.

Section 5. **Professional and technical assistance.** The department of natural resources and conservation, with the advice and recommendations of the advisory council, may use such professional, technical, and legal counsel and assistance as it determines necessary to develop and implement a soil survey plan to accelerate the completion of the national cooperative soil survey and mapping program in Montana.

Section 6. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 28, 1979.

CHAPTER NO. 359

AN ACT TO ALLOW THE GOVERNING BODY OF A POLITICAL SUBDIVISION WITH A POPULATION OF 10,000 OR LESS TO DISPENSE WITH A NONPARTISAN PRIMARY ELECTION IN CERTAIN CIRCUMSTANCES; AMENDING SECTION 7-5-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-302, MCA, is amended to read:

"7-5-302. Nonpartisan primary ballot and election. (1) Except as otherwise provided in this section, a nonpartisan primary election shall be conducted and canvassed and its results returned in the same manner as a partisan primary election.

(2) Ballots in a nonpartisan primary election shall contain only the name of the candidate and the office to which the candidate seeks election.

(3) Electors voting at a nonpartisan primary election may vote for the number of candidates to be elected to each office.

(4) (a) If the number of candidates to be entered on the nonpartisan primary ballot for each office does not exceed twice the number of candidates to be elected for the respective offices, a nonpartisan primary election shall not be held in that year and all candidates entered on the nonpartisan primary ballot shall be considered nominated for their respective offices and shall have their names placed on the nonpartisan general election ballot.

(b) If the number of candidates to be entered on the nonpartisan primary ballot for any particular office does exceed twice the number of persons to be elected to that office, a primary election shall be held for all offices to be voted on at the general election.

(5) Candidates for nomination, equal to twice the number to be elected at the nonpartisan general election for that office, who receive the highest number of votes cast at the nonpartisan primary or nominees determined under subsection (4) are nominees for office and shall have their names entered on the nonpartisan general election ballot. *In a political subdivision with a population of 10,000 or less, the governing body may determine that a primary need not be held if:*

(a) the number of candidates for an office exceeds twice the number to be elected to that office in no more than one-half of the offices on the ballot;

(b) the number of candidates in excess of twice the number to be elected is not more than one for any office on the ballot; and

(c) the governing body passes a resolution not more than 7 days after the close of filing by candidates for election stating that a primary election need not be held."

Approved March 28, 1979.

CHAPTER NO. 360

AN ACT TO PROVIDE THAT PUBLIC SCHOOL DISTRICT TRUSTEES WHO DO NOT MEET ON A REGULAR MONTHLY BASIS ARE TO APPROVE THE MINUTES OF EACH MEETING AT THE NEXT MEETING; AMENDING SECTION 20-3-323, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-323, MCA, is amended to read:

"**20-3-323. District policy and record of acts.** (1) The trustees of each district shall prescribe and enforce policies for the government of the district. In order to provide a comprehensive system of governing the district, the trustees shall:

(a) adopt the policies required by this title; and

(b) adopt policies to implement or administer the requirements of the general law, this title, the policies of the board of public education, and the rules of the superintendent of public instruction.

(2) The trustees shall keep a full and permanent record of all adopted policies and all other acts of the trustees. Minutes of each regular and special board meeting shall include wording of motions, voting records of each trustee present, and all other pertinent information, including a detailed statement of all expenditures of money with the name of any person or business to whom payment is made and showing the service rendered or goods furnished. A written copy of the minutes shall be made available within 5 working days following the approval of the minutes by the board at a cost of no more than 15 cents a page to be paid by those who request such a copy. One free copy of the minutes shall be provided to the local press within 5 working days following the approval of the minutes by the board. The board shall approve the minutes of each special and regular meeting no later than 1 month following the meeting *if it meets on a regular monthly basis.* If a board does not regularly meet on a monthly basis, *it shall approve the minutes of each special and regular meeting at the next regular or special meeting. The approval of the minutes of a prior meeting shall not occur more than 40 days after the meeting, except that no board shall be required to meet to approve the minutes of a meeting at which no substantive business was conducted.*"

Approved March 28, 1979.

CHAPTER NO. 361

AN ACT TO AMEND SECTION 61-5-111, MCA, TO PROVIDE A ONE-STOP LICENSING PROCEDURE FOR THE ISSUANCE AND PAYMENT OF FEES FOR DRIVERS' LICENSES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-111, MCA, is amended to read:

"61-5-111. Licenses issued to operators and chauffeurs — renewals and expiration thereof — fees. (1) The division shall have authority to appoint county treasurers and other qualified officers to act as its agents for the sale of drivers' licenses *receipts*, and shall make necessary rules governing such sales. *In those areas where the division provides driver licensing services 3 days or more a week the division is responsible for sale of receipts and may not appoint an agent.* The division, upon payment of the fees specified in this section, shall issue to every applicant qualifying therefor an operator's or chauffeur's license as applied for. Such licenses shall contain a photograph of such licensee in such size and form as may be prescribed by the division, a distinguishing number issued to the licensee, the full name, date of birth, resident address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee. *Five percent of the license fees collected by the county treasurer shall be deposited by the county treasurer*

for the use of the county general fund. In the event no agent is appointed under this section, 5% of the license fees collected by the division shall be retained by the division to defray the cost of handling.

(2) The division shall, when any person applies for renewal of an operator's or chauffeur's license, test the applicant's eyesight, and may also in the division's discretion have such applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle. A person shall be deemed to have applied for renewal of a Montana operator's or chauffeur's license if such application is made within 3 months of the expiration of such license.

(3) Licenses issued shall expire on the anniversary of the date of birth of the licensee 4 years or less after the date of issue.

(4) Whenever the division issues an original license to a person under the age of 18 years, such license shall be designated and clearly marked as a "provisional license". Any license so designated and marked may be suspended by the division for a period of not more than 12 months, when its record discloses that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal as applicable to operator's licenses, the division may for any reasonable cause, as shown by its records, designate the renewal of the license as provisional, otherwise a license in usual form shall be issued subject to other provisions of the laws of Montana.

(5) It shall be unlawful for any person to have in his possession or under his control more than one Montana operator's or chauffeur's license at any one time. Licenses shall not be valid for the operation of a motorcycle until the holder thereof has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement".

(6) Fees for drivers' licenses shall be as follows:

(a) driver's license — $2 per year or fraction thereof;

(b) motorcycle endorsement — 50 cents per year or fraction thereof.

(7) The state treasurer shall deposit to the credit of the state general fund all moneys received by him from the collection of motor vehicle driver's license fees."

Approved March 28, 1979.

CHAPTER NO. 362

AN ACT AFFIRMING THE VALIDITY OF DEEDS OF TRUST AND TRUST INDENTURES; PROVIDING THAT SUCH INSTRUMENTS ARE SUBJECT TO THE LAWS CONCERNING MORTGAGES AND WHEN RECORDED PROVIDE SUBSEQUENT PURCHASERS AND ENCUMBRANCERS WITH CONSTRUCTIVE NOTICE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Deeds of trust and trust deeds not invalidated.** The Small Tract Financing Act of Montana does not invalidate or preclude the use in this state of instruments, sometimes denominated deeds of trust,

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trust deeds, or trust indentures, which are not executed in conformity with Title 71, chapter 1, part 3, but in which a conveyance for security purposes is made to a trustee or trustees for the benefit of one or more lenders. Such instruments are considered to be mortgages and are subject to all laws relating to mortgages on real property. Every such instrument, recorded as prescribed by law, from the time it is filed for record is constructive notice of its contents to subsequent purchasers and encumbrancers.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 28, 1979.

CHAPTER NO. 363

AN ACT TO REQUIRE THE ANNUAL REGISTRATION OF SNOWMOBILES AND ASSESSING A REGISTRATION FEE; REVISING THE TITLE REQUIREMENTS FOR SNOWMOBILES; REVISING THE REGISTRATION REQUIREMENTS FOR SNOWMOBILE DEALERS; GENERALLY REVISING FEES AND THEIR ALLOCATION; PROVIDING A REGISTRATION EXCEPTION FOR NONRESIDENT SNOWMOBILE RACERS; ELIMINATING THE DISCRETION OF THE DEPARTMENT OF FISH AND GAME OVER DECIBEL STANDARDS; AND AMENDING SECTIONS 23-2-601, 23-2-611 THROUGH 23-2-614, 23-2-616, 23-2-618, 23-2-619, AND 23-2-634, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-601, MCA, is amended to read:

"23-2-601. Definition of terms. As used in this part, the following terms shall have the meanings indicated herein, unless the context otherwise clearly requires that another meaning is intended:

(1) "Certificate of ownership" means the document issued by the division of motor vehicles as prima facie evidence of ownership.

(2) "Certificate of registration" means the owner's receipt evidencing payment of taxes, decal fees, and registration fees for a given registration year.

(3) "dbA" means sound pressure level measured on the "A" weight scale in decibels.

(4) "Department" means the department of fish and game of the state of Montana.

(5) "New snowmobile" means any snowmobile that has not been previously sold to an owner, as defined in subsection *(7)*

(6) "Operator" includes every person who operates or is in actual physical control of the operation of a snowmobile.

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(7) "Owner" includes every person as defined herein, other than a lien holder or other person having a security interest only, holding a certificate of ownership to a snowmobile and entitled to the use or possession thereof.

(8) "Person" includes an individual, partnership, association, corporation, and any other body or group of persons, whether incorporated or not and regardless of the degree of formal organization.

(9) "Roadway" includes only those portions of any highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

(10) "Snowmobile" includes any self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, designed primarily for travel on snow or ice, which may be steered by skis or runners and which is not otherwise registered or licensed under the laws of the state of Montana."

Section 2. Section 23-2-611, MCA, is amended to read:

"23-2-611. Certificate of ownership. (1) No snowmobile may be operated upon any public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets, or highways, unless a certificate of ownership has first been obtained from the division of motor vehicles in accordance with the laws of this state.

(2) *The* owner of a snowmobile shall make application for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose. *The forms* shall require the following information:

(a) name of *the* owner;

(b) residence *of the owner* by town and county;

(c) business or home mail address *of the owner*;

(d) name and address of *any* lien holder;

(e) amount due under *any* contract or lien;

(f) name of *the* manufacturer;

(g) model number or name;

(h) *identification* number; and

(i) name and address of *the* dealer or other person from whom acquired.

(3) The application shall be signed by at least one owner or by a properly authorized officer or representative of the owner.

(4) If a certificate of ownership has previously been issued under the provisions of this part, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of this part were not in force and effect.

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(5) Upon completion of the application on forms furnished by the division of motor vehicles, the county treasurer shall issue to the applicant two copies of the application, one of which shall be marked "file copy". *The treasurer shall* forward one copy and the original application to the division, which shall *enter* the information contained in the application upon the corresponding records of its office, and shall furnish the applicant a certificate of ownership which shall contain *that* information *in* the application *considered necessary by the division* and a permanent ownership number. The certificate of ownership is not to be renewed annually and is valid as long as the person holding it owns the snowmobile.

(6) The owner shall at all times retain possession of the certificate of ownership, except when *it* is being transmitted to and from the division for endorsement or cancellation.

(7) Upon application for a certificate of ownership, a fee of $3 shall be paid to the county treasurer, *$2* of which shall be forwarded by the county treasurer to the division of motor vehicles *and deposited in the motor vehicle recording account of the earmarked revenue fund.*"

Section 3. Section 23-2-612, MCA, is amended to read:

"23-2-612. Transfer of interest. (1) Except as provided in subsection (3), upon a transfer of any certificate of ownership to a snowmobile registered as required under the provisions of this part, the person whose title or interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for the snowmobile in the appropriate space provided upon the reverse side of the certificate, and such signature shall be acknowledged before a notary public.

(2) Within 20 calendar days thereafter, the transferee shall *make application for transfer of* the certificate of ownership so endorsed *with the county treasurer of the county in which the transferee resides and also make application for registration of the snowmobile. The county treasurer shall forward the application* to the division of motor vehicles, which shall file the same upon receipt thereof. No certificate of ownership may be issued by the division until the outstanding certificates are surrendered to that office or their loss established to its reasonable satisfaction. The *county treasurer* shall collect a fee of $3 for each application for transfer of ownership, *of which $2 shall be forwarded to the division of motor vehicles for deposit in the motor vehicle recording account of the earmarked revenue fund.*

(3) A purchaser of a new or used snowmobile from a licensed snowmobile dealer has a grace period of 20 calendar days from the date of purchase to *register the snowmobile,* make application for a certificate of ownership, and obtain a tax-paid decal. It is not a violation of this part or any other law for the purchaser to operate a *newly acquired* snowmobile without a certificate of ownership, *certificate of registration,* and a tax-paid decal during the 20-day period. During this period the sticker, provided for in subsection (4), shall remain affixed to the snowmobile.

(4) Prior to the delivery of the snowmobile to the purchaser, the dealer shall issue and affix to the snowmobile a sticker (in a form to be prescribed by the division of motor vehicles). The sticker shall contain the

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name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the snowmobile, including its serial number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the division.

(5) The provisions of subsection (2) of this section do not apply in the event of the transfer of a snowmobile to a duly licensed snowmobile dealer intending to resell the snowmobile and who operates it only for demonstration purposes, but every such dealer, upon transferring such interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of this part. The division, upon receipt of the certificate of ownership and application for a new certificate, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership together with a statement of any conditional sales contract, mortgage, or other lien."

Section 4. Section 23-2-613, MCA, is amended to read:

"23-2-613. Lost or mutilated certificates. *If* any certificate of ownership is lost, mutilated, or becomes illegible, the person to whom *it* was issued shall immediately make application for and obtain a duplicate thereof, upon payment of a fee of *$2.*"

Section 5. Section 23-2-616, MCA, is amended to read:

"23-2-616. Registration and tax-paid decals — application and issuance — use of fees. (1) No snowmobile may be operated *on public lands* by any person in the state of Montana unless *it has been registered and* there is displayed in a conspicuous place on *both sides of the cowl* a decal as visual proof that Montana personal property taxes have been paid on it for the current year.

(2) Application for *registration* shall be made to the county treasurer upon forms to be furnished *by the division of motor vehicles* for this purpose, which may be obtained at the county *treasurer's* office in the county where the owner resides. The application shall contain the following information:

(a) name *and address* of *the* owner;

(b) certificate of ownership number;

(c) make of *the snowmobile*;

(d) model *name of the snowmobile*;

(e) year of manufacture;

(f) a statement evidencing *the* assessment and payment of property tax; and

(g) such other information as the division of motor vehicles may require.

(3) *The application shall be accompanied by a decal fee of $2, a registration fee of 50 cents, and, if the snowmobile has previously been registered, by the registration certificate for the most recent year in which the*

snowmobile was registered. The treasurer shall sign the application and issue a registration receipt which shall contain information considered necessary by the division of motor vehicles and a listing of fees and taxes paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the signed application to the division of motor vehicles and shall issue to the applicant a decal in the style and design prescribed by the division and of a different color than the preceding year, numbered in sequence.

(5) Before filing the application with the county treasurer, the applicant shall submit it to the county assessor of the county *of residence* and the county assessor shall enter on the application in a place provided for that purpose the market value and taxable value of the snowmobile for the year for which the application is made. *The county treasurer may not accept any application under this section until the applicant has paid the decal and registration fees and personal property taxes assessed against the snowmobile for the current year.*

(6) All *money* collected from payment of the *decal* fees and all interest accruing from use of *this money* shall be *forwarded* to the state treasurer and placed in the earmarked revenue fund to the credit of the department, with $1 designated for use in enforcing the purposes of this part and $1 designated for use in the development, maintenance, and operation of snowmobile facilities. *All money collected from payment of the registration fee shall be forwarded to the state treasurer and deposited in the motor vehicle recording account of the earmarked revenue fund."*

Section 6. Section 23-2-618, MCA, is amended to read:

"23-2-618. Application for registration and tax-paid decals to be made annually — grace periods. Application must be made to the county treasurer for *registration and* the issuance of tax-paid decals annually. All *registrations and* tax-paid decals expire on June 30 of each year."

Section 7. Section 23-2-619, MCA, is amended to read:

"23-2-619. Dealer registration certificate — use of fees. (1) A dealer registration certificate shall be issued in accordance with this part.

(2) *The dealer application shall be accompanied by an application fee of $5 and a registration fee of $5.* Upon receipt of *the* dealer application and payment of fees, the dealer shall be issued two dealer snowmobile identification cards which shall be carried by *the* dealer or *the* dealer's customer when demonstrating *the* dealer's snowmobiles.

(3) No bond is required of the dealer.

(4) The dealer shall have a principal place of business where he shall maintain all his business records and display and sell merchandise.

(5) An applicant for renewal of a snowmobile dealer registration shall certify that he has sold 3 or more snowmobiles during the preceding year

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or pay an additional $50 renewal registration fee or provide a copy of a written new snowmobile franchise or sales agreement that the applicant has with a manufacturer, importer, or distributor.

(6) Additional dealer snowmobile identification cards *as required by need justified to the division of motor vehicles* may be purchased by the dealer for a fee of $2.

(7) Dealer registration *certificates* and identification cards expire on June 30 following the date of issuance.

(8) (a) the dealer application fees and all interest accruing from use of this money shall be deposited in the earmarked revenue fund to the credit of the department, with one-half designated for use in enforcing the purposes of this part and one-half designated for use in the development, maintenance, and operation of snowmobile facilities.

(b) All money collected from dealer registration and renewal registration fees shall be deposited in the motor vehicle recording account of the earmarked revenue fund."

Section 8. Section 23-2-614, MCA, is amended to read:

"23-2-614. Exemptions. (1) The provisions of this part, with respect to *registration, tax-paid decals, and* certification of ownership, do not apply to snowmobiles owned or used by the United States or another state or any agency or political subdivision thereof, any snowmobile registered in a country other than the United States and to be temporarily used within this state for a period of not more than 30 days, or to any snowmobile registered in another state of the United States but to be temporarily used within this state for not more than 30 days. Snowmobiles owned by the state of Montana or any agency or political subdivision thereof are exempt only from the payment of fees and shall otherwise comply with all the requirements of this part.

(2) The provisions of this part with respect to registration, *tax-paid decals,* and certification of ownership do not apply to unregistered snowmobiles owned by nonresidents of the state of Montana *who either:*

(a) display visual proof that a nonresident temporary-use permit has been purchased*; or*

(b) use the snowmobile only in races and for not more than 30 days in the state. "Race" means an organized competition on a predetermined course that is run according to accepted rules."

Section 9. Section 23-2-634, MCA, is amended to read:

"23-2-634. Regulation of snowmobile noise. (1) Except as provided in this section, every snowmobile shall be equipped at all times with noise-suppression devices, including an exhaust muffler in good working order and in constant operation. No snowmobile may be modified by any person in any manner that will amplify or otherwise increase total noise emissions to a level greater than that emitted by the snowmobile as originally constructed, regardless of date of manufacture.

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(2) Every person who owns or operates a snowmobile manufactured after June 30, 1972, but prior to June 30, 1975, shall maintain his machine in such a manner that it will not exceed a sound level limitation of 82 dbA measured at 50 feet.

(3) No new snowmobile manufactured after June 30, 1975, except snowmobiles designated for competition purposes only, may be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than 78 dbA measured at 50 feet. Every person who owns or operates a snowmobile manufactured after June 30, 1975, shall maintain his machine in such a manner that it will not exceed a sound level limitation of 78 dbA measured at 50 feet.

(4) A manufacturer who certifies that a new snowmobile can comply with the noise limitation requirements of this part shall affix a permanent notice of that certification to every snowmobile offered for sale in the state of Montana.

(5) In certifying that a new snowmobile can comply with the noise limitation requirements of this part, a manufacturer shall make such a certification based upon measurements made in accordance with SAE recommended practice J192, as amended. The department, in enforcing the provisions of this section, shall make measurements of snowmobile noise in accordance with applicable practices outlined in the "Procedure for Sound Level Measurements of Snowmobiles" (January, 1969), as amended, used by the international snowmobile industry association or with such other standards for measurement of sound level as the department may adopt.

(6) This section does not apply to organized races or similar competitive events held on:

(a) private lands, with the permission of the owner, lessee, or custodian of the land; or

(b) public lands, with the consent of the public agency having the authority to grant such consent, provided that total sound produced by such an event may not exceed 50 dbA at any point 50 feet or more outside the area under the control of the sponsoring entity."

Approved March 28, 1979.

CHAPTER NO. 364

AN ACT TO REESTABLISH THE BOARD OF COUNTY PRINTING; REVISING THE COUNTY PRINTING LAW; AMENDING SECTIONS 2-8-103 AND 7-5-2411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of county printing is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

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Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of public accountants, department of professional and occupational licensing, created by 2-15-1641;

(c) board of architects, department of professional and occupational licensing, created by 2-15-1651;

(d) state banking board, department of business regulation, created by 2-15-1803;

(e) state electrical board, department of professional and occupational licensing, created by 2-15-1654;

(f) board of professional engineers and land surveyors, department of professional and occupational licensing, created by 2-15-1653;

(g) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(h) office of the investment commissioner, state auditor's office, created by 2-15-1901;

(i) board of landscape architects, department of professional and occupational licensing, created by 2-15-1652;

(j) board of plumbers, department of professional and occupational licensing, created by 2-15-1655;

(k) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(l) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(m) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

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(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(n) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(t) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(u) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

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(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish and game, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631;

(j) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(k) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agency shall terminate on July 1, 1985: the board of county printing created by 2-15-1102."

Section 3. Section 7-5-2411, MCA, is amended to read:

"**7-5-2411. County printing contract.** (1) *Except as provided in subsection (2), the* county commissioners shall contract with one newspaper to do all the printing for the county, including advertising required by law and all printed forms required by the county, at a rate not exceeding that set by the board. The newspaper shall be:

(a) of general circulation;

(b) published at least once a week;

(c) published in the county;

(d) published continuously in the county for the 12 months preceding the awarding of the contract.

(2) In any county in which no newspaper owns or operates a commercial printing establishment, the county commissioners shall *and in counties of the first class, the county commissioners may* separate the printing contract into two parts, one of which shall provide for the publication of legal advertising only, such contract being let to a legally qualified newspaper, and the other contract shall provide for all printed forms, materials, and supplies required by the county, which contract shall be let to a commercial printing establishment which shall have been in business in the county for at least 1 year.

(3) In no case shall any contract call for payment by the county of any prices in excess of the maximum fixed by the board of county printing.

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(4) Nothing in this part shall limit or restrict the power of a board of county commissioners to call for competitive bids from persons or firms qualified to bid on county printing under the terms of this part or to let contracts at prices less than the maximum fixed by the board of county printing."

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 28, 1979.

CHAPTER NO. 365

AN ACT AMENDING SECTIONS 2-15-1005 AND 2-18-103, MCA, WHICH RELATE TO THE BOARD OF INVESTMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1005, MCA, is amended to read:

"2-15-1005. Board of investments — allocation — composition — quasi-judicial. (1) There is a board of investments.

(2) *Except as otherwise provided in this subsection, the* board is allocated to the department for administrative purposes only as prescribed in 2-15-121. Personnel for the board shall be appointed by the department subject to the approval of the board, *except that the board may employ an investment officer and assistant investment officer who will have general responsibility for management of the board's staff and directing investment activity. The investment officer and assistant investment officer serve at the pleasure of the board, and the board may prescribe the duties and annual salary of both.*

(3) The board is composed of five members, appointed by the governor as prescribed in 2-15-124, informed and experienced in the subject of investments.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124."

Section 2. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials and their chief deputy and executive secretary;

(2) officers and employees of the legislative branch;

(3) judges and employees of the judicial branch;

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(4) members of boards and commissions appointed by the governor, appointed by the legislature, or appointed by other elected state officials;

(5) officers or members of the militia;

(6) agency heads appointed by the governor;

(7) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(8) academic and professional administrative personnel who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(9) teachers under the authority of the department of institutions;

(10) personal staff of the elected officials enumerated in Article VI, section 1, of the constitution of Montana are exempt from 2-18-204, 2-18-205, 2-18-207, and 2-18-1011 through 2-18-1013;

(11) legal services staff and the special assistant attorneys general under the direct control of the attorney general;

(12) investment officer and assistant investment officer of the board of investments."

Approved March 28, 1979.

CHAPTER NO. 366

AN ACT RELATING TO THE INTRODUCTION OF NEW EVIDENCE IN AN ACTION INVOLVING UTILITY REGULATION AND RESUBMISSION OF THE ACTION TO THE PUBLIC SERVICE COMMISSION; AMENDING SECTIONS 69-3-402 AND 69-3-404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-402, MCA, is amended to read:

"69-3-402. Action to challenge commission order. (1) Any party in interest being dissatisfied with an order of the commission fixing any rate, fare, charge, classification, or joint rate or any order fixing any regulation, practice, or service may, within 30 days, commence an action in the district court of the proper county against the commission and other interested parties as defendants to vacate and set aside any such order on the ground that the rate, fare, charge, classification, or joint rate fixed in such order is unlawful or unreasonable or that any such regulation, practice, or service fixed in such order is unlawful or unreasonable.

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(2) The commission and other parties defendant shall file their answer to said complaint within 20 days after the service thereof, whereupon such action shall be at issue and stand ready for *hearing* upon 20 days' notice to either party.

(3) All actions brought under this part shall have precedence over any civil cause of a different nature pending in such court, and the court shall always be deemed open for the *hearing* thereof.

(4) In all actions under this part, the burden of proof shall be upon the party attacking or resisting the order of the commission to show that the order is unlawful or unreasonable, as the case may be."

Section 2. Section 69-3-404, MCA, is amended to read:

"69-3-404. Review confined to record — exceptions. (1) *Except as otherwise provided in this section, review shall be conducted by the court without a jury and shall be confined to the record.*

(2) In cases of alleged irregularities in procedure before the agency not shown in the record, evidence thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(3) If, *before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency,* the court, before proceeding to render judgment *may* transmit a copy of such evidence to the commission and, *if such transmission is made,* shall stay further proceedings in said action for 15 days from the date of such transmission. *The court shall, within 7 days after the introduction of such evidence, decide whether or not to transmit a copy of such evidence to the commission. The court is considered to have ruled that the evidence must be transmitted to the commission unless it orders otherwise within such 7-day period.* Upon receipt of such evidence, the commission shall consider the same and may modify, amend, or rescind its order relating to such rate, fare, charge, classification, joint rate, regulation, practice, or service complained of in said action and shall report its action thereon to said court within 10 days from the receipt of such evidence.

(4) If the commission shall rescind its order complained of, the action shall be dismissed. If it shall alter, modify, or amend the same, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order."

Approved March 29, 1979.

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CHAPTER NO. 367

AN ACT TO AMEND THE LAWS RELATING TO CRIME VICTIMS' COMPENSATION BY CLARIFYING TERMINOLOGY, BY DELETING WELFARE BENEFITS AS A COLLATERAL SOURCE, BY PERMITTING THE DIVISION OF WORKERS' COMPENSATION TO ADOPT REQUIREMENTS CONCERNING INFORMATION ON THE AVAILABILITY OF ASSISTANCE TO VICTIMS AND THE ESTABLISHMENT OF ESCROW ACCOUNTS FOR FUNDS OWED TO INDIVIDUALS INFLICTING INJURY OR DEATH, BY PERMITTING THE REDUCTION OR ELIMINATION OF COMPENSATION WHEN THE VICTIM CONTRIBUTES TO THE INJURY OR DEATH, AND BY CHANGING A REFERENCE TO EARMARKED REVENUE FUND TO AGENCY FUND; AMENDING SECTIONS 53-9-103, 53-9-104, 53-9-109, AND 53-9-125, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-9-103, MCA, is amended to read:

"53-9-103. Definitions. As used in this part, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this part:

(a) a victim;

(b) a dependent of a deceased victim; or

(c) an authorized person acting on behalf of any of them.

(2) "Collateral source" means a source of benefits, *other than welfare benefits,* or advantages for economic loss otherwise compensable under this part which the claimant has received or which is readily available to him from:

(a) the offender;

(b) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this part;

(c) social security, medicare, *and* medicaid;

(d) workers' compensation;

(e) wage continuation programs of any employer;

(f) proceeds of a contract of insurance payable to the *claimant* for loss which *was* sustained because of the criminally injurious conduct; or

(g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. Any such contract in

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this state may not provide that benefits under this part shall be a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source.

(3) "Criminally injurious conduct" means conduct that:

(a) occurs or is attempted in this state;

(b) results in bodily injury or death; and

(c) is punishable by fine, imprisonment, or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle *as described in Title 61.*

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

(5) "Division" means the division of workers' compensation provided for in 2-15-1702.

(6) "Victim" means a person who suffers bodily injury or death as a result of:

(a) criminally injurious conduct;

(b) his good faith effort to prevent criminally injurious conduct; or

(c) his good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct."

Section 2. Section 53-9-104, MCA, is amended to read:

"53-9-104. Powers and duties of division. (1) The division shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation; and

(c) determine all *matters* relating to claims for compensation.

(2) The division may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the division to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(c) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

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(d) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(e) require that any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, or article relating to such crime to deposit any proceeds owed to such individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime or any surviving dependents of the victim, if such individual is convicted of that crime, to be held for such period of time as the division may determine is reasonably necessary to perfect the claims of the victims or dependents. If, after all funds due the victim have been paid to the victim under this section, there remain additional funds in the escrow account, such funds shall be returned to the individual charged or convicted of the crime."

Section 3. Section 53-9-109, MCA, is amended to read:

"53-9-109. Crime victims compensation account. There is a crime victims compensation account in the *agency* fund. There shall be paid into this account 6% of the fines assessed and bails forfeited on all offenses involving a violation of a state statute or a city ordinance relating to the operation or use of motor vehicles, except offenses relating to parking of vehicles."

Section 4. Section 53-9-125, MCA, is amended to read:

"53-9-125. Limitations on awards. (1) Compensation may not be awarded unless the claim is filed with the division within 1 year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is based. The time for filing a claim may be extended by the division for good cause shown.

(2) Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender or to any claimant if the award would unjustly benefit the offender or accomplice. Unless the division determines that the interests of justice otherwise require in a particular case, compensation may not be awarded to the spouse of or a person living in the same household with the offender or his accomplice or to the parent, child, brother, or sister of the offender or his accomplice.

(3) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within 72 hours after its occurrence or the division finds there was good cause for the failure to report within that time.

(4) In order to be entitled to benefits under this part, a claimant must fully cooperate with all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the offender causing the criminally injurious conduct. The division, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies or prosecuting attorneys, may deny or reconsider and reduce an award of compensation.

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(5) Compensation otherwise payable to a claimant shall be reduced or denied to the extent the compensation benefits payable are or can be recouped from collateral sources.

(6) Persons serving a sentence of imprisonment or residing in any other public institution which provides for the maintenance of such person are not entitled to the benefits of this part.

(7) Compensation may be denied or reduced if the victim contributed to the infliction of death or injury with respect to which the claim is made. Any reduction in benefits under this subsection shall be in proportion to what the division finds to be the victim's contribution to the infliction of death or injury."

Approved March 29, 1979.

CHAPTER NO. 368

AN ACT TO FACILITATE THE DESIGNATION OF NONSMOKING AREAS IN PUBLIC PLACES AND TO PROVIDE FOR ENFORCEMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Montana Clean Indoor Air Act of 1979".

Section 2. **Purpose.** The purpose of [this act] is to protect the health of nonsmokers in public places and to provide for reserved areas in some public places for those who choose to smoke.

Section 3. **Definitions.** As used in [this act], the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Enclosed public place" means any indoor area, room, or vehicle used by the general public or serving as a place of work, including but not limited to restaurants, stores, offices, trains, buses, educational or health care facilities, auditoriums, arenas, assembly, and meeting rooms.

(3) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(4) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

(5) "Working area" means an enclosed room where more than one employee works.

Section 4. **Designation or reservation of smoking or nonsmoking areas — notice.** (1) Except for those enclosed public

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places provided for in [section 5 of this act], the proprietor or manager of an enclosed public place shall:

(a) designate nonsmoking areas with easily readable signs; or

(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area; or

(c) designate the entire area as a smoking area.

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, whether or not areas within the establishment have been reserved for nonsmokers.

Section 5. **No smoking signs in certain places.** No smoking signs shall be conspicuously posted in elevators, museums, galleries, kitchens, and libraries of any establishment doing business with the general public.

Section 6. **Requirements of health care facilities.** (1) Health care facilities shall:

(a) ask all in-patients, prior to admission, to designate their preference for a nonsmoking or smoking patient room and, when possible, accommodate such a preference;

(b) prohibit smoking in all kitchens, laboratories, and corridors;

(c) prohibit smoking in storage areas for supplies or materials and wherever flammable liquids, gases, or oxygen is stored or in use;

(d) provide a nonsmoking area in all waiting rooms;

(e) prohibit employees from smoking in patient rooms; and

(f) require visitors to obtain express approval from all patients in the patient room, or from the patients' physicians, prior to smoking.

(2) Nothing in this section shall prohibit a health care facility from banning smoking on all or a part of its premises.

(3) All areas of a health care facility not specifically referred to in this section may be considered smoking areas unless posted otherwise.

Section 7. **Exemptions.** The following shall be exempt from [this act]:

(a) restrooms;

(b) taverns or bars where meals are not served;

(c) vehicles or rooms seating six or fewer members of the public.

Section 8. **Enforcement.** The provisions of [this act] shall be supervised and enforced by the local boards of health under the direction of the department.

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Section 9. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 29, 1979.

CHAPTER NO. 369

AN ACT AMENDING SECTION 39-31-406, MCA, TO REQUIRE ISSUANCE OF FINAL ORDERS CONCERNING UNFAIR LABOR COMPLAINTS WITHIN 5 MONTHS AFTER SUBMITTING THE COMPLAINT TO THE HEARING OFFICER.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-31-406, MCA, is amended to read:

"39-31-406. Hearing on complaint — findings — order. (1) The complainant and the person charged shall be parties and shall appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the board or its agent conducting the hearing, any other person may be allowed to intervene in the proceeding and present testimony.

(2) In any hearing the board is not bound by the rules of evidence prevailing in the courts.

(3) The testimony taken by the board or its agent shall be reduced to writing and filed with the board. Thereafter, in its discretion the board upon notice may take further testimony or hear argument.

(4) If, upon the preponderance of the testimony taken, the board is of the opinion that any person named in the complaint has engaged in or is engaging in an unfair labor practice, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged or the payment to him of any back pay if it is found that the individual was suspended or discharged for cause.

(5) If, upon the preponderance of the testimony taken, the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint.

(6) If the evidence is presented before a member of the board or before an examiner, the member or the examiner, as the case may be, shall issue

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and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within 20 days after service thereof upon the parties or within such further period as the board may authorize, the recommended order shall become the order of the board. *The board shall issue a final order within 5 months after a complaint is submitted to the hearing officer.*"

Approved March 29, 1979.

CHAPTER NO. 370

AN ACT TO AMEND SECTION 7-4-2108, MCA, TO INCREASE THE EXPENSES ALLOWED A MEMBER OF A BOARD OF COUNTY COMMISSIONERS WHO RESIDES 50 MILES OR MORE FROM THE COUNTY SEAT AND PERFORMS OFFICIAL DUTIES IN THE COUNTY SEAT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2108, MCA, is amended to read:

"**7-4-2108. Mileage allowance for county commissioners — expenses.** (1) In addition to the salary provided by 7-4-2107(1), each member of the board of county commissioners in counties of the first, second, third, and fourth class shall receive a mileage allowance as provided in 2-18-503 for the distance necessarily traveled in going to and returning from the county seat and his place of residence, each day that such trip is actually made and while engaged in the performance of his official duties.

(2) Each member of the board in all other counties is entitled to a mileage allowance as provided in 2-18-503 for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made *to perform official duties.* Any county commissioner whose place of residence is 50 miles or more from the county seat, as measured by the usual route of travel, *and who elects to remain more than one day in the county seat to attend sessions of the board or perform his official duties is entitled to* receive, *in addition to mileage for one round trip between his place of residence and the county seat, $18* per day as expenses for each day's attendance on sessions of the board while engaged in the performance of his official duties.

(3) All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(4) When other than commercial, nonreceiptable lodging facilities are utilized by a county commissioner, the amount of $7 will be authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in this section. However, when

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overnight accommodations are provided at the expense of any government entity, no reimbursement may be claimed for lodging.

(5) This section does not apply to counties that have adopted charter form of government."

Approved March 29, 1979.

CHAPTER NO. 371

AN ACT TO AUTHORIZE THE BOARD OF COUNTY COMMISSIONERS TO ESTABLISH COMPENSATION FOR CORONERS; AMENDING SECTIONS 7-4-2501, 7-4-2902, AND 7-4-2911, MCA; AND REPEALING SECTIONS 7-4-2921 AND 7-4-2922, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Salary of coroner.** The coroner is entitled to receive a salary established prior to July 1 of each year by the board of county commissioners. The salary must be in effect upon the first day of each ensuing fiscal year.

Section 2. Section 7-4-2501, MCA, is amended to read:

"7-4-2501. Compensation of county officers. (1) The county surveyor, public administrator, justice of the peace, and constable may collect and receive for their own use, respectively, for official services, the fees and emoluments prescribed in this chapter.

(2) All other county officers receive salaries."

Section 3. Section 7-4-2902, MCA, is amended to read:

"7-4-2902. Justice of peace to act as coroner in certain cases. (1) If the office of coroner is vacant or he is absent or unable to attend, the duties of his office may be discharged by any justice of the peace of the county with the like authority and subject to the same obligations and penalties as the coroner.

(2) A justice of the peace acting as coroner is allowed the same *salary* as the coroner *for that portion of time he actually spends discharging the duties of coroner.*"

Section 4. Section 7-4-2911, MCA, is amended to read:

"7-4-2911. Duties of county coroner. (1) The coroner must hold inquests as provided in Title 46, chapter 4, parts 1 and 2.

(2) In the cases specified in 25-3-205, the coroner must discharge the duties of sheriff. If acting as sheriff, the coroner is allowed the same *salary* as sheriff or *the same fees as* constable for like services.

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(3) When a prisoner confined in the state prison dies, the coroner of the county wherein the state prison is located may hold an inquest as provided in Title 46, chapter 4, parts 1 and 2."

Section 5. **Repealer.** Sections 7-4-2921 and 7-4-2922, MCA, are repealed.

Approved March 29, 1979.

CHAPTER NO. 372

AN ACT TO TRANSFER TO THE GENERAL FUND OF THE STATE ALL MONEY REMAINING IN THE WARM SPRINGS STATE HOSPITAL SINKING ACCOUNT AND ALL MONEY TO BE DEPOSITED IN THAT ACCOUNT IN THE SINKING FUND, AFTER ALL OUTSTANDING BONDS HAVE BEEN REDEEMED AND ALL EXPENSES OF LIQUIDATING THE BONDS HAVE BEEN PAID; AMENDING SECTION 6, CHAPTER 246, LAWS OF 1953, TO AUTHORIZE THE TRANSFER.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Transfer of funds.** After all outstanding general obligation bonds issued in 1955 for construction at the Warm Springs state hospital have been redeemed and all expenses incurred in liquidating the bonds have been paid, all money remaining in the Warm Springs state hospital sinking account or money to be deposited in that account in the sinking fund are transferred from that account in the sinking fund to the general fund of the state.

Section 2. Section 6, Chapter 246, Laws of 1953, is amended to read:

"Section 6. There shall be levied annually upon all property in the State of Montana subject to taxation an ad valorem tax upon each dollar of the taxable valuation of such property sufficient to pay the interest accruing on said bonds as such interest shall fall due and to pay the principal of said bonds as such principal becomes due, said levy, however, not to exceed one (1) mill per annum until the indebtedness herein provided for shall have been fully paid and discharged. The tax when collected by the county treasurers of the several counties of the state shall be by them accounted to and paid into the state treasury of the State of Montana, and by the state treasurer placed in the "Montana state hospital for the insane bond interest and redemption fund", which fund shall be used exclusively for the payment of principal and interest on said bonds as the same become due, *except that any amount remaining after all bonds have been redeemed and all costs of liquidating the bonds have been paid shall be deposited in the general fund of the state of Montana.*"

Approved March 29, 1979.

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CHAPTER NO. 373

AN ACT TO PROVIDE THAT INTEREST ON A JUDGMENT INVOLVING A CONTRACTUAL OBLIGATION MUST BE PAID AT THE RATE SPECIFIED IN THE CONTRACTUAL OBLIGATION; AMENDING SECTIONS 31-1-107 AND 31-1-110, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-110, MCA, is amended to read:

"31-1-110. Interest — judgment. *(1) Except as provided in subsection (2), interest* is payable on judgments recovered in the courts of this state at the rate of 6% per annum and no greater rate. Such interest must not be compounded in any manner or form.

(2) Interest on a judgment recovered in the courts of this state involving a contractual obligation that specifies an interest rate must be paid at the rate specified in the contractual obligation."

Section 2. Section 31-1-107, MCA, is amended to read:

"31-1-107. Interest rate allowed by agreement. (1) On amounts up to $150,000, parties may agree in writing for the payment of any rate of interest not more than 10% per annum or more than 4 percentage points in excess of the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district, whichever is greater, and such interest shall be allowed according to the terms of the agreement.

(2) On amounts exceeding $150,000 and up to $300,000, parties may agree in writing for the payment of any rate of interest not more than 10% per annum or more than 5 percentage points in excess of the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district, whichever is greater, and such interest shall be allowed according to the terms of the agreement.

(3) On amounts exceeding $300,000, parties may agree in writing to the payment of any rate of interest, without limitation, and such interest shall be allowed according to the terms of the agreement."

Section 3. **Application.** This act applies only to judgments entered after June 30, 1979.

Approved March 29, 1979.

CHAPTER NO. 374

AN ACT EXPANDING THE DEFINITION OF THEFT TO INCLUDE FRAUDULENTLY OBTAINED PUBLIC ASSISTANCE; AMENDING SECTION 45-6-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

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(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when he purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when he purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance, as defined in 53-3-101, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person convicted of the offense of theft of property not exceeding $150 in value shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of the offense of theft of property exceeding $150 in value or theft of any commonly domesticated hoofed animal shall be imprisoned in the state prison for any term not to exceed 10 years.

(6) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Approved March 29, 1979.

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CHAPTER NO. 375

AN ACT TO AMEND THE LAW REGARDING THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM BY INCREASING THE CONTRIBUTIONS TO BE MADE BY CERTAIN MEMBERS, CITIES, AND THE STATE AND PROVIDING FOR REDUCTION OF UNFUNDED LIABILITIES; AMENDING SECTIONS 19-9-107, 19-9-503, 19-9-601, 19-9-702, AND 19-9-703, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-9-107, MCA, is amended to read:

"19-9-107. Election to join plan — transfer of assets. (1) Cities other than those participating in the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974, as of June 30, 1977, may elect to join the plan by passing an ordinance stating the election and the consent of the city to be bound by the provisions of this chapter. Upon the enactment of such an ordinance, the provisions of this chapter become applicable to the city. Any city enacting such an ordinance shall send a certified copy thereof to the board and shall, as soon as possible thereafter, deposit with the board all cash and securities held by it in its local police reserve or retirement fund. The value of the securities shall be determined by the board.

(2) The trustees or other administrative head of the local system as of the effective date of the election shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the active members and the relative shares of the members as of that date. Such shares shall be charged to the employer and credited to the respective individual accounts of the members in the plan and administered as if the contributions had been made during membership in the plan. Any excess of employer credits over charges under this section will be offset, with interest, against future required employer contributions. Any excess of employer charges over credits under this section are payable by the employer, with interest, on a basis determined by the procedure described in 19-9-503(2) and (3)."

Section 2. Section 19-9-503, MCA, is amended to read:

"19-9-503. Unfunded liabilities. (1) It is found and declared by the legislature that many cities operating under prior plans have excess and unfunded liabilities under such prior plans, which liabilities cannot be amortized by the percentage contributions set forth in 19-9-702 and 19-9-703.

(2) The administrator shall, on or before October 1, 1977, determine the excess and unfunded liability of each city which participates in the plan created by this chapter. The determination of the administrator, in the absence of fraud, abuse of discretion, or arithmetic error, is final and binding on each city. Each city found by the administrator to have an excess and unfunded liability under a prior plan which as of July 1, 1977, is not funded by sums on deposit or funds available for deposit with the

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administrator shall pay an additional sum over a period of time to amortize its excess liability as determined by the administrator. If any city and the administrator are unable by January 1, 1978, to negotiate and reduce to writing the terms of an agreement satisfactory to both of them for the city to amortize its excess liability, the administrator shall require such city to pay an additional sum to amortize its excess liability on July 1, 1977, over a period of not more than 40 years.

(3) Each city found by the administrator to be paying an amount in excess of the amount necessary to amortize its liabilities under the prior plan and under this chapter shall receive a credit in the accounts of the administrator for any such excess payments.

(4) The excess unfunded liabiliity for each city shall be revaluated by the administrator on July 1, 1980, as part of the normal actuarial valuations required in 19-9-504 reflecting the change in the contribution rates made in [section 3, 4, and 5 of this bill], and each city's funding position will be changed using the procedures of 19-9-107. The resulting report will be made available to the cities no later than October 1, 1980.

(5) If a majority of the cities participating in the municipal police officers' retirement system do not agree with the results of the revaluation outlined in subsection (4), they may, by mutual agreement of the cities, select a qualified actuary, as defined in 19-9-504, to perform a second actuarial valuation as of July 1, 1980, with the conclusions of the second actuarial valuation to replace the actuarial valuation discussed in subsection (4). The cost of the second actuarial valuation shall be paid by all cities participating in the system in proportion to their active membership in the system as of July 1, 1980.

(6) The time and method of settlement on the unfunded liability will be as agreed on by the administrator and the city. The minimum allowable payment must be equal to or greater than the interest due at the interest rate used in the actuarial study for the unfunded balance."

Section 3. Section 19-9-601, MCA, is amended to read:

"**19-9-601. Member contributions.** The treasurer or other appropriate official of each employer shall retain from the monthly compensation of each active member a sum equal to 6% *or, in the case of a member first employed by an employer as a police officer after June 30, 1979,* 7 ½% of his monthly compensation, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, for his services as a police officer. The monthly deduction from the salaries of police officers shall be paid to the administrator for the purpose of paying the retirement allowances of retired police officers."

Section 4. Section 19-9-702, MCA, is amended to read:

"**19-9-702. State contribution.** The state of Montana shall make its contributions through the state auditor out of the premium tax on motor vehicle property and casualty insurance policies. Such payments shall be made annually from the gross premium tax after deduction for cancellations and returned premiums. The administrator shall notify the auditor

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of the annual compensation paid to all active members during the preceding year, and the state's contribution shall be *14%* of such compensation."

Section 5. Section 19-9-703, MCA, is amended to read:

"19-9-703. Employer contribution. Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official out of moneys available to the city for such purpose. The employer's contribution shall be *14%* of the total monthly compensation paid to all active members during the preceding month and shall be payable monthly to the administrator."

Approved March 29, 1979.

CHAPTER NO. 376

AN ACT PROVIDING FOR GIFTS AND DEVISES TO ESTATES AND FOR THE CREATION AND EXERCISE OF POWERS TO APPOINT TO ESTATES; DEFINING "ESTATES"; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** It is the purpose of [this act] to declare that a gift or devise may be made to the estate of a named or otherwise designated person and that a power to appoint to the estate of such a person may be created and exercised in order to ensure that persons who make inter vivos or testamentary conveyances that are subject to the law of Montana can effectively use forms of conveyances that are commonly used in other states to qualify for the federal estate and gift tax marital deductions.

Section 2. **Conveyances to an estate.** Unless a contrary intention appears, a devise, as defined in 72-1-103(8), or an inter vivos conveyance of a property interest to the estate of a named or otherwise designated person passes the interest as if the interest had been owned by that person. The interest may pass to the heirs of that person, may be used to satisfy devises made in his will, or may be used to satisfy claims for debts or taxes.

Section 3. **Creation or exercise of a power to appoint to an estate.** A person may be given a power to appoint a legal or equitable interest in property to his own estate by will or deed. The donee of such a power is considered to have a general power of appointment exercisable in favor of any person. Permissible exercise of the power as created may include but is not limited to:

(1) direction to the personal representative of the donee to administer the interest as if it were an interest in the property of the donee;

(2) direction to the personal representative to use the interest to satisfy the donee's devises or claims for debts and taxes; or

(3) appointment of the interest to any person to whom the donee might give or devise his own property.

Section 4. **Estate defined.** The word "estate" as used in [this act] means persons who may take interests in property.

Section 5. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1979.

CHAPTER NO. 377

AN ACT TO PROHIBIT A FORMER STATE EMPLOYEE FROM CONTRACTING OR BEING EMPLOYED BY A CONTRACTOR WITH THE STATE FOR 6 MONTHS FOLLOWING THE TERMINATION OF HIS EMPLOYMENT; AND TO REMOVE THE EXCEPTION FOR PROFESSIONAL SERVICE CONTRACTS; AMENDING SECTION 2-2-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-201, MCA, is amended to read:

"2-2-201. Public officers, employees, and former employees not to have interest in contracts. Members of the legislature, state, county, city, town, or township officers or any deputy or employee thereof must not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees. *A former employee may not, within 6 months following the termination of his employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which he was directly involved during his employment.* In this section the term:

(1) "be interested in" does not include holding a minority interest in a corporation;

(2) "contract" does not include:

(a) contracts awarded to the lowest responsible bidder based on competitive bidding procedures;

(b) merchandise sold to the highest bidder at public auctions;

(c) investments or deposits in financial institutions which are in the business of loaning or receiving money."

Approved March 29, 1979.

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CHAPTER NO. 379

AN ACT TO CLARIFY THE RESPONSIBILITIES OF THE FISH AND GAME COMMISSION AND THE DEPARTMENT OF FISH AND GAME IN REGARD TO PARKS AND RECREATION; DELETING THE REQUIREMENT THAT ONE COMMISSION MEMBER BE AN ATTORNEY; AND AMENDING SECTIONS 2-15-3402 AND 87-1-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3402, MCA, is amended to read:

"2-15-3402. Fish and game commission — composition — qualifications — quasi-judicial. (1) There is a fish and game commission.

(2) The commission consists of five members. At least one member shall be experienced in the breeding and management of domestic livestock. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.

(3) Appointments shall be made without regard to political affiliation and shall be made solely for the *wise management* of the fish, wildlife, *and state parks, and other outdoor recreational resources* of this state. A person may not be appointed to the commission unless he is informed or interested and experienced in the subject of wildlife, fish, *and outdoor recreation* and the requirements for the conservation and protection of fish, game, game birds, animals, *and outdoor recreational resources.*

(4) A vacancy occurring on the commission shall be filled by the governor in the same manner and from the district in which the vacancy occurs.

(5) The fish and game commission is designated as a quasi-judicial board for purposes of 2-15-124. *Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the commission."*

Section 2. Section 87-1-209, MCA, is amended to read:

"87-1-209. Acquisition and sale of lands or waters. (1) The department, with the consent of the commission, may acquire by purchase, condemnation, lease, agreement, gift, or devise and may acquire ease-

ments upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries, nursery ponds, or game farms;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) (a) The department, with the consent of the commission, may dispose of lands and waters acquired by it on those terms after that public notice, without regard to other laws which provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable.

(b) Notice of sale describing the lands or waters to be disposed of shall be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if no newspaper is published in that county, then in any newspaper with general circulation in that county.

(c) The notice shall advertise for cash bids to be presented to the director within 30 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid shall be accepted upon payment of the balance due within 10 days after mailing notice by registered or certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders shall be similarly notified in succession until a sale is completed. Deposits shall be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids which do not equal or exceed the full market value of the lands and waters as determined by the department. The department shall convey the lands and waters without covenants of warranty by deed executed by the governor or in his absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(3) Notwithstanding the provisions of 18-4-102, the department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas, in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish, and areas which provide access to fishing sites for the public. In no case may the total cost of such installment contracts exceed the cost of purchases authorized by the department and appropriated by the legislature."

Section 3. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 29, 1979.

CHAPTER NO. 378

AN ACT TO CLARIFY THE ROLE OF THE COUNTY CORONER IN THE CARE AND DISPOSITION OF DEAD BODIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Dead bodies to be held pending investigation.** A dead body in the custody of a county coroner shall be held until such time as the coroner after consultation with appropriate law enforcement officials and the county attorney, establishes that it is not necessary to hold the body to determine the reasonable and true cause of death or that the body is no longer necessary to assist any local investigations.

Section 2. **Removal of a dead body.** (1) If a county does not provide a morgue or morgue facilities for the use of the county coroner, the coroner may use existing hospital facilities for such purposes.

(2) The person lawfully entitled to custody of the deceased person's remains shall be notified of the death as soon as is practicable, and at this time the coroner shall obtain permission to release the body to a funeral home.

(3) A post-mortem examination may be conducted at a funeral home when so ordered by the county coroner.

Approved March 29, 1979.

CHAPTER NO. 379

AN ACT TO CLARIFY THE RESPONSIBILITIES OF THE FISH AND GAME COMMISSION AND THE DEPARTMENT OF FISH AND GAME IN REGARD TO PARKS AND RECREATION; AMENDING SECTIONS 2-15-3402, 70-16-301, 87-1-201, 87-1-209, AND 87-1-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3402, MCA, is amended to read:

"2-15-3402. Fish and game commission — composition — qualifications — quasi-judicial. (1) There is a fish and game commission.

(2) The commission consists of five members. At least one member shall be experienced in the breeding and management of domestic livestock. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

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(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.

(3) Appointments shall be made without regard to political affiliation and shall be made solely for the *wise management* of the fish, wildlife, *and state parks, and other outdoor recreational resources* of this state. A person may not be appointed to the commission unless he is informed or interested and experienced in the subject of wildlife, fish, *and outdoor recreation* and the requirements for the conservation and protection of fish, game, game birds, animals, *and outdoor recreational resources.*

(4) A vacancy occurring on the commission shall be filled by the governor in the same manner and from the district in which the vacancy occurs.

(5) The fish and game commission is designated as a quasi-judicial board for purposes of 2-15-124."

Section 2. Section 70-16-301, MCA, is amended to read:

"70-16-301. Recreational purposes defined. "Recreational purposes", as used herein, shall include hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, winter sports, hiking, or other pleasure expeditions."

Section 3. Section 87-1-201, MCA, is amended to read:

"87-1-201. Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) It shall enforce all the laws of the state respecting the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) It shall have the exclusive power to spend for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Moneys collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, from appropriations, or

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received by the department from any other sources are appropriated to and under control of the department.

(4) It may discharge any appointee or employee of the department for cause at any time.

(5) It may dispose of all property owned by the state used for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds which is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the earmarked revenue fund.

(6) It may not issue permits to anyone to carry firearms within this state except to regularly appointed officers or wardens.

(7) The department is hereby authorized to make, promulgate, and enforce such reasonable rules and regulations not inconsistent with the provisions of [this act] as in its judgment will accomplish the purpose of [this act].

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or without the state."

Section 4. Section 87-1-209, MCA, is amended to read:

"87-1-209. Acquisition and sale of lands or waters. (1) The department, with the consent of the commission, may acquire by purchase, condemnation, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries, nursery ponds, or game farms;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) (a) The department, with the consent of the commission, may dispose of lands and waters acquired by it on those terms after that public notice, without regard to other laws which provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable.

(b) Notice of sale describing the lands or waters to be disposed of shall be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or

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waters are situated or, if no newspaper is published in that county, then in any newspaper with general circulation in that county.

(c) The notice shall advertise for cash bids to be presented to the director within 30 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid shall be accepted upon payment of the balance due within 10 days after mailing notice by registered or certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders shall be similarly notified in succession until a sale is completed. Deposits shall be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids which do not equal or exceed the full market value of the lands and waters as determined by the department. The department shall convey the lands and waters without covenants of warranty by deed executed by the governor or in his absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(3) Notwithstanding the provisions of 18-4-102, the department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas, in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish, and areas which provide access to fishing sites for the public. In no case may the total cost of such installment contracts exceed the cost of purchases authorized by the department and appropriated by the legislature."

Section 5. Section 87-1-301, MCA, is amended to read:

"**87-1-301. Powers of the commission.** The commission shall:

(1) set the policies for the protection, preservation, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law, *including the promotion of state parks and outdoor recreation*;

(2) establish the hunting, fishing, and trapping rules of the department;

(3) establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(4) have the power within the department to establish wildlife refuges and bird and game preserves;

(5) approve all acquisitions or transfers by the department of interests in land or water;

(6) review and approve the budget of the department prior to its transmittal to the budget office; and

(7) review and approve construction projects whose estimated cost is more than $1,000 but less than $5,000."

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Section 6. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 29, 1979.

CHAPTER NO. 380

AN ACT TO AMEND SECTION 2-3-203, MCA, TO REQUIRE THAT A MEETING OF A SUBCOMMITTEE OF A PUBLIC AGENCY BE OPEN TO THE PUBLIC.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-3-203, MCA, is amended to read:

"2-3-203. Meetings of public agencies to be open to public — exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds shall be open to the public.

(2) Provided, however, the presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting shall be open.

(3) However, a meeting may be closed to discuss a strategy to be followed with respect to collective bargaining or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public agency.

(4) Any committee or subcommittee appointed by a public body for the purpose of conducting business which is within the jurisdiction of that agency shall be subject to the requirements of this section."

Approved March 29, 1979.

CHAPTER NO. 381

AN ACT TO REPEAL SECTION 39-4-108, MCA, WHICH WAS DECLARED UNCONSTITUTIONAL IN UNION PACIFIC RAILROAD COMPANY V. WOODAHL, 308 F. SUPP. 1002 (1970), AS DIRECTLY CONFLICTING WITH 45 U.S.C. 61 THROUGH 64.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 39-4-108, MCA, is repealed.

Approved March 29, 1979.

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CHAPTER NO. 382

AN ACT TO PERMIT A LICENSED WHOLESALER, SUBJOBBER, OR RETAILER TO SELL CIGARETTES TO A RESIDENT OR NON-RESIDENT PERSON, WHOLESALER, SUBJOBBER, OR RETAILER WHO IS EXEMPT FROM STATE CIGARETTE TAXATION PROVISIONS; AMENDING SECTIONS 16-11-113, 16-11-131, 16-11-132, AND 16-11-133, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-11-113, MCA, is amended to read:

"16-11-113. Tax insignia. (1) Within 72 hours after receipt by the distributor or dealer of any cigarettes, except as hereinafter provided, he shall cause to be securely affixed thereto the required insignia denoting the tax thereon. *A person specifically exempted under the provisions of 16-11-132(2) may not be considered to be acting unlawfully under this section.*

(2) Said insignia shall be properly canceled prior to sale or removal for consumption, under such regulations as the department may prescribe.

(3) Each package shall have the required insignia to affix thereto in such a manner that the insignia will be destroyed when the package is opened.

(4) Wholesalers and retailers licensed under this part may buy, sell, or have in their possession only cigarettes which have the insignia provided for in this part on each package. The insignia provided for in this part shall be sold to and affixed by licensed wholesalers and licensed retailers only.

(5) Whenever any cigarettes are found in the place of business of any unlicensed wholesaler, retailer, or other person without the insignia affixed and canceled or not marked as having been received by the unlicensed wholesaler, retailer, or person within the preceding 72 hours, the presumption shall be that such cigarettes are kept therein in violation of the provisions of this part."

Section 2. Section 16-11-131, MCA, is amended to read:

"16-11-131. Transporting cigarettes without insignia a misdemeanor. It shall be unlawful for any person to transport into, receive, carry, or move from place to place within this state, except in the course of interstate commerce, any cigarettes which do not bear the insignia required by this part, *except for a person specifically exempted in 16-11-132(2).* Any person violating the provisions of this section is guilty of a misdemeanor and shall be punished as hereinafter provided."

Section 3. Section 16-11-132, MCA, is amended to read:

"16-11-132. Unlawful to sell cigarettes without valid license — exceptions. (1) No person shall sell, offer to sell, or possess with

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intent to sell any cigarettes, at wholesale or retail, unless his license is current and valid under the provisions of this part.

(2) No person shall sell, offer to sell, or possess with intent to sell any cigarettes, at wholesale or retail, to a resident or nonresident wholesaler, subjobber, *or* retailer who is not licensed under this part or who is not licensed by the state in which he sells, offers to sell, or intends to sell cigarettes, *except that a resident wholesaler, resident subjobber, or retailer licensed under the provisions of this chapter may sell cigarettes to a resident or nonresident person, wholesaler, subjobber, or retailer not licensed under this chapter if:*

(a) such resident or nonresident person, wholesaler, subjobber, or retailer is exempt from state cigarette taxation provisions;

(b) such resident or nonresident person, wholesaler, subjobber, or retailer furnishes documentary evidence that he is exempt from state cigarette taxation provisions; and

(c) such resident or nonresident person, wholesaler, subjobber, or retailer signs a receipt of purchase for any cigarettes evidencing that he is exempt from state cigarette taxation provisions.

(3) Any person violating the provisions of this section is guilty of a misdemeanor and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state."

Section 4. Section 16-11-133, MCA, is amended to read:

"16-11-133. Sale and use of cigarettes without insignia unlawful. Every person who sells any package of cigarettes which does not bear the insignia required by this part and every person who uses or consumes a cigarette within this state, taken from a package which does not bear the required insignia, is guilty of a misdemeanor and shall be punished as hereinafter provided, *except that a person specifically exempted under the provisions of 16-11-132(2) may not be considered to be acting unlawfully under this section.*"

Approved March 29, 1979.

CHAPTER NO. 383

AN ACT TO PROVIDE FOR THE SUPERVISION, REHABILITATION, AND LIQUIDATION OF INSURERS; REPEALING SECTIONS 33-2-901 THROUGH 33-2-948, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title, construction, and purpose.** (1) [This act] shall be cited as the "Insurers Supervision, Rehabilitation, and Liquidation Act".

(2) [This act] may not be interpreted to limit the powers granted the commissioner by other provisions of the law.

(3) [This act] shall be liberally construed to effect the purpose stated in subsection (4).

(4) The purpose of [this act] is the protection of the interests of insureds, claimants, creditors, and the public generally, with minimum interference with the normal prerogatives of the owners and managers of insurers, through:

(a) early detection of any potentially dangerous condition in an insurer and prompt application of appropriate corrective measures;

(b) improved methods for rehabilitating insurers, involving the cooperation and management expertise of the insurance industry;

(c) enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation;

(d) equitable apportionment of any unavoidable loss;

(e) lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process and by extending the scope of personal jurisdiction over debtors of the insurer outside this state; and

(f) regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business.

Section 2. **Definitions.** For the purposes of [this act] the following definitions apply:

(1) "Ancillary state" means any state other than a domiciliary state.

(2) "Commissioner" means the commissioner of insurance of this state.

(3) "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

(4) "Delinquency proceeding" means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer and any summary proceeding under [section 9 or 10]. "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding.

(5) "Doing business" includes any of the following acts, whether effected by mail or otherwise:

(a) the issuance or delivery of contracts of insurance to persons resident in this state;

(b) the solicitation of applications for such contracts or other negotiations preliminary to the execution of such contracts;

(c) the collection of premiums, membership fees, assessments, or other consideration for such contracts;

(d) the transaction of matters subsequent to execution of such contracts and arising out of them; or

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(e) operating under a license or certificate of authority, as an insurer, issued by the commissioner.

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry.

(7) "Fair consideration" is given for property or obligation:

(a) when in exchange for such property or obligation, as a fair equivalent therefor and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or

(b) when such property of obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained.

(8) "Foreign country" means any other jurisdiction not in any state.

(9) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.

(10) "Guaranty association" means the Montana insurance guaranty association, the workers' compensation security fund, the Montana life and health insurance guaranty association, and any other similar entity now or hereafter created by the legislature of this state for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entities now in existence in or hereafter created by the legislature of any other state.

(11) (a) "Insolvency" or "insolvent" means:

(i) for an insurer issuing only assessable fire insurance policies, the inability to pay any obligation within 30 days after it becomes payable; or

(ii) for any other insurer, the inability to pay its obligations when they are due or when its admitted assets do not exceed its liabilities plus the greater of:

(A) any capital and surplus required by law for its organization; or

(B) the total par or stated value of its authorized and issued capital stock;

(iii) as to any insurer licensed to do business in this state as of [the effective date of this act] which does not meet the standard established under subsection (ii), for a period not to exceed 3 years from [the effective date of this act], the inability to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the commissioner under provisions of the insurance law.

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(b) For purposes of this subsection "liabilities" include but are not limited to reserves required by statute or by the commissioner upon a subject company at the time of admission or subsequent thereto.

(12) "Insurer" means any person who has done, purports to do, is doing, or is licensed to do insurance business and is or has been subject to the authority of or to liquidation, rehabilitation, reorganization, supervision, or conservation by any insurance commissioner. Any other persons included under [section 3] are considered to be insurers.

(13) "Preferred claim" means any claim with respect to which the terms of [this act] accord priority of payment from the general assets of the insurer.

(14) "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context requires.

(15) "Reciprocal state" means any state other than this state in which in substance and effect [sections 18(1), 52, 53, and 55 through 57] are in force and in which provisions are in force requiring that the commissioner or equivalent official be the receiver of a delinquent insurer and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

(16) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process.

(17) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class of persons, but not including any claim secured by general assets.

(18) "State" means any state, district, or territory of the United States.

(19) "Transfer" includes the sale and every other mode, direct or indirect, of disposing of or parting with property or with an interest therein or with the possession thereof or fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor is considered a transfer suffered by the debtor.

Section 3. **Persons covered.** The proceedings authorized by [this act] may be applied to:

(1) all insurers who are doing or have done insurance business in this state and against whom claims arising from that business may exist now or in the future;

(2) all insurers who purport to do an insurance business in this state;

(3) all insurers who have insureds resident in this state;

(4) all other persons organized or in the process of organizing with the intent to do an insurance business in this state;

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(5) all nonprofit service plans and all fraternal benefit societies and beneficial societies; or

(6) all title insurance companies.

Section 4. **Jurisdiction and venue.** (1) No delinquency proceeding may be commenced under [this act] by anyone other than the commissioner and no court shall have jurisdiction to entertain, hear, or determine any proceeding commenced by any other person.

(2) No court of this state has jurisdiction to entertain, hear, or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer or praying for an injunction or restraining order or other relief preliminary to, incidental to, or relating to such proceedings other than in accordance with [this act].

(3) In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Montana Rules of Civil Procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

(a) if the person served is obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker in any action on or incident to the obligation;

(b) if the person served is a reinsurer who has at any time written a policy of reinsurance for an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced or is an agent or broker of or for the reinsurer in any action on or incident to the reinsurance contract; or

(c) if the person served is or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced in any action resulting from such a relationship with the insurer.

(4) If the court on motion of any party finds that any action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an appropriate order to stay further proceedings on the action in this state.

(5) All actions herein authorized shall be brought in the district court in the county in which the office of the commissioner is located.

Section 5. **Injunctions and orders.** (1) Any receiver appointed in a proceeding under [this act] may at any time apply for and any court of general jurisdiction may grant such restraining orders, preliminary and permanent injunctions, and other orders as may be necessary to prevent:

(a) the transaction of further business;

(b) the transfer of property;

(c) interference with the receiver or with a proceeding under [this act];

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(d) waste of the insurer's assets;

(e) dissipation and transfer of bank accounts;

(f) the institution or further prosecution of any actions or proceedings;

(g) the obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its policyholders;

(h) the levying of execution against the insurer, its assets, or its policyholders;

(i) the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;

(j) the withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or

(k) any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders or the administration of any proceeding under [this act].

(2) The receiver may apply to any court outside of the state for the relief described in subsection (1).

Section 6. **Cooperation of officers, owners, and employees.** (1) Any officer, manager, director, trustee, owner, employee, or agent of any insurer or any other persons with authority over or in charge of any segment of the insurer's affairs shall cooperate with the commissioner in any proceeding under [this act] or any investigation preliminary to the proceeding. The term "person" as used in this section includes any person who exercises control directly or indirectly over activities of an insurer through any holding company or other affiliate of the insurer. "To cooperate" includes but is not limited to the following:

(a) replying promptly in writing to any inquiry from the commissioner requesting such a reply; and

(b) making available to the commissioner any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in his possession, custody, or control.

(2) No person may obstruct or interfere with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto.

(3) This section shall not be construed to abridge otherwise existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings, or other orders.

(4) Any person included within subsection (1) who fails to cooperate with the commissioner or any person who obstructs or interferes with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto or who violates any order the commissioner issued validly under [this act] may:

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(a) be sentenced to pay a fine not exceeding $10,000 or to undergo imprisonment for a term of not more than 1 year, or both; or

(b) after a hearing, be subject to the imposition by the commissioner of a civil penalty not to exceed $10,000 and to the revocation or suspension of any insurance licenses issued by the commissioner.

Section 7. **Bonds.** In any proceeding under [this act], the commissioner and his deputies are responsible on their official bonds for the faithful performance of their duties. If the court finds it desirable for the protection of the assets, it may at any time require an additional bond from the commissioner or his deputies, and such bonds shall be paid for out of the assets of the insurer as a cost of administration.

Section 8. **Continuation of delinquency proceedings.** Every proceeding heretofore commenced under the laws in effect before the enactment of [this act] shall be considered to have commenced under [this act] for the purpose of conducting the proceeding henceforth, except that in the discretion of the commissioner the proceeding may be continued, in whole or in part, as it would have been continued had [this act] not been enacted.

Section 9. **Commissioner's summary orders and supervision proceedings.** (1) Whenever the commissioner determines, after a hearing held under subsection (5), that any domestic insurer has committed or engaged in or is about to commit or engage in any act, practice, or transaction that would subject it to delinquency proceedings under [this act], he may make and serve upon the insurer and any other persons involved such orders as are reasonably necessary to correct or eliminate such conduct.

(2) If upon examination or at any other time the commissioner determines that any domestic insurer is in such condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if such domestic insurer gives its consent, then the commissioner shall notify the insurer of his determination, and furnish to the insurer a written list of the commissioner's requirements to abate his determination.

(3) If the commissioner makes a determination to supervise an insurer subject to an order under subsection (1) or (2), he shall notify the insurer that it is under the supervision of the commissioner. During the period of supervision, the commissioner may appoint a supervisor to supervise such insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsections (1) and (2) and may also require that the insurer may not do any of the following things during the period of supervision without the prior approval of the commissioner or the supervisor:

(a) dispose of, convey, or encumber any of its assets or its business in force;

(b) withdraw from any of its bank accounts;

(c) lend any of its funds;

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(d) invest any of its funds;

(e) incur any debt, obligation, or liability;

(f) merge or consolidate with another company; or

(g) enter into any new reinsurance contract or treaty.

(4) Any insurer subject to an order under this section shall comply with the lawful requirements of the commissioner and, if placed under supervision, has 60 days from the date the supervision order is served within which to comply with the requirements of the commissioner. If the insurer fails to comply within that time, the commissioner may institute proceedings under [section 12 or 17] to have a rehabilitator or liquidator appointed or extend the period of supervision.

(5) The notice of hearing under subsection (1) and any order issued pursuant to such subsection shall be served upon the insurer pursuant to the applicable rules of civil or administrative procedure. The notice of hearing shall state the time and place of hearing, and the conduct, condition, or ground upon which the commissioner would base his order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than 10 days or more than 30 days after notice is served and shall be either in Lewis and Clark County or in some other place convenient to the parties to be designated by the commissioner. The commissioner shall hold all hearings under subsection (1) privately unless the insurer requests a public hearing, in which case the hearing shall be public.

(6) (a) Any insurer subject to an order under subsection (2) may request a hearing to review that order. Such a hearing shall be held as provided in subsection (5), but the request for a hearing shall not stay the effect of the order.

(b) If the commissioner issues an order under subsection (2), the insurer may, at any time, waive a commissioner's hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing, any party to the proceedings whose interests are substantially affected shall be entitled to judicial review of any order issued by the commissioner.

(7) During the period of supervision the insurer may request the commissioner to review an action taken or proposed to be taken by the supervisor, specifying wherein the action complained of is believed not to be in the best interest of the insurer.

(8) If any person has violated any supervision order issued under this section which as to him was then still in effect, he is subject to a civil penalty imposed by the district court not to exceed $10,000.

(9) The commissioner may apply for and any court of general jurisdiction may grant such restraining orders, preliminary and permanent injunctions, and other orders as may be necessary to enforce a supervision order.

(10) If any person subject to the provisions of [this act], including any person described in section 6(1), knowingly violates any valid order of the

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commissioner issued under the provisions of this section and, as a result of such violation, the net worth of the insurer is reduced or the insurer suffers loss it would not otherwise have suffered, said person is personally liable to the insurer for the amount of any such reduction or loss. The commissioner or supervisor is authorized to bring an action on behalf of the insurer in the district court to recover the amount of the reduction or loss together with any costs.

Section 10. **Court's seizure order.** (1) The commissioner may file in a district court of this state a petition alleging, with respect to a domestic insurer:

(a) that there exist grounds that would justify a court order for a formal delinquency proceeding against an insurer under [this act];

(b) that the interests of policyholders, creditors, or the public will be endangered by delay; and

(c) the contents of an order considered necessary by the commissioner.

(2) Upon a filing under subsection (1), the court may issue forthwith, ex parte and without a hearing, the requested order which shall direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer and of the premises occupied by it for transaction of its business and until further order of the court enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from transaction of its business except with the written consent of the commissioner.

(3) The court shall specify in the order what its duration shall be, which shall be such time as the court considers necessary for the commissioner to ascertain the condition of the insurer. On motion of either party or on its own motion, the court may from time to time hold such hearings as it considers desirable after such notice as it considers appropriate, and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under [this act] after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under [this act] shall ipso facto vacate the seizure order.

(4) Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the insurer.

(5) An insurer subject to an ex parte order under this section may petition the court at any time after the issuance of such order for a hearing and review of the order. The court shall hold such a hearing and review not more than 15 days after the request. A hearing under this subsection may be held privately in chambers, and it shall be so held if the insurer proceeded against so requests.

(6) If, at any time after the issuance of such an order, it appears to the court that any person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given. An order that notice be given shall not stay the effect of any order previously issued by the court.

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Section 11. **Confidentiality of hearings.** In all proceedings and judicial reviews under [sections 9 and 10], all records of the insurer, other documents, and all files and court records and papers of the commissioner, so far as they pertain to or are a part of the record of the proceedings, remain confidential except as necessary to obtain compliance therewith, unless the district court, after hearing arguments from the parties in chambers, orders otherwise or unless the insurer requests that the matter be made public. Until such court order, all papers filed with the clerk of the district court shall be held by him in a confidential file.

Section 12. **Grounds for rehabilitation.** The commissioner may apply by petition to a district court for an order authorizing him to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds:

(1) The insurer is in such condition that the further transaction of business would be financially hazardous to its policyholders, creditors, or the public.

(2) There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that if established would endanger assets in an amount threatening the solvency of the insurer.

(3) The insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, if the person has been found after notice and hearing by the commissioner to be dishonest or untrustworthy in a way affecting the insurer's business.

(4) Control of the insurer, whether by stock ownership or otherwise, and whether direct or indirect, is in a person found after notice and hearing to be untrustworthy.

(5) Any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, director or trustee, employee, or other person, has refused to be examined under oath by the commissioner concerning its affairs, whether in this state or elsewhere, and after reasonable notice of the fact the insurer has failed promptly and effectively to terminate the employment and status of the person and his influence on management.

(6) After demand by the commissioner under 33-1-403 or under [this act], the insurer has failed to promptly make available for examination any of its own property, books, accounts, documents, or other records or those of any subsidiary or related company within the control of the insurer or those of any person having executive authority in the insurer so far as they pertain to the insurer.

(7) Without first obtaining the written consent of the commissioner, the insurer has transferred or attempted to transfer, in a manner contrary to chapter 2, part 11, or chapter 2, part 12, of Title 33, substantially its entire property or business or has entered into any transaction the effect

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of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.

(8) The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state, and such appointment has been made or is imminent, and such appointment might oust the courts of this state of jurisdiction or might prejudice orderly delinquency proceedings under [this act].

(9) Within the previous 4 years the insurer has willfully violated its charter or articles of incorporation, its bylaws, any insurance law of this state, or any valid order of the commissioner under [section 9].

(10) The insurer has failed to pay within 60 days after due date any obligation to any state or any subdivision thereof or any judgment entered in any state, if the court in which such judgment was entered had jurisdiction over such subject matter, except that such nonpayment shall not be a ground until 60 days after any good faith effort by the insurer to contest the obligation has been terminated, whether it is before the commissioner or in the courts, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full.

(11) The insurer has failed to file its annual report or other financial report required by statute within the time allowed by law and, after written demand by the commissioner, has failed to give an adequate explanation immediately.

(12) The board of directors or the holders of a majority of the shares entitled to vote request or consent to rehabilitation under [this act].

Section 13. **Rehabilitation orders.** (1) An order to rehabilitate the business of a domestic insurer or an alien insurer domiciled in this state shall appoint the commissioner the rehabilitator and shall direct the rehabilitator forthwith to take possession of the assets of the insurer and to administer them under the general supervision of the court. The filing or recording of the order with the clerk of the district court or clerk and recorder of the county in which the principal business of the company is conducted or the county in which its principal office or place of business is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the county clerk and recorder would have imparted. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.

(2) Any order issued under this section shall require accounting to the court by the rehabilitator. Accountings shall be at such intervals as the court specifies in its order.

(3) Entry of an order of rehabilitation does not constitute an anticipatory breach of any contracts of the insurer.

Section 14. **Powers and duties of the rehabilitator.** (1) The commissioner as rehabilitator may appoint one or more special deputies, who

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shall have all the powers and responsibilities of the rehabilitator granted under this section, and the commissioner may employ counsel, clerks, and assistants. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the commissioner, with the approval of the court and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the commissioner. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of his office. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of his office out of the first available money of the insurer.

(2) The rehabilitator may take such action as necessary to reform and revitalize the insurer. He shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. He shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.

(3) If it appears to the rehabilitator that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, broker, employee, or other person, he may pursue all appropriate legal remedies on behalf of the insurer.

(4) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, he shall prepare a plan to effect such changes. Upon application of the rehabilitator for approval of the plan and after such notice and hearings as the court may prescribe, the court may either approve or disapprove the plan proposed or may modify it and approve it as modified. Any plan approved under this section must be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the company, if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period and to such an extent as may be necessary.

(5) The rehabilitator shall have the power under [sections 26 and 27] to avoid fraudulent transfers.

Section 15. **Actions by and against the rehabilitator.** (1) Any court in this state before which any action or proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for 90 days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as he considers necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator

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shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(2) No statute of limitations or defense of laches shall run with respect to any action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. Any action by or against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the order of rehabilitation is entered or the petition is denied.

(3) Any guaranty association or foreign guaranty association covering life or health insurance or annuities has standing to appear in any court proceeding concerning the rehabilitation of a life or health insurer if such association is or may become liable to act as a result of the rehabilitation.

Section 16. **Termination of rehabilitation.** (1) Whenever the commissioner believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public or would be futile, the commissioner may petition the district court for an order of liquidation. A petition under this subsection shall have the same effect as a petition under [section 17]. The district court shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require.

(2) The rehabilitator may at any time petition the district court for an order terminating rehabilitation of an insurer. The court shall also permit the directors of the insurer to petition the court for an order terminating rehabilitation of the insurer and may order payment from the estate of the insurer of such costs and other expenses of such petition as justice may require. If the court finds that rehabilitation has been accomplished and that grounds for rehabilitation under [section 12] no longer exist, it shall order that the insurer be restored to possession of its property and the control of the business. The district court may also make that finding and issue that order at any time upon its own motion.

Section 17. **Grounds for liquidation.** The commissioner may petition the district court for an order directing him to liquidate a domestic insurer or an alien insurer domiciled in this state on the basis:

(1) of any ground for an order of rehabilitation as specified in [section 12], whether or not there has been a prior order directing the rehabilitation of the insurer;

(2) that the insurer is insolvent; or

(3) that the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

Section 18. **Liquidation orders.** (1) An order to liquidate the business of a domestic insurer shall appoint the commissioner and his successors in office liquidator and shall direct the liquidator forthwith to take

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possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator shall be vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the district court and the clerk and recorder of the county in which its principal office or place of business is located or, in the case of real estate, with the clerk and recorder of the county where the property is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that clerk and recorder would have imparted.

(2) Upon issuance of the order, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate shall become fixed as of the date of entry of the order of liquidation, except as provided in [sections 19 and 37].

(3) An order to liquidate the business of an alien insurer domiciled in this state shall be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be the only assets and business included therein.

(4) At the time of petitioning for an order of liquidation or at any time thereafter, the commissioner, after making appropriate findings of an insurer's insolvency, may petition the court for a judicial declaration of such insolvency. After providing such notice and hearing as it considers proper, the court may make the declaration.

(5) Any order issued under this section shall require accounting to the court by the liquidator. Accountings shall be at such intervals as the court specifies in its order.

Section 19. **Continuance of coverage.** (1) All policies, other than life or health insurance or annuities, in effect at the time of issuance of an order of liquidation shall continue in force only for the lesser of:

(a) a period of 30 days from the date of entry of the liquidation orders;

(b) the expiration of the policy coverage;

(c) the date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy; or

(d) the liquidator has effected a transfer of the policy obligation pursuant to [section 21(1)(h)].

(2) An order of liquidation under [section 18] terminates coverages at the time specified in subsection (1) for purposes of any other statute.

(3) Policies of life or health insurance or annuities continue in force for such period and under such terms as provided by any applicable guaranty association or foreign guaranty association.

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(4) Policies of life or health insurance or annuities or any period or coverage of such policies not covered by a guaranty association or foreign guaranty association shall terminate under subsections (1) and (2).

Section 20. **Dissolution of insurer.** The commissioner may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time he applies for a liquidation order. The court shall order dissolution of the corporation upon petition by the commissioner upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, it shall be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent but may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason.

Section 21. **Powers of liquidator.** (1) The liquidator may:

(a) appoint a special deputy to act for him under [this act] and to determine his reasonable compensation. The special deputy has all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(b) employ agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel necessary to assist in the liquidation;

(c) fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court;

(d) pay reasonable compensation to persons appointed and defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the commissioner's office. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of his office out of the first available money of the insurer.

(e) hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to his testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, records or other documents which he considers relevant to the inquiry;

(f) to collect all debts and money due and claims belonging to the insurer, wherever located, and for this purpose:

(i) institute timely action in other jurisdictions in order to forestall garnishment and attachment proceedings against such debts;

(ii) do such other acts as are necessary to collect, conserve, or protect its assets or property, and has the power to sell, compound, compromise, or assign debts for purposes of collection upon such terms and conditions as he considers best; and

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(iii) pursue any creditor's remedies available to enforce his claims;

(g) conduct public and private sales of the property of the insurer;

(h) use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under [section 42];

(i) acquire, encumber, lease, improve, sell, or transfer any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. He shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.

(j) borrow money on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation;

(k) enter into such contracts as are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party;

(l) continue to prosecute and institute in the name of the insurer or in his own name any and all suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims he considers unprofitable to pursue further. If the insurer is dissolved under [section 20], he shall have the power to apply to any court in this state or elsewhere for leave to substitute himself for the insurer as plaintiff.

(m) prosecute any action which may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer or any other person;

(n) remove any or all records and property of the insurer to the offices of the commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations.

(o) deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions;

(p) invest all sums not currently needed, unless the court orders otherwise;

(q) file any necessary documents for record in the office of any county clerk and recorder in this state or elsewhere where property of the insurer is located;

(r) assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty

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association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations.

(s) exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with [sections 26 through 28];

(t) intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee and act as the receiver or trustee whenever the appointment is offered;

(u) enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states;

(v) exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of [this act].

(2) The enumeration in this section of the powers and authority of the liquidator shall not be construed as a limitation upon him, nor shall it exclude in any manner his right to do such other acts not herein specifically enumerated, or otherwise provided for, as may be necessary for the accomplishment of or in aid of the purpose of liquidation.

Section 22. **Notice to creditors and others.** (1) Unless the court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible:

(a) by first-class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is doing business;

(b) by first-class mail to any guaranty association or foreign guaranty association which is or may become obligated as a result of the liquidation;

(c) by first-class mail to all insurance agents of the insurer;

(d) by first-class mail to all persons known or reasonably expected to have claims against the insurer, including all policyholders, at their last-known address as indicated by the records of the insurer; and

(e) by publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator considers appropriate.

(2) Notice to potential claimants under subsection (1) shall require claimants to file with the liquidator their claims together with proper proofs thereof under [section 36], on or before a date the liquidator shall specify in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants have a duty to keep the liquidator informed of any changes of address.

(3) If notice is given in accordance with this section, the distribution of assets of the insurer under this chapter shall be conclusive with respect to all claimants, whether or not they received notice.

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Section 23. **Duties of agents.** (1) Every person who receives notice in the form prescribed in [section 22] that an insurer which he represents as an agent is the subject of a liquidation order shall within 15 days of such notice give notice of the liquidation order. The notice shall be sent by first-class mail to the last address contained in the agent's records to each policyholder or other person named in any policy issued through the agent by the insurer, if he has a record of the address of the policyholder or other person. A policy shall be considered issued through an agent if the agent has a property interest in the expiration of the expiration of the policy or if the agent has had in his possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another. The written notice shall include the name and address of the insurer, the name and address of the agent, identification of the policy impaired, and the nature of the impairment, including termination of coverage, as described in [section 19]. Notice by a general agent satisfies the notice requirement for any agents under contract to him. Each agent obligated to give notice under this section shall file a report of compliance with the liquidator.

(2) Any agent failing to give notice or file a report of compliance as required in subsection (1) may be subject to payment of a penalty of not more than $1,000 and may have his license suspended, after a hearing held by the commissioner.

(3) The liquidator may waive the duties imposed by this section if he determines that other notice to the policyholders of the insurer under liquidation is adequate.

Section 24. **Actions by and against liquidator.** (1) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, no action at law or equity may be brought against the insurer or liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after issuance of such order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or the company when such injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states. Whenever in the liquidator's judgment protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, he may intervene in the action. The liquidator may defend any action in which he intervenes under this section at the expense of the estate of the insurer.

(2) The liquidator may, upon or after an order for liquidation, within 2 years or such time in addition to 2 years as applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered. When, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim or for filing any claim, proof of claim, proof of loss, demand, notice, or the like or when in any proceeding, judicial or otherwise, a period of limitation

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is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading, or doing any act and when in any such case the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any such action or do any such act, required of or permitted to the insurer, within a period of 180 days subsequent to the entry of an order for liquidation, or within such further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

(3) No statute of limitations or defense of laches shall run with respect to any action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the petition is denied.

(4) Any guaranty association or foreign guaranty association shall have standing to appear in any court proceeding concerning the liquidation of an insurer if such association is or may become liable to act as a result of the liquidation.

Section 25. **Collection and list of assets.** (1) As soon as practicable after the liquidation order but not later than 120 days thereafter, the liquidator shall prepare in duplicate a list of the insurer's assets. The list shall be amended or supplemented from time to time as the liquidator may determine. One copy shall be filed in the office of the clerk of the district court and one copy shall be retained for the liquidator's files. All amendments and supplements shall be similarly filed.

(2) The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

(3) A submission to the court for disbursement of assets in accordance with [section 34] fulfills the requirements of subsection (1) of this section.

Section 26. **Fraudulent transfers prior to petition.** (1) Every transfer made or suffered and every obligation incurred by an insurer within 1 year prior to the filing of a successful petition for rehabilitation or liquidation under [this act] is fraudulent as to then existing and future creditors if made or incurred without fair consideration or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under [this act] which is fraudulent under this section may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value, and except that any purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver succeeds to and may enforce the rights of the purchaser, lienor, or obligee.

(2) (a) A transfer of property other than real property is considered to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under [section 28(3)].

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(b) A transfer of real property is considered to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien is not considered to perfected if there are available means by which a legal lien could be created.

(d) Any transfer not perfected prior to the filing of a petition for liquidation is considered to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

(3) Any transaction of the insurer with a reinsurer is considered fraudulent and may be avoided by the receiver under subsection (1) if:

(a) the transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transaction, unless the reinsurer gives a present fair equivalent value for the release; and

(b) any part of the transaction took place within 1 year prior to the date of filing of the petition through which the receivership was commenced.

Section 27. **Fraudulent transfer after petition.** (1) After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation is constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the county clerk and recorder in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

(2) After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

(a) a transfer of any of the property of the insurer, other than real property, made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred;

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(b) a person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property, or any part thereof, to the insurer or upon his order, with the same effect as if the petition were not pending;

(c) a person having actual knowledge of the pending rehabilitation or liquidation is considered not acting in good faith;

(d) a person asserting the validity of a transfer under this section has the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator.

(3) Nothing in [this act] impairs the negotiability of currency or negotiable instruments.

Section 28. **Voidable preferences and liens.** (1) (a) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within 1 year before the filing of a successful petition for liquidation under [this act], the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then such transfers shall be considered preferences if made or suffered within 1 year before the filing of the successful petition for rehabilitation or within 2 years before the filing of the successful petition for liquidation, whichever time is shorter.

(b) Any preference may be avoided by the liquidator if:

(i) the insurer was insolvent at the time of the transfer;

(ii) the transfer was made within 4 months before the filing of the petition;

(iii) the creditor receiving it or to be benefited thereby or his agent acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(iv) the creditor receiving it was an officer or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he held such position, or any shareholder holding directly or indirectly more than 5% of any class of any equity security issued by the insurer, or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(c) When the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property, except where a bona fide purchaser or lienor has given less than fair equivalent value, he shall have a lien upon the property to the extent of the consideration actually given by him. When a preference by way of lien or security title is voidable, the court

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may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title passes to the liquidator.

(2) (a) A transfer of property other than real property is considered to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.

(b) A transfer of real property is considered to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien is not considered to be perfected if there are available means by which a legal lien could be created.

(d) A transfer not perfected prior to the filing of a petition for liquidation is considered to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(3) (a) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of such proceedings upon the entry or docketing of a judgment or decree or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(b) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection (2), if such consequences would follow only from the lien or purchase itself or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of subsection (2) through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action or ruling.

(4) A transfer of property for or on account of a new and contemporaneous consideration which is considered under subsection (2) to be made or suffered after the transfer because of delay in perfecting it does not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within 21 days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan shall have the same

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effect as a transfer for or on account of a new and contemporaneous consideration.

(5) If any lien considered voidable under subsection (1)(b) has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under [this act] which results in a liquidation order, the indemnifying transfer or lien shall also be considered voidable.

(6) The property affected by any lien considered voidable under subsections (1) and (5) shall be discharged from such lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order any such lien to be preserved for the benefit of the estate and the court may direct that such conveyance be executed as may be proper or adequate to evidence the title of the liquidator.

(7) The district court has summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under this section. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. When an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien, and if the value is less than the amount for which the property is indemnity or less than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator, within such reasonable times as the court shall fix.

(8) The liability of a surety under a releasing bond or other like obligation is discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator or when the property is retained under subsection (7) to the extent of the amount paid to the liquidator.

(9) If a creditor has been preferred and afterward in good faith gives the insurer further credit without security of any kind, for property which becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from him.

(10) If an insurer, directly or indirectly, within 4 months before the filing of a successful petition for liquidation under [this act] or at any time in contemplation of a proceeding to liquidate it, pays money or transfers property to an attorney at law for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the liquidator for the benefit of the estate, provided that where the attorney is in a position of influence in the insurer or an affiliate thereof, payment of any money or the transfer of

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any property to the attorney at law for services rendered or to be rendered shall be governed by the provision of subsection (1)(b)(iv).

(11) (a) Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when he has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. It is permissible to infer that there is reasonable cause to so believe if the transfer was made within 4 months before the date of filing of this successful petition for liquidation.

(b) Every person receiving any property from the insurer or the benefit thereof as a preference voidable under subsection (1) is personally liable therefor and is bound to account to the liquidator.

(c) Nothing in this subsection prejudices any other claim by the liquidator against any person.

Section 29. **Claims of holders of void or voidable rights.** (1) No claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance voidable under [this act], shall be allowed unless he surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim may not be allowed unless the money is paid or the property is delivered to the liquidator within 30 days from the date of the entering of the final judgment, except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

(2) A claim allowable under subsection (1) by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under [section 35] if filed within 30 days from the date of the avoidance or within the further time allowed by the court under subsection (1).

Section 30. **Setoffs and counterclaims.** (1) Mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under [this act] shall be set off and the balance only shall be allowed or paid, except as provided in subsection (2) and [section 33].

(2) No setoff or counterclaim may be allowed in favor of any person when:

(a) the obligation of the insurer to the person would not at the date of the filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer;

(b) the obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;

(c) the obligation of the person is to pay an assessment levied against the members or subscribers of the insurer or is to pay a balance upon a

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subscription to the capital stock of the insurer or is in any other way in the nature of a capital contribution; or

(d) the obligation of the person is to pay premiums, whether earned or unearned, to the insurer.

Section 31. **Assessments.** (1) As soon as practicable but not more than 2 years from the date of an order of liquidation under [section 18] of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth:

(a) the reasonable value of the assets of the insurer;

(b) the insurer's probable total liabilities;

(c) the probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and

(d) a recommendation as to whether or not an assessment should be made and in what amount.

(2) (a) Upon the basis of the report provided in subsection (1), including any supplements and amendments thereto, the district court may levy one or more assessments against all members of the insurer who are subject to assessment.

(b) Subject to any applicable legal limits on assessability, the aggregate assessment shall be for the amount that the sum of the probable liabilities, the expenses of administration, and the estimated cost of collection of the assessment exceeds the value of existing assets, with due regard being given to assessments that cannot be collected economically.

(3) After levy of assessment under subsection (2), the liquidator shall issue an order directing each member who has not paid the assessment pursuant to the order to show cause why the liquidator should not pursue a judgment therefor.

(4) The liquidator shall give notice of the order to show cause by publication and by first-class mail to each member liable thereunder mailed to his last-known address as it appears on the insurer's records at least 20 days before the return day of the order to show cause.

(5) (a) If a member does not appear and serve duly verified objections upon the liquidator on or before the return day of the order to show cause under subsection (3), the court shall make an order adjudging the member liable for the amount of the assessment against him, pursuant to subsection (3), together with costs, and the liquidator shall have a judgment against the member therefor.

(b) If on or before such return day, the member appears and serves duly verified objections upon the liquidator, the commissioner may hear and determine the matter or may appoint a referee to hear it and make such order as the facts warrant. If the commissioner determines that such objections do not warrant relief from assessment, the member may request the court to review the matter and vacate the order to show cause.

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(6) The liquidator may enforce any order or collect any judgment under subsection (5) by any lawful means.

Section 32. **Reinsurer's liability.** The amount recoverable by the liquidator from reinsurers may not be reduced as a result of delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor may not diminish the reinsurer's obligation to the insurer's estate except when the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of that obligation.

Section 33. **Recovery of premiums owed.** (1) (a) An agent or any other person responsible for the payment of a premium, other than the insured, shall be obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator may recover from such person any part of an unearned premium that represents commission of such person. Credits or setoffs or both may not be allowed to an agent for any amounts advanced to the insurer by the agent on behalf of but in the absence of a payment by the insured.

(b) An insured shall pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.

(2) Upon satisfactory evidence of a violation of this section, the commissioner may pursue either one or both of the following courses of action:

(a) suspend or revoke or refuse to renew the licenses of any offending party;

(b) impose a penalty of not more than $1,000 for each act in violation of this section by such party.

(3) Before the commissioner may take any action as set forth in subsection (2), he shall give written notice to the person, company, association, or exchange accused of violating the law, stating specifically the nature of the alleged violation and fixing a time and place, at least 10 days thereafter, when a hearing on the matter shall be held. After such hearing or upon failure of the accused to appear at such hearing, the commissioner, if he finds a violation, shall impose such penalties under subsection (2) as he considers advisable.

(4) When the commissioner takes action in any of the ways set out in subsection (2), the party aggrieved may appeal from the action to the district court.

Section 34. **Domiciliary liquidator's proposal to distribute assets.** (1) Within 120 days of a final determination of insolvency of an insurer by a court of competent jurisdiction of this state, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshalled assets, from time to time as such assets become available, to a guaranty association or foreign guaranty association having obligations because of such insolvency. If the liquidator determines that there are insufficient assets to disburse, the application required by this

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section shall be considered satisfied by a filing by the liquidator stating the reasons for this determination.

(2) The proposal shall at least include provisions for:

(a) reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and claims falling within the priorities established in [section 42], classes 1 and 2;

(b) disbursement of the assets marshalled to date and subsequent disbursement of assets as they become available;

(c) equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled thereto;

(d) the securing by the liquidator from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the liquidator such assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in [section 42] in accordance with such priorities (no bond may be required of any such association); and

(e) a full report to be made by each association to the liquidator accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets, and any other matter as the court may direct.

(3) The liquidator's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the liquidator and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made or to be made by the association, then disbursements shall be in the amount of available assets.

(4) The liquidator's proposal shall, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to any guaranty association or any foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating such associations.

(5) Notice of such application shall be given to the association in and to the commissioners of insurance of each of the states. Any notice shall be considered to have been given when deposited in the United States certified mails, first-class postage prepaid, at least 30 days prior to submission of such application to the court. Action on the application may be taken by the court provided the above required notice has been given and provided further that the liquidator's proposal complies with subsections (2)(a) and (2)(b).

Section 35. **Filing of claims.** (1) Proof of all claims shall be filed with the liquidator in the form required by [section 36] on or before the last day for filing specified in the notice required under [section 22],

except that proof of claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator requires.

(2) The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if he were not late, to the extent that any such payment will not prejudice the orderly administration of the liquidation, under the following circumstances:

(a) the existence of the claim was not known to the claimant and his claim was filed as promptly after learning of it as reasonably possible;

(b) a transfer to a creditor was avoided under [sections 26 through 28] or was voluntarily surrendered under [section 29], and the filing satisfies the conditions of [section 29]; and

(c) the valuation under [section 41] of security held by a secured creditor shows a deficiency, which is filed within 30 days after the valuation.

(3) The liquidator shall permit late filing claims to share in distributions, whether past or future, as if they were not late, if such claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid or expenses incurred, or both, subsequent to the last day for filing where such payments were made and expenses incurred as provided by law.

(4) The liquidator may consider any claim filed late which is not covered by subsection (2) and permit it to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive, at each distribution, the same percentage of the amount allowed on his claim as is then being paid to claimants of any lower priority. This shall continue until his claim has been paid in full.

Section 36. **Proof of claim.** (1) Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

(a) the particulars of the claim including the consideration given for it;

(b) the identity and amount of the security on the claim;

(c) the payments made on the debt, if any;

(d) that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim;

(e) any right of priority of payment or other specific right asserted by the claimants;

(f) a copy of the written instrument which is the foundation of the claim;

(g) the name and address of the claimant and the attorney who represents him, if any.

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(2) No claim need be considered or allowed if it does not contain all the information in subsection (1) which may be applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

(3) At any time the liquidator may request the claimant to present information or evidence supplementary to that required under subsection (1) and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

(4) No judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation and no judgment or order against an insured or the insurer entered at any time by default or by collusion need be considered as evidence of liability or of quantum of damages. No judgment or order against an insured or the insurer entered within 4 months before the filing of the petition need be considered as evidence of liability or of the quantum of damages.

(5) All claims of a guaranty association or foreign guaranty association shall be in such form and contain such substantiation as may be agreed to by the association and the liquidator.

Section 37. **Special claims.** (1) The claim of a third party which is contingent only on his first obtaining a judgment against the insured shall be considered and allowed as if there were no such contingency.

(2) A claim may be allowed even if contingent, if it is filed in accordance with [section 35]. It may be allowed and may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

(3) Claims that are due except for the passage of time shall be treated as absolute claims are treated, except that such claims may be discounted at the legal rate of interest.

(4) Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of any order of rehabilitation or liquidation under [section 13 or 18].

Section 38. **Special provisions for third-party claims.** (1) Whenever any third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.

(2) Whether or not the third party files a claim, the insured may file a claim on his own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within 60 days after mailing of the notice required by [section 22], whichever is later, he is an unexcused late filer.

(3) The liquidator shall make his recommendations to the court under [section 42], for the allowance of an insured's claim under subsection (2), after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold any dividends payable on

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the claim, pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, he shall reconsider the claim on the bases of additional information and amend his recommendations to the court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The court may amend its allowance as it thinks appropriate. As claims against the insured are settled or barred, the insured shall be paid, from the amount withheld, the same percentage dividend as was paid on other claims of like property, based on the lesser of the amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expenses of defense, or the amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subsection shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

(4) If several claims founded upon one policy are filed, whether by third parties or as claims by the insured under this section and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. Claims by the insured shall be evaluated as in subsection (3). If any insured's claim is subsequently reduced under subsection (3), the amount thus freed shall be apportioned ratably among the claims which have been reduced under this subsection.

(5) No claim may be presented under this section if it is or may be covered by any guaranty association or foreign guaranty association.

Section 39. **Disputed claims.** (1) When a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or his attorney by first-class mail at the address shown in the proof of claim. Within 60 days from the mailing of the notice, the claimant may file his objections with the liquidator. If no such filing is made, the claimant may not further object to the determination.

(2) Whenever objections are filed with the liquidator and the liquidator does not alter his denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first-class mail to the claimant or his attorney and to any other persons directly affected, not less than 10 or more than 30 days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee who shall submit findings of fact along with his recommendation.

Section 40. **Claims of surety.** Whenever a creditor whose claim against an insurer is secured, in whole or in part, by the undertaking of another person fails to prove and file that claim, the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that he discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person shall not be entitled to any distribution until

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the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by him in trust for such other person. The term "other person", as used in this section, is not intended to apply to a guaranty association or foreign guaranty association.

Section 41. **Secured creditor's claims.** (1) The value of any security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

(a) by converting the same into money according to the terms of the agreement pursuant to which the security was delivered to such creditors; or

(b) by agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

(2) The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount so determined shall be credited upon the secured claim, and any deficiency shall be treated as an unsecured claim. If the claimant surrenders his security to the liquidator, the entire claim shall be allowed as if unsecured.

Section 42. **Priority of distribution.** The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be as follows:

(1) Class 1—the costs and expenses of administration, including but not limited to the following:

(a) the actual and necessary costs of preserving or recovering the assets of the insurer;

(b) compensation for all services rendered in the liquidation;

(c) any necessary filing fees;

(d) the fees and mileage payable to witnesses;

(e) reasonable attorney's fees;

(f) the reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

(2) Class 2—debts due to employees for services performed to the extent that they do not exceed $1,000 and represent payment for services performed within 1 year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. Such priority is in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.

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(3) Class 3—all claims under policies for losses incurred, including third-party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to his employee may be treated as a gratuity.

(4) Class 4—claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors.

(5) Class 5—claims of the federal or any state or local government. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subsection (8).

(6) Class 6—claims filed late or any other claims other than claims under subsections (7) and (8).

(7) Class 7—surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law.

(8) Class 8—the claims of shareholders or other owners.

Section 43. **Liquidator's recommendations to the court.** (1) The liquidator shall review all claims duly filed in the liquidation and make such further investigation as he considers necessary. He may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by any person or organization, including any guaranty association or foreign guaranty association. Unresolved disputes shall be determined under [section 39]. As soon as practicable, he shall present to the court a report of the claims against the insurer with his recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

(2) The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within a period of 60 days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to [section 39]. No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits.

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Section 44. **Distribution of assets.** Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

Section 45. **Unclaimed and withheld funds.** (1) All unclaimed funds subject to distribution remaining in the liquidator's hands when he is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found, shall be deposited with the state treasurer and shall be paid without interest except in accordance with [section 42] to the person entitled thereto or his legal representative upon proof satisfactory to the state treasurer of his right thereto. Any amount on deposit not claimed within 6 years from the discharge of the liquidator shall be considered to have been abandoned and shall be escheated without formal escheat proceedings and be deposited in the general fund.

(2) All funds withheld under [section 37] and not distributed shall upon discharge of the liquidator be deposited with the state treasurer and paid by him in accordance with [section 42]. Any sums remaining which under [section 42] would revert to the undistributed assets of the insurer shall be transferred to the state treasurer and become the property of the state under subsection (1), unless the commissioner in his discretion petitions the court to reopen the liquidation under [section 47].

Section 46. **Termination of proceedings.** (1) When all assets justifying the expense of collection and distribution have been collected and distributed under [this act], the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer any remaining funds that are uneconomic to distribute, as may be considered appropriate.

(2) Any other person may apply to the court at any time for an order under subsection (1). If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

Section 47. **Reopening liquidation.** After the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may at any time petition the district court to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall so order.

Section 48. **Disposition of records during and after termination of liquidation.** When it appears to the commissioner that the records of any insurer in process of liquidation or completely liquidated are no longer useful, he may recommend to the court and the court shall direct what records should be retained for future reference and what should be destroyed.

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Section 49. **External audit of the receiver's books.** The district court may, as it considers desirable, cause audits to be made of the books of the commissioner relating to any receivership established under [this act], and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of each audit shall be considered a cost of administration of the receivership.

Section 50. **Conservation of property of foreign or alien insurers.** (1) If a domiciliary liquidator has not been appointed, the commissioner may apply to the district court by verified petition for an order directing him to act as conservator to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any one or more of the following grounds:

(a) any of the grounds in [section 12];

(b) that any of its property has been sequestered by official action in its domiciliary state or in any other state;

(c) that enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent;

(d) that its certificate of authority to do business in this state has been revoked or that none was ever issued;

(e) that there are residents of this state with outstanding claims or outstanding policies.

(2) When an order is sought under subsection (1), the court shall cause the insurer to be given such notice and time to respond thereto as is reasonable under the circumstances.

(3) The court may issue the order in whatever terms it considers appropriate. The filing or recording of the order with the clerk of the district court or the clerk and recorder of the county in which the principal business of the company is located or the county in which its principal office or place of business is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that clerk and recorder would have imparted.

(4) The conservator may at any time petition for and the court may grant an order under [section 51] to liquidate assets of a foreign or alien insurer under conservation or, if appropriate, for an order under [section 53], to be appointed ancillary receiver.

(5) The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order the insurer to be restored to possession of its property and the control of its business. The court may also make such finding and issue such order at any time upon motion of any interested party, but if such motion is denied, all costs shall be assessed against such party.

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Section 51. **Liquidation of property of foreign or alien insurers.** (1) If no domiciliary receiver has been appointed, the commissioner may apply to the district court by verified petition for an order directing him to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state, on any of the following grounds:

(a) any of the grounds in [section 12 or 17]; or

(b) any of the grounds specified in subsections (1)(b) through (1)(d) of [section 50].

(2) When an order is sought under subsection (1), the court shall cause the insurer to be given notice and time to respond thereto as reasonable under the circumstances.

(3) If it appears to the court that the best interests of creditors, policyholders, and the public require, the court may issue an order to liquidate in whatever terms it considers appropriate. The filing or recording of the order with the clerk of the district court or the clerk and recorder of the county in which the principal business of the company is located or the county in which its principal office or place of business is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that clerk and recorder would have imparted.

(4) If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under [section 53]. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under [section 53].

(5) On the same grounds as specified in subsection (1), the commissioner may petition any appropriate federal district court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction or any lesser part thereof that the commissioner considers desirable for the protection of the policyholders and creditors in this state.

(6) The court may order the commissioner, when he has liquidated the assets of a foreign or alien insurer under this section, to pay claims of residents of this state against the insurer under such rules as to the liquidation of insurers under [this act] as are otherwise compatible with the provisions of this section.

Section 52. **Domiciliary liquidators in other states.** (1) The domiciliary liquidator of an insurer domiciled in a reciprocal state shall, except as to special deposits and security on secured claims under [section 53(3)], be vested by operation of law with the title to all of the assets, property, contracts, and rights of action, agents' balances, and all of the books, accounts, and other records of the insurer located in this state. The date of vesting shall be the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator has

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the immediate right to recover balances due from agents and to obtain possession of the books, accounts, and other records of the insurer located in this state. He also has the right to recover all other assets of the insurer located in this state, subject to [section 53].

(2) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this state is vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books, accounts, and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The commissioner of this state may petition for a conservation or liquidation order under [section 50 or 51] or for an ancillary receivership under [section 53] or after approval by the district court may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

(3) Claimants residing in this state may file claims with the liquidator or ancillary receiver, if any, in this state or with the domiciliary liquidator, if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings.

Section 53. **Ancillary formal proceedings.** (1) If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the commissioner may file a petition with the district court requesting appointment as ancillary receiver in this state:

(a) if he finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver;

(b) if the protection of creditors or policyholders in this state so requires.

(2) The court may issue an order appointing an ancillary receiver in whatever terms it considers appropriate. The filing or recording of the order with the recorder of deeds in this state imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds.

(3) When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this state may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state and shall pay the necessary expenses of the proceedings. He shall promptly transfer all remaining assets, books, accounts, and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

(4) When a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have, as to assets

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and books, accounts, and other records in their respective states, corresponding rights, duties, and powers to those provided in subsection (3) for ancillary receivers appointed in this state.

Section 54. **Ancillary summary proceedings.** The commissioner in his sole discretion may institute proceedings under [sections 9 through 11] at the request of the commissioner or other appropriate insurance official of the domiciliary state of any foreign or alien insurer having property located in this state.

Section 55. **Claims of nonresidents against insurers domiciled in this state.** (1) In a liquidation proceeding begun in this state against an insurer domiciled in this state, claimants residing in foreign countries or in states not reciprocal states must file claims in this state, and claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary liquidator. Claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) Claims belonging to claimants residing in reciprocal states may be proved either in the liquidation proceeding in this state as provided in [this act] or in ancillary proceedings, if any, in the reciprocal states. If notice of the claims and opportunity to appear and be heard is afforded the domiciliary liquidator of this state as provided in [section 56(2)] with respect to ancillary proceedings, the final allowance of claims by the courts in ancillary proceedings in reciprocal states is conclusive as to amount and as to priority against special deposits or other security located in such ancillary states but is not conclusive with respect to priorities against general assets under [section 42].

Section 56. **Claims of residents against insurers domiciled in reciprocal states.** (1) In a liquidation proceeding in a reciprocal state against an insurer domiciled in that state, claimants against the insurer who reside within this state may file claims either with the ancillary receiver, if any, in this state or with the domiciliary liquidator. Claims must be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) Claims belonging to claimants residing in this state may be proved either in the domiciliary state under the law of that state or in ancillary proceedings, if any, in this state. If a claimant elects to prove his claim in this state, he shall file his claim with the liquidator in the manner provided in [sections 35 and 36]. The ancillary receiver shall make his recommendation to the court as under [section 43]. He shall also arrange a date for hearing if necessary under [section 39] and shall give notice to the liquidator in the domiciliary state, either by certified mail or by personal service at least 40 days prior to the date set for hearing. If the domiciliary liquidator, within 30 days after the giving of such notice, gives notice in writing to the ancillary receiver and to the claimant, either by certified mail or by personal service, of his intention to contest the claim, he shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim.

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(3) The final allowance of the claim by the courts of this state shall be accepted as conclusive as to amount and as to priority against special deposits or other security located in this state.

Section 57. **Attachment, garnishment, and levy of execution.** During the pendency in this or any other state of a liquidation proceeding, whether called by that name or not, no action or proceeding in the nature of an attachment, garnishment, or levy of execution may be commenced or maintained in this state against the delinquent insurer or its assets.

Section 58. **Interstate priorities.** (1) In a liquidation proceeding in this state involving one or more reciprocal states, the order of distribution of the domiciliary state shall control as to all claims of residents of this and reciprocal states. All claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where such assets are located.

(2) The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state is given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in any deposit so that the claims secured by it are not fully discharged from it, the claimants may share in the general assets, but the sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(3) The owner of a secured claim against an insurer for which a liquidator has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security in accordance with [section 41], in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors.

Section 59. **Subordination of claims for noncooperation.** If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state any assets within his control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under [section 42(7)].

Section 60. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 61. **Repealer.** Sections 33-2-901 through 33-2-948, MCA, are repealed.

Approved March 30, 1979.

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CHAPTER NO. 384

AN ACT TO GENERALLY REVISE THE LAW RELATING TO EDUCATION; REPEALING SECTION 20-6-623, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-106, MCA, is amended to read:

"20-3-106. Supervision of schools — powers and duties. The superintendent of public instruction has the general supervision of the public schools and districts of the state, and he shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of joint costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) serve on the teachers' retirement board in accordance with the provisions of 2-15-1010;

(5) prescribe absentee voting forms and rules in accordance with the provisions of 20-20-104;

(6) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311;

(7) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(8) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(9) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and *20-9-506*;

(10) establish a system of communication for calculating joint district revenues in accordance with the provisions of 20-9-151;

(11) approve or disapprove the adoption of a district's emergency budget resolution under the conditions prescribed in 20-9-163 and publish rules for an application for additional state aid for an emergency budget in accordance with the approval and disbursement provisions of 20-9-166;

(12) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(13) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(5) and the annual report forms to enable the county

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superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(14) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(15) distribute state equalization aid in support of the foundation program in accordance with the provisions of 20-9-342, 20-9-346, and 20-9-347;

(16) estimate the statewide equalization level for the foundation program in accordance with the provisions of 20-9-348;

(17) distribute state impact aid in accordance with the provisions of 20-9-304;

(18) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(19) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705;

(20) request, accept, deposit, and expend federal moneys in accordance with the provisions of 20-9-603;

(21) authorize the use of federal moneys for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(22) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(23) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of 20-1-303 and 20-1-304;

(24) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with such standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(25) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(26) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(27) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(28) administer and perform the duties as the executive officer of the board of public education for vocational education in accordance with the provisions of 20-7-302;

(29) consider applications for the designation of a postsecondary vocational-technical center in accordance with the provisions of 20-7-311;

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(30) establish a fund for the handling of postsecondary vocational-technical center fees in accordance with the provisions of 20-7-333;

(31) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(32) administer the traffic education program in accordance with the provisions of 20-7-502;

(33) administer the school food services program in accordance with the provisions of 20-10-201, 20-10-202, and 20-10-203;

(34) review school building plans and specifications in accordance with the provisions of 20-6-622;

(35) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408; and

(36) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

Section 2. Section 20-3-354, MCA, is amended to read:

"20-3-354. Redetermination of additional trustee positions and subsequent adjustments. *Whenever* there is a revision of the taxable valuation of the high school district or the elementary districts within it or there is a reclassification of the elementary district which has its trustees placed on the high school district *board of* trustees, the county superintendent shall redetermine the number of additional trustee positions for the high school district in accordance with *20-3-352.* If there is a change in the allowable number of additional trustee positions, the county superintendent shall reestablish the trustee nominating districts in accordance with 20-3-353. If the number of additional trustee positions is less than the previous number of positions, the county superintendent shall designate which present additional positions *are to* terminate upon his order reestablishing the trustee nominating districts. If the number of additional trustee positions is more than the previous number of positions, such additional trustee positions shall be filled in the manner prescribed under the provisions of 20-3-309. Each additional trustee position filled by appointment under this section shall be subject to election at the next regular school election."

Section 3. Section 20-6-509, MCA, is amended to read:

"20-6-509. School closure. *Whenever* it is in the best interest of the pupils affected, the trustees of any district *may* close any school of the district, except that a junior high school *may* be closed *only* by *joint action of* the trustees of the elementary district and the high school district in which the school is located. Whenever the trustees of a district close a school of the district, they shall provide the pupils of the closed school with transportation and tuition, if required, to other schools in accordance with the provisions of this title."

Section 4. Section 20-7-801, MCA, is amended to read:

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"**20-7-801. Public recreation program authorized.** *(1)* Any city or town, including any board of park commissioners, may expend funds from the band fund and the park fund of *the* city or town for the purpose of operating a program of public recreation and playgrounds and *for this purpose may* acquire, equip, and maintain land, buildings, and other recreation facilities.

(2) Any school district may cooperate in such program."

Section 5. Section 20-9-215, MCA, is amended to read:

"**20-9-215. Destruction of certain financial records.** Any claim, warrant, voucher, bond, or treasurer's general receipt may be destroyed by any county or school district officer after a period of 25 years."

Section 6. Section 20-9-431, MCA, is amended to read:

"**20-9-431. Publication of notice of sale of school district bonds.** (1) The trustees shall cause a copy of the notice of sale of the bonds to be:

(a) published once a week for 4 successive weeks preceding the date of the sale in a newspaper as determined by the trustees;

(b) published once, not less than 30 days prior to the date of sale, in some daily newspaper of the state that has a general circulation throughout the state when the bond issue to be sold is $10,000 or more; and

(c) sent to the board of *investments*.

(2) If the bond issue to be sold is $10,000 or more, the trustees may cause a brief notice to be published in some newspaper in the city of New York."

Section 7. Section 20-9-433, MCA, is amended to read:

"**20-9-433. Form and printing of school district bonds.** (1) It *is* not necessary for the trustees to prescribe the detailed form of the bonds to be issued, but the bonds must conform to all legal requirements for their payment whether they are issued as amortization or serial bonds. The bonds and coupons shall be issued in the name of the school district and shall be executed by the chairman of the trustees and the school district clerk in accordance with 2-16-114. If the bonds are purchased by the board of *investments*, all payments of principal or interest shall be made at the office of the state treasurer.

(2) The trustees shall cause the bonds, with the attached coupons, to be printed at the expense of the school district at the lowest commercial rates."

Section 8. Section 20-9-435, MCA, is amended to read:

"**20-9-435. Delivery of school district bonds and disposition of sale moneys.** (1) After the school district bonds have been registered, the county treasurer shall:

(a) when the board of *investments* has purchased such bonds, forward the bonds to such state board which, in turn, shall cause the bonds to be

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sent to the state treasurer and shall cause the bonds to be paid for in the manner provided by law; or

(b) when the purchaser is anybody other than the board of *investments* , deliver the bonds to such purchaser when full payment of the bonds has been made by the purchaser.

(2) If any of the trustees *fails* or *refuses* to pay into the proper county treasury the money arising from the sale of any bonds, he *is* guilty of a felony *and* shall be punished by imprisonment in the state prison for not less than 1 year or more than 10 years.

(3) All *money* realized from the sale of school district bonds shall be paid to the county treasurer, and he shall credit such *money* to the building fund of the school district issuing *the* bonds, except *money* realized for the purposes defined in 20-9-403(1)(c) and (1)(d) shall be deposited in the debt service fund for the purchase of such bonds. The *money* realized from the sale of school district bonds shall be immediately available to such school district, and the trustees may expend such *money* without budgeted authorization only for *the* purposes for which the bonds were authorized by the school district bond election. Under the provisions of 7-6-2802, the trustees may invest *the money* for which there is no immediate demand and the interest earned by such investment shall be used in the manner provided therein. After the full accomplishment of the purpose or purposes of a bond issue, the excess *money* realized from such bond issue shall be transferred to the debt service fund of the school district to be used for the redemption or purchase of bonds of such issue."

Section 9. Section 20-9-436, MCA, is amended to read:

"20-9-436. County attorney to assist in the proceedings. The trustees of any school district conducting bond proceedings shall prepare and maintain a transcript of their bond proceedings. It is a part of the official duties of the county attorney of every county of this state to advise and assist the trustees of each school district of his county in its bond proceedings. Before any transcript of school district bond proceedings is sent to the board of *investments*, he shall carefully examine such transcript, and the transcript *may* not be sent until he has attached his opinion to the transcript that the proceedings are in full compliance with law. The trustees of any school district, however, may, upon consent of the county attorney, employ any attorney licensed in Montana to assist the county attorney in the performance of his duties."

Section 10. Section 20-9-441, MCA, is amended to read:

"20-9-441. Redemption of bonds — investment of debt service fund moneys. (1) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more bonds of such school district held by the state of Montana, the county treasurer shall apply such money in payment of as many of such bonds as can be paid and redeemed. The county treasurer shall give notice not less than 30 days before the next interest due date to the board of *investments* that on such interest due date such bonds will be paid. Before such interest due date, the county treasurer shall remit to the state treasurer the amount of money that is necessary to pay the bonds that are

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being redeemed and the interest due on such bonds. When the state treasurer receives such payment, he shall cancel such bonds and any unpaid coupons of such bonds and return the canceled bonds and coupons to the county treasurer.

(2) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more optional bonds of such school district not held by the state of Montana, not yet due but then redeemable or becoming redeemable on the next interest due date, the county treasurer shall apply such available money in payment of as many of such bonds as can be paid and redeemed. The county treasurer shall give notice to the holder of the bonds, if known to him, or to any bank or financial institution at which the bonds are payable, at least 30 days before the next interest due date, that the bonds will be paid and redeemed on such date. If the bonds are payable at some bank or financial institution, the county treasurer shall remit to the bank or financial institution, before such interest due date, an amount sufficient to pay and redeem the bonds. If the bonds are not presented for payment and redemption on such interest due date, the accrual of interest shall cease on such interest due date.

(3) Whenever there is money available in any school district debt service fund sufficient to pay and redeem one or more outstanding bonds not yet due or redeemable and not held by the state of Montana, the trustees of such school district may direct the county treasurer to purchase such bonds of the district if this can be done at not more than par and accrued interest or at such reasonable premium as the trustees may feel justified in paying, but in no case exceeding 6%.

(4) Whenever the trustees cannot purchase outstanding bonds of the school district at a reasonable price, the available debt service fund *money* shall be invested by the trustees under the provisions of 20-9-213(4). Such investments shall be sold in ample time before the debt service fund *money is* required for the payment of the bonds of the school district."

Section 11. Section 20-9-444, MCA, is amended to read:

"20-9-444. Liability of officers for failure to provide fund for payment of bonds. When *the trustees of a* school district are required by law to provide, by a levy of taxes or by certifying the amount of money required or otherwise, a sinking fund or fund required to pay at maturity any bonds issued or created after February 6, 1923, such *trustees are* jointly and severally liable to the *school district* which they represent if they fail to perform any duties so required by law, as *specified* in this section, in an amount equal to the sum which would have been added to such fund had they performed such duty. *However, whenever* any such board *of trustees fails or neglects* to perform any such duty, no minority member of *the* board who moved *the* board or voted in favor of performance of such duty *may* be held liable."

Section 12. Section 20-9-465, MCA, is amended to read:

"20-9-465. Action to restrain bond issue — time for bringing. (1) No action *may* be brought for the purpose of restraining the issuance

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and sale of bonds or other obligations by any school district or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations after the expiration of 60 days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of 60 days from the date of the resolution authorizing the issuance thereof on account of any defect, irregularity, or informality in giving notice of or *in* holding the election; nor *may* any defense based upon any such defect, irregularity, or informality be interposed in any action unless brought within this period.

(2) This section applies but is not limited to any action and defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon."

Section 13. Section 20-25-706, MCA, is amended to read:

"20-25-706. Eligibility. Any local governing body; state or local administrative agency, department, board, commission; judicial, legislative, or other governmental unit; or nonprofit private organization is eligible to employ Montana students under the program as determined by the board of regents of higher education and within the funding limitations of the program, which eligibility:

(1) will not result in the displacement of employed workers or impair existing contracts for services;

(2) will not involve any partisan or nonpartisan political activity associated with a candidate or contending group or *faction* in an election for public or party office;

(3) will not involve the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place of worship; and

(4) in the case of nonprofit organizations other than governmental units, will result in employment which is in the general public interest rather than in the interest of a particular group."

Section 14. Section 20-30-405, MCA, is amended to read:

"20-30-405. Enforcement — injunction. (1) The county attorney of any county in which a postsecondary educational institution or an agent thereof is found, at the request of the department or on his own motion, may bring any appropriate action or proceeding (including injunctive proceedings or criminal proceedings pursuant to 20-30-403) in any court of competent jurisdiction for the enforcement of the provisions of this chapter.

(2) Whenever it shall appear to the department that any person, agent, group, or entity is, is about to, or has been violating any of the provisions of this chapter or any of the lawful rules or orders of the department, it may, on its own motion or on the written complaint of any person, file a petition for injunction in any court of competent jurisdiction against such person, group, or entity for the purpose of enjoining such violation or for

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an order directing compliance with the provisions of this *chapter* and all rules and orders issued by the department."

Section 15. **Repealer.** Section 20-6-623, MCA, is repealed.

Approved March 30, 1979.

CHAPTER NO. 385

AN ACT TO REQUIRE EXTENSION OF CERTAIN CONSTITUTIONAL RIGHTS TO A YOUTH DETAINED FOR INVESTIGATION OR QUESTIONING UNDER THE MONTANA YOUTH COURT ACT; AMENDING SECTION 41-5-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-303, MCA, is amended to read:

"41-5-303. Rights of youth upon apprehension. When a youth *is detained for investigation or questioning upon a matter which could result in a petition alleging that the youth being detained is either delinquent or in need of supervision,* the following requirements must be met:

(1) The youth shall be immediately and effectively advised of his constitutional rights and his rights under this chapter.

(2) The youth may waive such rights under the following situations:

(a) when the youth is under the age of 12 years, the parents of the youth may make an effective waiver;

(b) when the youth is over the age of 12 years and the youth and his parents agree, they may make an effective waiver; and

(c) when the youth is over the age of 12 years and the youth and his parents do not agree, the youth may make an effective waiver only with advice of counsel."

Approved March 30, 1979.

CHAPTER NO. 386

AN ACT TO CLARIFY THAT A YOUTH MAY WAIVE THE RIGHT TO COUNSEL UNLESS A PETITION HAS BEEN FILED UNDER THE MONTANA YOUTH COURT ACT; AMENDING SECTIONS 41-5-511 AND 46-8-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-511, MCA, is amended to read:

"41-5-511. Right to counsel. In all proceedings *following the filing of a petition* alleging a delinquent youth or youth in need of supervision,

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the youth and the parents or guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained, counsel shall be appointed for the youth unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel *after a petition has been filed* if commitment to a state correctional facility or to the department of institutions for a period of more than 6 months may result from adjudication."

Section 2. Section 46-8-102, MCA, is amended to read:

"46-8-102. Waiver of counsel. A defendant may waive his right to counsel, except that in all felony cases where the defendant is under 18 years of age, the defendant shall be represented by counsel at every stage of the proceedings *following the filing of a petition under 41-5-501.*"

Approved March 30, 1979.

CHAPTER NO. 387

AN ACT TO REVISE THE LAWS RELATING TO CLASS D MOTOR CARRIERS; AMENDING SECTIONS 69-12-314 AND 69-12-407, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-314, MCA, is amended to read:

"69-12-314. Class D motor carrier certificate. *(1)* Class D carriers shall conduct operations pursuant to a certificate of public convenience and necessity issued by the commission authorizing the transportation of the commodities described in 69-12-301(5). Class D carriers when applying for a new or additional authority shall file an application with the commission in accordance with the requirements of this chapter and the rules of the commission.

(2) A motor carrier may not possess a Class D motor carrier certificate or operate as a Class D motor carrier unless the motor carrier actually engages in the transportation of ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter on a regular basis as part of the motor carrier's usual business operation."

Section 2. Section 69-12-407, MCA, is amended to read:

"69-12-407. Records and reports. (1) All records, books, accounts, and files of every Class A, Class B, *or Class D* motor carrier in this state, so far as the same shall relate to the business of transportation conducted by such motor carrier, shall at all times be subject to examination by the commission or by any authorized agent or employee of the commission. The commission shall prescribe a uniform system of accounts and uniform reports covering the operations of such Class A, Class B, *or Class D* motor

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carriers, and every motor carrier authorized to operate as such in accordance with the provisions of this chapter shall keep its records, books, and accounts according to such uniform system, insofar as possible.

(2) On or before March 31 of each year, every motor carrier authorized to engage in such business shall file with the commission a report, under oath, on a form prescribed and furnished by the commission. Those carriers filing an annual report with the interstate commerce commission shall, in addition to filing the report prescribed by the public service commission, submit to the public service commission a copy of the annual report filed with the interstate commerce commission. In addition to such annual reports every motor carrier shall prepare and file with the commission, at the time or times and in the form to be prescribed by the commission, annual reports, special reports, and statements giving to the commission such information as it shall require in order to perform its duties under this chapter.

(3) In addition to other reporting requirements, the commission shall require the holder of a Class D motor carrier certificate to provide sufficient information to show that the carrier is entitled to possess the Class D motor carrier certificate under the requirements of 69-12-314."

Approved March 30, 1979.

CHAPTER NO. 388

AN ACT TO GENERALLY REVISE THE LAW RELATING TO ARCHITECTURE; TO REESTABLISH THE BOARD OF ARCHITECTS AND REVISE BOARD MEMBERSHIP; TO REDEFINE "PUBLIC BUILDING"; TO REVISE REEXAMINATION PROVISIONS; TO ALLOW THE BOARD TO FIX REASONABLE FEES; TO ALLOW THE BOARD TO PRESCRIBE CONTINUING EDUCATION PROGRAMS; AMENDING SECTIONS 2-8-103, 2-15-1651, 18-2-101, 37-65-102, 37-65-303, 37-65-304, AND 37-65-306, MCA; REPEALING SECTIONS 18-2-115 AND 37-65-309, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Board reestablished.** The board of architects created by 2-15-1351 is reestablished for a period of 6 years pursuant to 2-8-122.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of public accountants, department of professional and occupational licensing, created by 2-15-1641;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) state electrical board, department of professional and occupational licensing, created by 2-15-1654;

(e) board of professional engineers and land surveyors, department of professional and occupational licensing, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the investment commissioner, state auditor's office, created by 2-15-1901;

(h) board of landscape architects, department of professional and occupational licensing, created by 2-15-1652;

(i) board of county printing, department of community affairs, created by 2-15-1102;

(j) board of plumbers, department of professional and occupational licensing, created by 2-15-1655;

(k) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(l) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(m) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

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(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(n) board of osteopathic physicians, department of professsional and occupational licensing, created by 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(t) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(u) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

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(g) Montana outfitters council, department of fish and game, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631;

(j) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(k) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632."

Section 3. Section 2-15-1651, MCA, is amended to read:

"2-15-1651. Board of architects. (1) There is a board of architects.

(2) The board consists of *four* members appointed by the governor with the consent of the senate. *The members are:*

(a) two registered architects who *have* been in continuous practice for 3 years before *their* appointment;

(b) one registered architect who is on the staff of the Montana state university school of architecture; and

(c) one representative of the public who is not engaged in or directly connected with the practice of architecture.

(3) Each member must have been a resident of Montana for 4 years prior to appointment.

(4) Each member shall serve for a term of 3 years.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 18-2-101, MCA, is amended to read:

"18-2-101. Definitions of building and construction. In part 1 of this chapter, with the exception of 18-2-104, 18-2-107, 18-2-113, *and 18-2-114*:

(1) "building" includes:

(a) a building, facility, or structure constructed or purchased wholly or in part with state moneys;

(b) a building, facility, or structure at a state institution;

(c) a building, facility, or structure owned or to be owned by a state agency, including the department of highways;

(2) "building" does not include:

(a) a building, facility, or structure owned or to be owned by a county, city, town, school district, or special improvement district;

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(b) a facility or structure used as a component part of a highway or water conservation project;

(3) "construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration."

Section 5. Section 37-65-102, MCA, is amended to read:

"37-65-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Architect" means an individual technically and legally qualified to practice architecture and who is authorized under this chapter to practice architecture.

(2) "Board" means the board of architects provided for in 2-15-1651.

(3) "Building" means a structure intended primarily for human occupancy or use.

(4) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(5) "Practice of architecture" means rendering or offering to render services by consultations, preliminary studies, drawings, specifications, or other services in connection with the design of a building or addition or alteration thereto, whether one or all of these services are performed either in person or as the directing head of an organization.

(6) "Public building" means any building which the state or any political subdivision thereof maintains for the use of the public."

Section 6. Section 37-65-303, MCA, is amended to read:

"37-65-303. Application — examination — issuance of certificate. (1) A person wishing to practice architecture in this state shall apply to the department for a certificate to do so. A person applying shall have successfully completed the requirement of prerequisites in education, practical experience, and a written examination as prescribed by the board. *The examination must be* in *substantial* conformance with the standard national council of architectural registration boards examination and grading procedure, *except as modified by board rules.*

(2) After examination the department shall, if the candidate has been found qualified, grant a certificate to the candidate to practice architecture in this state, which may only be granted on the consent of not less than two members of the board, attested by the secretary, and have the seal of the board attached."

Section 7. Section 37-65-304, MCA, is amended to read:

"37-65-304. Examination fee — deposit of fee. (1) Applicants for examination shall pay in advance to the department a fee set by the board, commensurate with the cost, which shall defray the entire examination expense of the candidate. An applicant failing to pass the examination is entitled to *reexamination at the next scheduled examination* on payment of a reasonable fee prescribed by the board.

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(2) The money received from the applicant shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6)."

Section 8. Section 37-65-306, MCA, is amended to read:

"37-65-306. Annual renewal fee. A licensed architect in this state who desires to continue the practice of his profession shall annually during the month of July, during the time he continues in this practice:

(1) pay to the department a *reasonable* fee *as prescribed by the board; and*

(2) present evidence to the board of compliance with any continuing education requirements imposed by the board."

Section 9. **Continuing education.** (1) The board may by rule prescribe continuing education requirements for license renewal.

(2) If the board prescribes continuing education requirements, the rules shall provide for the method of compliance, such as:

(a) attendance at approved classroom or seminar-type instruction programs; or

(b) passing an examination.

(3) If classroom or seminar-type instruction is required, the board shall by rule:

(a) make determinations as to approved programs; and

(b) prescribe the number of hours required for compliance.

(4) If an examination is required, the board shall by rule prescribe:

(a) the subjects of the examination; and

(b) the grade required to pass the examination.

Section 10. **Transition.** Section 3 does not affect the terms of office of persons who are members of the board on July 1, 1979, and such members shall serve the remainder of their unexpired terms. All appointments made and vacancies filled after July 1, 1979, must be in accordance with section 3.

Section 11. **Codification.** Section 9 is intended to be codified as an integral part of Title 37, chapter 65. The provisions of Title 37, chapter 65, apply to section 9, and section 9 applies to the provisions of Title 37, chapter 65. All references in the MCA to Title 37, chapter 65, include section 9.

Section 12. **Repealer.** Sections 18-2-115 and 37-65-309, MCA, are repealed.

Section 13. **Effective date of certain sections.** Sections 1 and 2 are effective on passage and approval.

Approved March 30, 1979.

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CHAPTER NO. 389

AN ACT TO PROVIDE THAT PAYMENT OF A DISABILITY RETIREMENT ALLOWANCE UNDER THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM SHALL COMMENCE ON THE DAY FOLLOWING THE MEMBER'S LAST DAY OF MEMBERSHIP SERVICE; AMENDING SECTION 19-9-902, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-9-902, MCA, is amended to read:

"19-9-902. Eligibility for disability retirement. If a member is determined by the board to be totally and permanently disabled, he is entitled to a disability retirement allowance, regardless of the length of his service, commencing *on the day following the member's last day of membership service.*"

Approved March 30, 1979.

CHAPTER NO. 390

AN ACT TO EXCLUDE VOLUNTEER AMBULANCE DRIVERS AND ATTENDANTS FROM LIABILITY WHILE PERFORMING AMBULANCE RUNS; AMENDING SECTION 27-1-714, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-714, MCA, is amended to read:

"27-1-714. Limits on liability for emergency care rendered at scene of accident or emergency. *(1)* Any person licensed as a physician and surgeon under the laws of the state of Montana or any other person who in good faith renders emergency care or assistance without compensation *except as provided in subsection (2)* at the scene of an emergency or accident *is not* liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.

(2) Subsection (1) includes a person properly trained under the laws of this state who operates an ambulance to and from the scene of an emergency or renders emergency medical treatment on a volunteer basis so long as any reimbursement received for such volunteer services does not exceed 25% of his gross annual income."

Approved March 30, 1979.

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CHAPTER NO. 391

AN ACT TO EXEMPT THE DEPARTMENT OF PUBLIC SERVICE REGULATION, IN THE EXERCISE OF ITS REGULATORY AUTHORITY OVER RATES, FROM THE REQUIREMENTS OF THE MONTANA ENVIRONMENTAL POLICY ACT; AMENDING SECTION 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions — environmental impact statements. The legislature authorizes and directs that, to the fullest extent possible:

(1) the policies, regulations, and laws of the state shall be interpreted and administered in accordance with the policies set forth in this chapter;

(2) all agencies of the state, *except as provided in subsection (4),* shall:

(a) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(b) identify and develop methods and procedures which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(c) include in every recommendation or report on proposals for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on:

(i) the environmental impact of the proposed action;

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) alternatives to the proposed action;

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(d) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(e) recognize the national and long-range character of environmental problems and, where consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to

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maximize national cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(f) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(g) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(h) assist the environmental quality council established by 5-16-101; and

(3) prior to making any detailed statement as provided in subsection (2)(c), the responsible state official shall consult with and obtain the comments of any state agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate state, federal, and local agencies which are authorized to develop and enforce environmental standards shall be made available to the governor, the environmental quality council, and the public and shall accompany the proposal through the existing agency review processes.

(4) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of this chapter."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 30, 1979.

CHAPTER NO. 392

AN ACT FOR THE GENERAL REVISION OF THE LAWS RELATING TO THE GOVERNANCE OF COMMUNITY COLLEGE DISTRICTS SO THAT CHAPTER 15 OF TITLE 20, MCA, WILL BE THE PRIMARY LAW GOVERNING COMMUNITY COLLEGE DISTRICTS; CLARIFYING THE DEFINITION OF THE WORD DISTRICT AS IT APPLIES TO COMMUNITY COLLEGE DISTRICTS; AND AMENDING SECTIONS 20-3-205, 20-9-101, 20-9-112, 20-9-134, 20-9-161, 20-9-163, 20-9-165, 20-9-201, 20-9-204, 20-9-212, 20-15-103, 20-15-104, 20-15-106, 20-15-210, 20-15-221, 20-15-223, 20-15-225, AND 20-15-302, MCA.

Section 1. **Purpose.** It is the purpose of this chapter to establish the governance of community college districts in Montana. The legislature intends that the board of regents and the local boards of trustees of community college districts coordinate their responsibilities to insure an orderly development of educational services to the citizens of Montana in accordance with this chapter.

Section 2. **Precedence of community college chapter.** Unless specifically identified in any other sections of the school laws prescribed

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in this title, community college districts are governed by the provisions of this chapter. Should there be a conflict between other requirements of this title and the provisions of this chapter regulating community college districts, the provisions of this chapter shall govern.

Section 3. **Candidate qualification and nomination.** (1) Any person who is qualified to vote in a community college district under the provisions of 20-20-301 is eligible for the office of community college trustee.

(2) Any five electors of a community college district qualified under the provisions of 20-20-301 may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. A nominating petition containing the signatures of the five electors and the name of each person nominated for candidacy must be submitted to the election clerk designated by the board of trustees no less than 30 days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated must also be indicated.

Section 4. **Trustee election ballot after organization of community college district.** (1) The trustee election ballot must be substantially in the following form:

Official Ballot
Community College Trustee Election
Instructions to Voters

Make an "X" or similar mark in the vacant square before the name of the candidate for whom you wish to vote.

Vote for (indicate number to be elected) for a 3-year term.
☐ ..... List the names of the candidates for the 3-year term with a vacant square in front of each name.

Vote for (indicate number to be elected) for a 2-year term.
☐ ..... List the names of the candidates for the 2-year term with a vacant square in front of each name.

Vote for (indicate number to be elected) for a 1-year term.
☐ ..... List the names of the candidates for the 1-year term with a vacant square in front of each name.

(2) In preparing the ballots, only those portions of the prescribed ballot that are applicable to the election to be conducted need be used. The ballot must also be prepared with blank lines and vacant squares in front of the lines in a sufficient number to allow write-in voting for each trustee position that is subject to election.

Section 5. **Qualification and oath after organization of community college district.** (1) No person who receives a certificate of election as a community college trustee may assume the trustee position until he

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has qualified by taking an oath of office prescribed by the constitution of Montana at the next regularly scheduled meeting of the board of trustees after receipt of the certificate of election.

(2) If the elected person does not qualify in accordance with this requirement, another person must be appointed in a manner provided by 20-15-223 and shall serve until the next regular election.

(3) After a person has qualified for a trustee position, he shall hold such position for the term of the position and until his successor has been elected or appointed and has been qualified.

Section 6. **Trustee removal procedure.** (1) Any person may seek the removal of a community college trustee by filing a complaint with the board of county commissioners, containing charges based on one or more of the grounds cited in [section 7].

(2) If upon receiving such a complaint it appears that there is probable cause for removal, the board of county commissioners shall suspend such trustee from his trustee position until charges can be heard in the appropriate district court. The board of county commissioners shall then transmit the complaint, together with a statement of suspension, to the district court.

Section 7. **Grounds for removal.** (1) A community college trustee may be removed whenever he:

(a) moves his residence from the applicable community college district;

(b) is no longer a registered elector of the community college district under the provisions of 20-20-301;

(c) is absent from the district 60 consecutive days;

(d) fails to attend three consecutive meetings of the trustees without reasonable cause;

(e) fails to perform responsibilities in accordance with [section 9]; or

(f) ceases to have the capacity to hold office.

Section 8. **Organization and officers after organization of community college district.** (1) The trustees of each community college district shall annually organize as a governing board of the community college district at the next regularly scheduled meeting after the regular election day and after the issuance of the election certificate to the newly elected trustees.

(2) In order to organize, the trustees of the community college district shall be given notice by the coordinator of the time and place where the organization meeting will be held, and at such meeting they shall choose one of their members as chairman and as secretary. In addition, the trustees may employ or appoint a competent person who is not a member of the trustees as the clerk of the community college district.

(3) The chairman and secretary of the trustees of the community college district shall serve until the next organization meeting. The chairman

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shall preside at all meetings of the trustees in accordance with the customary rules of order. He shall perform the duties prescribed by this title and any other duties that normally pertain to such office.

Section 9. **Personal liability of trustees.** (1) The trustees of each community college district are responsible for the proper administration and utilization of all money of the district. Failure or refusal to do so constitutes grounds for removal from office.

(2) Trustees consenting to illegal use of money are jointly and individually liable to the district for any losses sustained by the district. The county attorney shall prosecute any proceedings arising pursuant to this section, or a party seeking such action may retain private counsel. The party commencing the action is liable for the costs if the action fails.

Section 10. **Trustees' power over property.** The trustees of a community college district shall hold in trust all real and personal property of the district for the benefit of the college and students.

Section 11. **Intrastate, interstate, and international agreements.** The trustees of a community college district may enter into agreements with the Western Interstate Commission for Higher Education, or similar intrastate, interstate, or international agreements, for the benefit of the district and students.

Section 12. **When community college district subject to other school district provisions.** (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts, and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2215, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-18-108, 15-24-502, 15-24-505, 15-30-221, 15-55-106, 15-70-301, 15-70-322, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-102, 18-1-105, 18-1-112, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-115, 18-2-404, 18-2-408, 18-5-205, 19-1-102, 19-1-602, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 40-8-124, 40-8-125, 40-8-128, 41-5-912, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208, MCA, and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district.

Section 13. **Additional provisions apply.** Unless the context clearly indicates otherwise, the trustees of a community college district shall:

(1) adhere to the teachers' retirement provisions of Title 19, chapter 4, as amended;

(2) adhere to the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212, as amended;

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(3) adhere to the school property provisions of 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636, as amended;

(4) adhere to the adult education provisions of 20-7-701 through 20-7-712, as amended;

(5) adhere to the administration of finances provisions of 20-9-115, 20-9-134, subsections (2), (3), (4), and (5) of 20-9-161, 20-9-163, 20-9-165, 20-9-207 through 20-9-210, 20-9-215, and 20-9-221 through 20-9-224, as amended;

(6) adhere to the school bond provisions of 20-9-401 through 20-9-412, 20-9-421 through 20-9-446, 20-9-451 through 20-9-456, and 20-9-461 through 20-9-465, as amended;

(7) adhere to the special purpose funds provisions of 20-9-501 through 20-9-503, 20-9-507, 20-9-508, and 20-9-511, as amended;

(8) adhere to the educational cooperative agreements provisions of 20-9-701 through 20-9-704, as amended;

(9) adhere to the school elections provisions of Title 20, chapter 20, as amended;

(10) adhere to the students' rights provisions of 20-25-511 through 20-25-516, as amended; and

(11) adhere to the health provisions of 50-1-206.

Section 14. **Audit of community college districts.** A community college district is subject to audit by the legislative auditor in the same manner as a state agency. A community college district may contract for an audit with a private accounting firm, subject to approval of the legislative auditor.

Section 15. Section 20-3-205, MCA, is amended to read:

"20-3-205. Powers and duties. The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts and fill additional trustee position vacancies in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in his county in accordance with the provisions of 20-3-307;

(3) fill by appointment any trustee position vacancies when required under the provisions of 20-3-309;

(4) register the teacher certificate or emergency authorization of employment of any person employed in the county as a teacher, principal, or district superintendent in accordance with the provisions of 20-4-202;

(5) act on each tuition application submitted to him in accordance with the provisions of 20-5-301, 20-5-302, 20-5-304, and 20-5-311 and transmit the tuition information required by 20-5-312;

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(6) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(7) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(8) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of 20-6-103;

(9) fulfill all responsibilities assigned to him under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(10) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(11) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(12) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(13) complete the budgets, compute the budgeted revenues and tax levies, give notices of the budget meetings, file final and emergency budgets, and fulfill such other responsibilities assigned to him under the provisions of this title regulating school budgeting systems;

(14) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(15) quarterly, unless otherwise provided by law, order the county treasurer to apportion state *money*, county school *money*, and any other school *money* subject to apportionment in accordance with the provisions of 20-9-212, 20-9-334, 20-9-347, 20-9-351, 20-10-145, or 20-10-146;

(16) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(17) calculate the estimated budgeted general fund sources of revenue in accordance with the provisions of 20-9-348 and the other general fund revenue provisions of the general fund part of this title;

(18) compute the revenues and the district and county levy requirements for each fund included *in* each district's final budget and report such computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(19) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(20) for districts which do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

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(21) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(22) act on district requests to allocate federal *money* for indigent children for school food services in accordance with the provisions of 20-10-205;

(23) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, *the policies of the board of regents relating to community college districts,* or the rules of the superintendent of public instruction;

(24) administer the oath of office to trustees without the receipt of pay for administering the oath;

(25) keep a record of his official acts, preserve all reports submitted to him under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender such records, books, supplies, and equipment to his successor;

(26) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(27) hold meetings for the members of the trustees from time to time at which matters for the good of the districts shall be discussed."

Section 16. Section 20-9-101, MCA, is amended to read:

"20-9-101. Application of budget system for districts. The school budgeting procedure and provisions of this title apply to elementary *and* high school *districts* and, *whenever specified, to* community college districts and to all funds requiring the adoption of a budget. Each district shall separately propose and adopt a budget in accordance with the requirements of this title."

Section 17. Section 20-9-112, MCA, is amended to read:

"20-9-112. Notice of preliminary budget meeting. During the month of May, the county superintendent shall publish a notice at least one time in the official newspaper of the county, stating that the trustees of each district in the county *and the trustees of the community college*

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district will meet *separately* in regular session on the fourth Monday in June to prepare and adopt a preliminary budget for the next ensuing school fiscal year and that any taxpayer in the district may attend such meeting and be heard on such preliminary budget."

Section 18. Section 20-9-134, MCA, is amended to read:

"20-9-134. Completion, filing, and delivery of final budgets. After the final budget of the *elementary, high school, or community college* district has been adopted by the trustees, the county superintendent shall complete all the remaining portions of the budget forms and shall:

(1) send the final budget information to the superintendent of public instruction, on the forms provided by the superintendent, on or before September 1;

(2) in the case of the community college districts, send the final budget information to the board of regents, on the forms provided by the community college coordinator, on or before September 1; and

(3) deliver a copy of the final budget for the district to the county treasurer on or before September 1."

Section 19. Section 20-9-161, MCA, is amended to read:

"20-9-161. Definition of emergency for budgeting purposes. As used in this title, unless the context clearly indicates otherwise, the term "emergency" for the purpose of school budgeting shall be:

(1) an increase in the enrollment of *an elementary or high school* district over the immediately preceding school fiscal year which is beyond what could reasonably have been anticipated at the time of the adoption of the budget for the then-current school fiscal year *whenever*, because of such enrollment increase, the district's budget for any or all of the regularly budgeted funds does not provide sufficient financing to properly maintain and support the district for the entire current school fiscal year;

(2) the destruction or impairment of any school property necessary to the maintenance of the school, by fire, flood, storm, riot, insurrection, or any act of God, to such an extent as to render such school property unfit for its present school use;

(3) a judgment for damages against the district rendered by a court after the adoption of the budget for the current year;

(4) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district; or

(5) any other reason of similar consequences that has been approved by the superintendent of public instruction upon petition by the trustees of the district *or by the board of regents upon petition by the trustees of a community college district.*"

Section 20. Section 20-9-163, MCA, is amended to read:

"20-9-163. Resolution for emergency budget — petition to superintendent of public instruction or to the board of regents.

(1) Whenever the trustees of any district *decide* that an emergency exists, they may adopt a resolution proclaiming such emergency by a unanimous vote of all members present at any meeting for which each trustee has been given reasonable notice of the time and place of holding such meeting. The emergency resolution shall also state the facts constituting the emergency, the estimated amount of money required to meet the emergency, the funds affected by the emergency, and the time and place when the board will meet for the purpose of considering and adopting an emergency budget for such funds for the current school fiscal year.

(2) If the trustees *decide* that an emergency exists for any reason other than the conditions specified in subsections (1), (2), (3), or (4) of 20-9-161, they shall petition the superintendent of public instruction *or, in the case of a community college district, the board of regents* for permission to adopt a resolution of emergency. Such petition shall set forth in writing the reasons for the request, the district funds affected by the emergency, the estimated amount of money required to meet such emergency for each affected fund, the anticipated sources of financing for the emergency expenditures, and such other information as may be required by the superintendent of public instruction *or the board of regents*. The petition shall be signed by each trustee.

(3) The superintendent of public instruction *or, in the case of a community college district, the board of regents* shall promptly approve or disapprove the petition requesting approval to adopt a resolution of emergency. If the petition is approved, the trustees may then adopt a resolution of emergency and may subsequently take all other steps required for the adoption of an emergency budget. Approval of *a* petition by the superintendent of public instruction *or the board of regents* shall merely authorize the board of trustees to initiate emergency budget proceedings by resolution and shall not relieve the trustees of the necessity of complying with the requirements of the school emergency budgeting laws. Approval of the petition shall not be construed as approval of any subsequent application for increased state aid on account of such emergency."

Section 21. Section 20-9-165, MCA, is amended to read:

"20-9-165. Emergency budget limitation, preparation, and adoption procedures. (1) The meeting of the trustees to consider and adopt an emergency budget shall be open to the public, and any taxpayer in the district shall have the right to appear and be heard. If at such a meeting a majority of the trustees present shall find that an emergency exists, the trustees may make and adopt a preliminary emergency budget, on the regular budget form, setting forth fully the facts constituting the emergency. In adopting the preliminary emergency budget, the trustees may budget for any fund which was included on the final budget of the district for the current school fiscal year. The budget shall be itemized to show the amount appropriated for each item as required on the budget form.

(2) When the emergency is due to any increase of enrollment, the maximum amount of the emergency budget for all funds shall be determined in the following manner:

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(a) Determine the total amount in the final budget for the current school fiscal year of all funds affected by the emergency, less any amounts appropriated as capital outlay and any amount appropriated for addition to the cash reserve.

(b) Divide the amount determined in subsection (2)(a) by the number of pupils originally enrolled in such district during the immediately preceding school fiscal year. The resulting cost per pupil shall constitute the maximum permissible per-pupil expenditure in the emergency budget.

(c) Determine the enrollment increase of the current school fiscal year by subtracting the number of pupils originally enrolled during the immediately preceding school fiscal year from the number of pupils enrolled for the current school year. The result shall be the enrollment increase for the current school fiscal year.

(d) Multiply the cost per pupil determined in subsection (2)(b) by the enrollment increase determined in subsection (2)(c). The result shall be the maximum limitation on an emergency budget for emergencies due to an increase of enrollment.

(e) In the case of a community college district, by budget amendment in accordance with 20-15-302.

(3) In the event of any other type of emergency, the budget shall be limited by those expenditures deemed by the trustees to be reasonable and necessary to finance the stated conditions of the emergency and the preliminary emergency budget shall be accompanied with the details of the proposed expenditures.

(4) Whenever the trustees adopt a preliminary emergency budget for the transportation fund, the trustees shall attach to such budget a copy of each transportation contract which is connected with the emergency and which has been prepared and executed in accordance with the school transportation contract laws.

(5) After the trustees have adopted the emergency budget by a majority vote of the trustees, it shall be signed by the chairman of the trustees and the clerk of the district and copies shall be sent to the county superintendent, the county treasurer, and the superintendent of public instruction. *In the case of a community college district, copies of the emergency budget shall be sent to the county superintendent, the county treasurer, and the board of regents.*"

Section 22. Section 20-9-201, MCA, is amended to read:

"20-9-201. Definitions and application. (1) As used in this title, unless the context clearly indicates otherwise, "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law. Funds are classified as follows:

(a) A "budgeted fund" means any fund for which a budget must be adopted in order to expend any *money* from such fund. The general fund, transportation fund, bus depreciation reserve fund, elementary tuition fund, retirement fund, debt service fund, leased facilities fund, building reserve fund, adult education fund, nonoperating fund, postsecondary

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vocational-technical center fund, and any other funds so designated by the legislature shall be budgeted funds.

(b) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend any *money* on deposit in such fund. The school food services fund, miscellaneous federal programs fund, building fund, housing and dormitory fund, traffic education fund, interlocal cooperative fund, and any other funds so designated by the legislature shall be nonbudgeted funds.

(2) The school financial administration provisions of this title apply to all *money* of any elementary or high school district except the extracurricular *money* realized from pupil activities. The superintendent of public instruction has general supervisory authority over the school financial administration provisions, as they relate to elementary and high school districts, as prescribed by law and shall establish such rules as are necessary to secure compliance with the law."

Section 23. Section 20-9-204, MCA, is amended to read:

"20-9-204. Pecuniary interests, letting contracts, and calling for bids. (1) It is unlawful for any trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract for the erection of any school building or for warming, ventilating, furnishing, or repairing the same;

(b) be in any manner connected with the furnishing of supplies for the maintenance and operation of the schools; or

(c) be employed in any capacity by the school district of which he is trustee.

(2) Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of $4,000, the work done or the purchase made shall be by contract. Each such contract must be let to the lowest responsible bidder after advertisement for bids. Such advertisement shall be published in the newspaper which will give notice to the largest number of people of the district as determined by the trustees. Such advertisement shall be made once each week for 2 consecutive weeks, and the second publication shall be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section shall be void.

(3) Whenever bidding is required, the trustees shall award the contract to the lowest responsible bidder, except that the trustees may reject any or all bids."

Section 24. Section 20-9-212, MCA, is amended to read:

"20-9-212. Duties of county treasurer. The county treasurer of each county shall:

(1) receive and hold all school *money* subject to apportionment and keep a separate accounting of *its* apportionment to the several districts

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which are entitled to a portion of such *money* according to the apportionments ordered by the county superintendent. A separate accounting shall be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary foundation programs;

(b) the basic special tax for high schools in support of the high school foundation programs;

(c) the county tax in support of the county's high school transportation obligation;

(d) the county tax in support of the high school obligations to the retirement systems of the state of Montana;

(e) any additional county tax required by law to provide for deficiency financing of the elementary foundation programs;

(f) any additional county tax required by law to provide for deficiency financing of the high school foundation programs;

(g) the county tax for a postsecondary vocational-technical center when levied by the board of county commissioners; and

(h) any other county tax for schools, *including the community colleges,* which may be authorized by law and levied by the county commissioners;

(2) whenever requested, notify the county superintendent and the superintendent of public instruction of the amount of county school *money* on deposit in each of the funds enumerated in subsection (1) of this section and the amount of any other school *money* subject to apportionment and apportion such county and other school *money* to the districts in accordance with the apportionment ordered by the county superintendent;

(3) keep a separate accounting of the expenditures for each budgeted fund included *in* the final budget of each district;

(4) keep a separate accounting of the receipts, expenditures, and cash balances for each budgeted fund included *in* the final budget of each district and for each nonbudgeted fund established by each district;

(5) except as otherwise limited by law, pay all warrants properly drawn on the county or district school *money* and properly endorsed by their holders;

(6) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law or by the district if no fund is designated by law. Interest and penalties on delinquent school taxes shall be credited to the same fund and district for which the original taxes were levied.

(7) send all revenues received for a joint district, part of which is situated in his county, to the county treasurer designated as the custodian of such revenues, no later than December 15 of each year and every 3 months thereafter until the end of the school fiscal year;

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(8) register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there *is* insufficient *money* available in the sum of *money* in all funds of the district to make payment of such warrant. Redemption of registered warrants shall be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) invest the *money* of any district as directed by the trustees of the district; and

(10) give to the trustees of each district, at least quarterly, an itemized report for each fund maintained by the district, showing the paid warrants, outstanding warrants, registered warrants, *amounts* and types of revenue received, and the cash balance."

Section 25. Section 20-15-103, MCA, is amended to read:

"20-15-103. Supervision and coordination by board of regents. Community college districts shall be under the supervision *and coordination* of the regents. The regents shall:

(1) supervise community college districts in accordance with the provisions of this section and 20-15-105;

(2) appoint a coordinator of community college districts and *prescribe the duties of the coordinator*;

(3) formulate and put into effect *general* policies *for the supervision and coordination of community college districts*;

(4) after consultation with the community college trustees, develop and implement policies that distinguish the regents' authority to supervise and coordinate and the trustees' authority to administer and control community colleges; and

(5) call an election, determine the results of the election, and order and implement the organization of a community college district in accordance with this chapter."

Section 26. Section 20-15-104, MCA, is amended to read:

"20-15-104. Pecuniary interest and letting contracts. (1) It shall be unlawful for any community college district trustee to have any pecuniary interest, either directly or indirectly, in the erection of any community college building in his district or *in* furnishing or repairing the same or be in any manner connected with the furnishing of supplies for the maintenance of the college or to receive or accept any compensation or reward for services rendered as trustee, except as herein provided.

(2) *The* board of trustees shall let *contracts* for building, furnishing, repairing, or other work or supplies for the benefit of the district *according to the following rules and procedures:*

(a) The board of trustees need not meet requirements relating to advertising or bidding if a proposed contract for building, furnishing, repairing or other work or supplies is for less than $5,000.

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(b) Whenever the proposed contract costs are less than $25,000 but more than $5,000, the board of trustees shall procure at least three informal bids, if reasonably available, from contractors licensed in Montana.

(c) Whenever the proposed contract costs are more than $25,000 the board of trustees shall solicit formal bids and advertise once each week for at least 2 weeks in a newspaper published in each county wherein the area of the district lies, calling for bids to perform such work or furnish such supplies. *If* advertising is required, the board shall award the contract to the lowest responsible bidder. *However,* the board of trustees *has* the right to reject any and all bids."

Section 27. Section 20-15-106, MCA, is amended to read:

"20-15-106. Retirement systems for employees and teachers. *(1) Teachers* of a community college district *are* subject to and eligible for the benefits of the *Montana* teachers' retirement system.

(2) The employees of a community college district not eligible for teachers' retirement system benefits are subject to and eligible for the benefits of the Montana public employees' retirement system."

Section 28. Section 20-15-210, MCA, is amended to read:

"20-15-210. Qualification and organization of board of trustees. *(1)* Newly elected members of the board of trustees of the community college district shall be qualified by taking the oath of office prescribed by the constitution of Montana. At the organization meeting called by the board of regents, the board of trustees shall be organized by the election of a *chairman* and a secretary.

(2) The treasurer of the community college district *is* the county treasurer of the county in which the community college facilities are located. *The duties of the county treasurer are referenced in 20-9-206, 20-9-212, 20-9-222, and 20-9-224."*

Section 29. Section 20-15-221, MCA, is amended to read:

"20-15-221. Election of trustees after organization of community college district. (1) After organization, the registered electors of the community college district *qualified to vote under the provisions of 20-20-301* shall *annually* vote for trustees on the *regular school election day provided for in 20-3-304. The election shall be conducted in accordance with the election provisions of this title whenever such provisions are made applicable to community college districts. Such* elections shall be conducted by the component elementary school districts within such community college district upon the order of the board of trustees of the community college district. *The* order shall be transmitted to the appropriate trustees not less than 40 days prior to the regular school election day.

(2) Notice of the community college district trustee election shall be given by the board of trustees of the community college district by publication in one or more newspapers of general circulation within each county, not less than once a week for 2 consecutive weeks, the last insertion to be no *more* than 1 week prior to the date of the election. This

notice shall be in addition to the election notice to be given by the trustees of the component elementary districts under the school election laws.

(3) Should trustees be elected other than at large throughout the entire district, then only those qualified voters within the area from which the trustee or trustees are to be elected shall cast their ballots for the trustee or trustees from that area. *In addition to the nominating petition required by [section 3(2)], all* candidates for the office of trustee shall file their declarations of candidacy with the secretary of the board of trustees of the community college district not less than 30 days prior to the date of election. If an electronic voting system or voting machines are not used in the component elementary school district or districts which conduct the election, the board of trustees of the community college district shall cause ballots to be printed and distributed for the polling places in such component districts at the expense of the community college district, but in all other respects said elections shall be conducted in accordance with the school election laws. All costs incident to election of the community college trustees shall be borne by the community college district, including one-half of the compensation of the judges for the school elections; provided that if the election of the community college district trustees is the only election conducted, the community college district shall compensate the district for the total cost of the election."

Section 30. Section 20-15-223, MCA, is amended to read:

"20-15-223. Vacancies. *(1) A community college trustee position is vacant whenever the incumbent:*

(a) dies;

(b) resigns; or

(c) is removed under the provisions of [section 6].

(2) A trustee position is also vacant whenever an elected candidate fails to qualify under the provisions of 20-3-307.

(3) Any vacancy of a *trustee* position shall be filled by appointment by *majority vote of* the remaining trustees, and the person appointed shall hold office until the next regular school election day, when a trustee shall be elected for the remainder of the unexpired term."

Section 31. Section 20-15-225, MCA, is amended to read:

"20-15-225. Powers and duties of trustees. The trustees of a community college district shall, subject to supervision by the board of regents:

(1) have general control and supervision of the community college;

(2) adopt rules, not inconsistent with the constitution and the laws of the state, for the government and administration of the community college;

(3) grant certificates and degrees to the graduates of the community college;

(4) keep a record of *their* proceedings;

(5) when not otherwise provided by law, *have* control of all books, records, buildings, grounds, and other property of the community college;

(6) receive from the state board of land commissioners; other boards, agencies, or persons; or the government of the United States all funds, *income*, and other property the community college may be entitled to receive or accept and use and appropriate the property for the specific purpose of the entitlement, grant, or donation;

(7) have general control of all receipts and disbursements of the community college;

(8) appoint and dismiss a president and faculty for the community college; appoint and dismiss any other necessary officers, agents, and employees; fix their compensation; and set the terms and conditions of their employment;

(9) administer the tuition provision and otherwise govern the students of the community college district in accordance with the provisions of this chapter;

(10) call and conduct the elections of the district in accordance with the school election chapter of this title;

(11) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of this title;

(12) establish employee benefits, other than retirement benefits, and fix their limits in accordance with 2-18-701 through 2-18-704; and

(13) participate in district boundary change actions in accordance with the provisions of the district organization chapter of this title."

Section 32. Section 20-15-302, MCA, is amended to read:

"20-15-302. Budget — approval. *(1)* The board of trustees of a community college district shall adopt an annual *operating* budget for the general maintenance and operation of the community college district. The budget shall be submitted to the regents of the state of Montana for their approval. The budget approved by the regents shall be the budget of the community college district submitted to the *state* budget *director in accordance with Title 17, chapter 7.*

(2) In the case of an emergency budget as defined in subsections (2) through (5) of 20-9-161, the community college district must receive an approved budget amendment from the board of regents in a manner and on forms prescribed by the board of regents."

Section 33. **Codification instructions.** The code commissioner shall codify sections 1 through 14 in chapter 15 of Title 20.

Approved March 31, 1979.

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CHAPTER NO. 393

AN ACT TO REVISE THE LAW PERTAINING TO THE INVESTMENT OF FIRE DEPARTMENT RELIEF ASSOCIATION PENSION FUNDS IN MUNICIPALITIES OTHER THAN FIRST- AND SECOND-CLASS CITIES; AND AMENDING SECTIONS 19-11-402 AND 19-11-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-11-402, MCA, is amended to read:

"19-11-402. Investment of fund by trustees. (1) Subject to the provisions of 19-11-403, when so directed by a majority vote of the members of the association, the board of trustees may invest the surplus money in the fund or any part thereof in:

(a) time or saving deposits in a solvent bank, building and loan association, or savings and loan association operating in the county where the city or town is located;

(b) bonds or other securities of the United States government; or

(c) general obligation bonds or warrants of any state, county, or city.

(2) At the time of purchase the investments must be stamped in boldface type substantially as follows: "property of the .... fire department relief association and negotiable only upon the order of the board of trustees of such association"."

Section 2. Section 19-11-403, MCA, is amended to read:

"19-11-403. Investment of fund by board of investments. When the average yield on investments of public retirement funds under the board of investments exceeds by 1% in any fiscal year the average yield on investments of the fund made pursuant to 19-11-402, the surplus money in the fund shall be remitted to the state treasurer for investment by the board of investments as is provided in 19-11-302 for associations in first- and second-class cities. *The* department *of community affairs* shall advise the association of the current yield on investments of public retirement funds."

Approved March 31, 1979.

CHAPTER NO. 394

AN ACT TO AMEND SECTIONS 30-14-111 AND 30-14-142, MCA, TO ALLOW FOR THE USE OF TEMPORARY RESTRAINING ORDERS IN THE ENFORCEMENT OF THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-14-111, MCA, is amended to read:

"30-14-111. Department to restrain unlawful acts. (1) Whenever the department has reason to believe that any person is using, has

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used, or is about to knowingly use any method, act, or practice declared by 30-14-103 to be unlawful and that proceeding would be in the public interest, the department may bring an action in the name of the state against such person to restrain by temporary or permanent injunction *or temporary restraining order* the use of such method, act, or practice, upon the giving of appropriate notice to that person.

(2) The notice must state generally the relief sought and be served in accordance with *30-14-115* at least 20 days before the hearing of the action *where the relief to be sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by [27-19-305].*

(3) The action may be brought in the district court in which such person resides or has his principal place of business or, with consent of the parties, may be brought in the district court of Lewis and Clark County.

(4) The courts are authorized to issue temporary or permanent injunctions *or temporary restraining orders* to restrain and prevent violations of this part, and such injunctions shall be issued without bond."

Section 2. Section 30-14-142, MCA, is amended to read:

"30-14-142. Penalties. (1) Any person who violates the terms of an injunction *or temporary restraining order* issued under 30-14-111 shall forfeit and pay to the state a civil penalty of not more than $10,000 per violation. For the purposes of this section, the district court issuing an injunction *or temporary restraining order* retains jurisdiction and the cause continued, and in such cases the department acting in the name of the state may petition for recovery of civil penalties.

(2) In any action brought under 30-14-111, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by 30-14-103, the department, upon petition to the court, may recover on behalf of the state a civil penalty of not more than $500 per violation.

(3) Any person who engages in a fraudulent course of conduct declared unlawful by 30-14-103 shall upon conviction be fined not more than $2,000, imprisoned for not more than 1 year, or both, in the discretion of the court. Nothing in this subsection limits any other provision of this part.

(4) For purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of 30-14-103."

Section 3. **Codification.** If Senate Bill 243 becomes law, the reference in section 1, subsection (2), of this act to 27-19-305 shall be changed by the code commissioner to a reference to section 7 of Senate Bill 243.

Approved March 31, 1979.

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CHAPTER NO. 395

AN ACT TO ALLOW A RECOUNT IN CERTAIN CIRCUMSTANCES IF THE UNSUCCESSFUL CANDIDATE POSTS A BOND TO COVER ALL COSTS OF THE RECOUNT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Recounts allowed if bond posted to cover all costs.** (1) If a candidate for a public office is defeated by a margin exceeding ¼ of 1% but not exceeding ½ of 1% of the total votes cast for all candidates for the same position, he may, within 5 days after the official canvass, file with the officer with whom his declaration or petition for nomination was filed a petition stating that he believes a recount will change the result of the election.

(2) The unsuccessful candidate shall post a bond with the clerk and recorder of the county in which he resides. The bond must be in an amount set by the clerk and recorder sufficient to cover all costs of the recount incurred by each county in which a recount is sought, including loss of time of regular employees caused by absence from their regular duties.

(3) Upon the filing of a petition and posting of a bond under this section, the board of county canvassers in each county affected shall meet and recount the ballots specified in the petition.

Approved March 31, 1979.

CHAPTER NO. 396

AN ACT TO AMEND SECTION 46-18-222, MCA, TO RESTRICT THE EXCEPTION RELATING TO THE ABSENCE OF SERIOUS BODILY INJURY TO THE VICTIM FROM THE LIST OF EXCEPTIONS TO MANDATORY MINIMUM SENTENCES AND CERTAIN RESTRICTIONS ON DEFERRED IMPOSITION AND SUSPENDED EXECUTION OF SENTENCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(3), 46-18-221(3), and 46-18-502(2) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

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(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution;

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution; *or*

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor;

(5) where applicable, no serious bodily injury was inflicted on the victim *unless a weapon was used in the commission of the offense.*"

Approved March 31, 1979.

CHAPTER NO. 397

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO LABOR; ENACTING SECTION 39-1-101, MCA; AND REPEALING SECTIONS 41-901 THROUGH 41-909, 92-613, AND 92-1340, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. **39-1-101. Definitions.** As used in this chapter, unless the context requires otherwise the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry as provided for in 2-15-1701.

(2) "Department" means the department of labor and industry as provided for in 2-15-1701.

Section 2. Section 39-1-102, MCA, is amended to read:

"**39-1-102. Duties of department.** The department shall *enforce* all the laws of Montana relating to hours of labor, conditions of labor, prosecution of employers who default in payment of wages, protection of employees, *and* all laws relating to child labor *which regulate* the employment of children in any manner and *shall* administer the laws of the state relating to free employment offices and all *other* state labor laws."

Section 3. Section 39-2-103, MCA, is amended to read:

"**39-2-103. Confidential employment.** The obligations peculiar to confidential employments are defined in the *laws relating to trusts and fiduciary relationships.*"

Section 4. Section 39-2-503, MCA, is amended to read:

"**39-2-503. Termination at will.** An employment having no specified term may be terminated at the will of either party on notice to the

other, except where otherwise provided by this chapter, 28-10-301 through 28-10-303, 28-10-502, 30-11-601 through 30-11-605, and 39-2-302."

Section 5. Section 39-2-703, MCA, is amended to read:

"39-2-703. Liability of railway corporation for negligence of fellow servants. (1) Every person or corporation operating a railway or railroad in this state *is* liable for all damages sustained by any employee of such person or corporation in consequence of the neglect of any other employee thereof or by the mismanagement of any other employee thereof and in consequence of the willful wrongs, whether of commission or omission, of any other employee thereof when such neglect, mismanagement, or wrongs are in any manner connected with the use and operation of any railway or railroad on or about which *he is* employed. *No* contract which restricts such liability *is* legal or binding.

(2) In case of the death of any such employee in consequence of any injury or damage so sustained, the right of action provided by subsection (1) shall survive and may be prosecuted and maintained by his heirs or personal representatives.

(3) Every railway corporation doing business in this state, including electric railway corporations, *is* liable for damages sustained by an employee thereof within this state, *subject to the provisions of 27-1-702,* when such damages are caused by the negligence of any train dispatcher, telegraph operator, superintendent, master mechanic, yardmaster, conductor, engineer, motorman, or any other employee who has superintendence of any stationary or hand signal.

(4) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into, either before or after the injury, between the person injured and any of the employers named in subsection (3) *is a* bar or defense to any cause of action brought under the provisions of this section, *except as otherwise provided in the Workers' Compensation Act.*"

Section 6. Section 39-2-704, MCA, is amended to read:

"39-2-704. Liability of mining company for negligence of fellow servants. (1) Every company, corporation, or individual operating any mine, smelter, or mill for the refining of ores *is* liable for damages sustained by any *employee* thereof within this state, *subject to the provisions of 27-1-702,* when such damage is caused by the negligence of any superintendent, foreman, shift boss, hoisting or other engineer, or craneman.

(2) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into before the injury between the person injured and any of the employers named in this section *is a* bar or defense to any cause of action brought under the provisions of this section, *except as otherwise provided in the Workers' Compensation Act.*

(3) In case of the death of any such *employee* in consequence of any injury or damages so sustained, the right of action *survives* and may be prosecuted and maintained by *his* heirs or personal representatives."

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Section 7. Section 39-2-803, MCA, is amended to read:

"39-2-803. Blacklisting prohibited. If any company or corporation in this state authorizes or allows any of its agents to blacklist or any person does blacklist any discharged employee or attempts by word or writing or any other means whatever to prevent any discharged employee or any employee who may have voluntarily left *the* company's service from obtaining employment with another person, except as provided for in 39-2-802, such company or corporation or person is liable in punitive damages to such *employee* so prevented from obtaining employment, to be recovered by him in *a* civil action, and is also punishable as provided in 39-2-804."

Section 8. Section 39-3-104, MCA, is amended to read:

"39-3-104. Equal pay for women for equivalent service. (1) It *is* unlawful for *the* state *or any* county, municipal *entity*, school district, public or private corporation, *person, or firm* to employ women in any occupation within the state for compensation less than that paid to men for equivalent service or for the same amount or class of work or labor in the same industry, school, establishment, office, or place of *employment of* any kind or description.

(2) *If the* state *or any* county, municipal *entity*, school district, public or private corporation, *person, or firm violates* any of the provisions of subsection (1) *it is* guilty of a misdemeanor and upon conviction thereof shall be fined not less than $25 or more than $500 for each offense."

Section 9. Section 39-3-202, MCA, is amended to read:

"39-3-202. Rulemaking power of commissioner. The commissioner is authorized to issue, amend, and enforce rules for the purpose of carrying out the provisions of *this part*."

Section 10. Section 39-3-203, MCA, is amended to read:

"39-3-203. Employer to notify employee on written demand as to rate of wages and date of paydays. (1) Each employer or an authorized representative of the employer shall, on written demand, prior to the commencing of work, notify each employee as to the rate of wages to be paid, whether by the hour, day, week, month, or *year*, and date of paydays. Such notification *must* be in writing to each employee or *by* posting of notice in a conspicuous place.

(2) The provisions of this section *do* not apply to an employer who has entered into a signed collective bargaining agreement, when such agreement contains conditions of employment, wages to be received, and hours to be worked, or to employers engaged in agriculture or stockraising; provided, however, such employers shall *comply* with the provisions of 39-3-205."

Section 11. Section 39-3-204, MCA, is amended to read:

"39-3-204. Payment of wages generally. (1) Every employer of labor in the state of Montana shall pay to each *employee* the wages earned by such *employee* in lawful money of the United States or checks on

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banks convertible into cash on demand at the full face value thereof, and no person for whom labor has been performed *may* withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the same *are* due and payable. However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever such deductions are a part of the conditions of employment, or other deductions provided for by law.

(2) If at such time of payment of wages any employee *is* absent from the regular place of labor, he *is* entitled to such payment at any time thereafter.

(3) Provisions of this section *do* not apply to any professional, supervisory, or technical *employee* who by custom *receives his* wages earned at least once monthly."

Section 12. Section 39-3-208, MCA, is amended to read:

"39-3-208. Contracts in violation of part void. Any contract or agreement made between any person, partnership, or corporation and any *party* in his *or* its employ *the provisions of which violate, evade,* or *circumvent* this part *is* unlawful and void, but such employee may sue to recover his wages earned, together with *the* 5% penalty *specified in 39-3-206* or separately to recover the penalty if the wages have been paid."

Section 13. Section 39-3-210, MCA, is amended to read:

"39-3-210. Investigative powers of commissioner. (1) The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters *which* they may *consider* appropriate to determine whether any person has violated any provision of this *part* or any rule issued hereunder or which may aid in the enforcement of the provisions of this *part.*

(2) The commissioner or his authorized representatives *may* administer oaths and examine witnesses under oath; issue subpoenas; compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony; and take depositions and affidavits in any proceeding before the commissioner."

Section 14. Section 39-3-211, MCA, is amended to read:

"39-3-211. Commissioner to take wage assignments. Whenever the commissioner determines that one or more employees have claims for unpaid wages, he shall, upon the written request of the employee, take an assignment of the claim in trust for such employee and may maintain any proceeding appropriate to enforce the claim, including liquidated damages pursuant to this *part.* With the written consent of the assignor, the commissioner may settle or adjust any claim assigned pursuant to this section."

Section 15. Section 39-3-214, MCA, is amended to read:

"39-3-214. Court costs and attorneys' fees. (1) Whenever it *is* necessary for the employee to enter or maintain a suit at law for the recovery or collection of wages due as provided for by this part, *a resulting*

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judgment *must* include a reasonable attorney's fee in favor of the successful party, to be taxed as part of the costs in the case.

(2) Any judgment for the plaintiff in a proceeding pursuant to this *part must* include all costs reasonably incurred in connection with the proceeding, including attorneys' fees.

(3) If the proceeding is maintained by the commissioner, no court costs or fees *are* required of him nor *is he* required to furnish any bond or other security that might otherwise be required in connection with any phase of the proceeding."

Section 16. Section 39-3-501, MCA, is amended to read:

"39-3-501. Certain laws extended to certain employers in mineral and oil industry. For the purposes of this part, all the provisions of *part 2 of this chapter* extend to and govern every person, firm, partnership, or corporation engaged in the business of extracting or of extracting and refining or reducing metals and minerals or mining for coal or drilling for oil, except such persons, firms, partnerships, or corporations as have a free and unencumbered title to not less than one-half the fee of the property being worked. For this purpose, *an* outstanding unpaid or unredeemed tax sale certificate *is* not considered an encumbrance."

Section 17. Section 39-3-504, MCA, is amended to read:

"39-3-504. Report of violations directly to county attorney by employee. Any *employee* may make complaint *directly* to the county attorney relative to any violation of this part or part 2 of this chapter."

Section 18. Section 39-3-505, MCA, is amended to read:

"39-3-505. County attorney to notify commissioner of violation reported directly by employee. The county attorney of the county shall promptly notify the commissioner of labor and industry of any complaint made by any employee relative to the violation of any of the provisions of this part or part 2 of this chapter and shall in writing keep *the* commissioner advised of each step in any proceeding taken by *the* county attorney thereunder."

Section 19. Section 39-3-506, MCA, is amended to read:

"39-3-506. County attorney to file complaint in district court on belief of violation. If *a* county attorney believes after receiving information that the provisions of this part or part 2 of this chapter have been violated and that such violation was willful or that the financial condition of the employer is such as to endanger employees in receiving prompt payment or collection of wages, *he shall* file *a* complaint in district court. All proceedings upon such complaint *must* be promptly prosecuted."

Section 20. Section 39-4-102, MCA, is amended to read:

"39-4-102. Drivers and attendants of motor buses. (1) Drivers or attendants of motor buses employed in the state *may* not be employed for more than 8 hours in *any* 24-hour period. Drivers or attendants of motor buses *must* be allowed a rest of at least 12 hours between the completion of their services in any 24-hour period and the beginning of their

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services in the succeeding 24-hour period. In computing the number of hours of employment made by the provisions of this section, evidence may be introduced showing that part of *such* time *is* consumed prior to entry within the state.

(2) The provisions of this section *do* not *apply* when life is in danger or property *is* in imminent danger of destruction; or in case of delay due to accident or *impassable* roads, abnormal road conditions, or snow blockades; or *when* mails for *the* drivers or attendants *are delayed.*

(3) *"Attendant"*, for the purpose of this section, *is* defined as any employee engaged for a portion of a day driving or repairing a motor bus and who is required to remain on *the* vehicle as a relief driver or mechanic for time in excess of the 8-hour period *for* which he *is* rightly employed.

(4) Any employer or supervisor in charge of *employees* who *requires* a driver or attendant as above defined to labor contrary to the provisions of this section *is* guilty of a misdemeanor and upon conviction *is punishable* by a fine of not less than $100 or more than $600 or by imprisonment of not less than 30 days or more than 7 months or both such fine and imprisonment.

(5) All motor bus companies operating lines in this state *are* liable in damage for all injuries to the person resulting *from* the violation of the provisions of *this* section."

Section 21. Section 39-4-103, MCA, is amended to read:

"39-4-103. Underground miners and smeltermen. (1) The period of employment of *workers* in all underground mines or workings, including railroad or other tunnels, *is* 8 hours per day, except in cases of emergency *when* life and property are in imminent danger.

(2) The period of employment of *workers* in smelters, *stamp mills*, sampling works, concentrators, and all other institutions for the reduction of ores and refining of ores or metals *is* 8 hours per day, except in cases of emergency where life or property is in imminent danger.

(3) Any person, *corporation*, agent, manager, or employer who *violates* any of the provisions of this section *is* guilty of a misdemeanor and upon conviction thereof for each offense *is* subject to a fine of not less than $100 or more than $600 or by imprisonment in the county jail for a period of not less than 1 month or more than 7 months or by both such fine and imprisonment."

Section 22. Section 39-4-107, MCA, is amended to read:

"39-4-107. State and municipal governments, school districts, mines, mills, and smelters. (1) A period of 8 hours *constitutes* a day's work in all works and undertakings carried on or aided by any municipal *or* county *government*, *the* state government, *or a* first-class school *district* , and on all contracts let by them, and for all janitors *(*except in courthouses of sixth- and seventh-class counties*)*, engineers, *firefighters*, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by *such* municipal, county,

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or state *government or first-class school district. A period of 8 hours constitutes a day's work* in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal. *In* cases of emergency when life or property is in imminent danger *this subsection does not apply.*

(2) For firefighters in cities of the first and second class, a *workweek consists* of a maximum of 40 hours during a 5-day week.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their duly constituted representative, establish a 40-hour *workweek* consisting of 4 consecutive 10-hour days. No employee *may* be required to work in excess of 8 hours in any one *workday* if he prefers not to.

(4) Every person, corporation, stock company, or association of persons who violates any of the provisions of this section *is* guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment."

Section 23. Section 39-4-108, MCA, is amended to read:

"39-4-108. Railway employees. (1) On all lines of railroads or railways operated in whole or in part within this state, the time of labor of locomotive engineers, locomotive firemen, conductors, trainmen, operators, and agents acting as operators employed in running or operating the locomotive engines or trains on or over such railroads or railways in this state *may* not at any time exceed 12 consecutive hours or *an aggregate of* 16 hours in any 24-hour period. At least 8 hours *must* be allowed them off duty before engineers, firemen, conductors, trainmen, operators, and agents acting as operators are again ordered or required to go on duty.

(2) Nothing in this section *may* be construed to allow any engineer, fireman, conductor, or trainman to desert his locomotive or train in case of accident, *storm, wreck, washout,* snow blockade, or any unavoidable delay arising from like causes or to allow *such* engineer, fireman, conductor, or trainman to tie up any passenger or mail train between terminals.

(3) The provisions of this section *do* not apply to relief or wreck trains.

(4) Any railroad company or superintendent, train dispatcher, trainmaster, master mechanic, or other railroad or railway official who *orders* or *requires* any locomotive engineer, locomotive fireman, conductor, trainman, operator, or agent acting as operator to labor contrary to the provisions of this section *is* guilty of a misdemeanor and on conviction thereof *is punishable* by a fine of not less than $100 or more than $500 or by imprisonment of not less than 30 days or more than 60 days in the county jail.

(5) All railroad or railway corporations operating lines of railroads or railways in whole or in part in this state *are* liable in damages for all injuries to any person resulting from violations of the provisions of this section."

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Section 24. Section 39-4-110, MCA, is amended to read:

"39-4-110. Sugar refineries. (1) A period of not to exceed 8 hours *constitutes* a day's work for all persons employed in or about sugar refineries, except in a case of emergency when life *or* property *is* in danger.

(2) The provisions of this section *do* not apply to beet receiving station employees or superintendents, master mechanics, *or* beet-end, sugar-end, and Steffan house foremen.

(3) Any person, corporation, agent, manager, or employer who *violates* the provisions of this section *is* guilty of a misdemeanor and upon conviction thereof *is punishable* by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment."

Section 25. Section 39-5-102, MCA, is amended to read:

"39-5-102. Definitions. Unless a different meaning is clearly required by the context, the following words and phrases, as used in this chapter, have the following meanings:

(1) (a) "Employment agency" is synonymous with "agency" and *means* any business in which any part of the business's gross or net income is derived from a fee received from applicants and in which any of the following activities are engaged in:

(i) the offering, promising, procuring, or attempting to procure employment for applicants; or

(ii) the giving of information regarding where and from whom employment may be obtained.

(b) In addition, the term "employment agency" *means* and *includes* any person, bureau, organization, or school which for profit, by advertisement or otherwise, offers as one of its main objects or purposes to procure employment for any person who pays for its services or which collects tuition or charges for service of any nature where the main object of the person paying the same is to secure employment.

(c) The term "employment agency" *does* not include labor union organizations, temporary service contractors, proprietary schools, or the Montana state employment agency.

(2) "Temporary service contractors" *means* any person, firm, association, or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary basis to others.

(3) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(4) "Applicant", except when used to describe an applicant for an employment agency license, means any person, whether employed or unemployed, seeking or entering into any arrangement for his employment

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or change of his employment through the medium or service of an employment agency.

(5) "Person" includes an individual, a firm, a corporation, a partnership, or an association.

(6) "Director" *means* the commissioner of the department of labor and industry."

Section 26. Section 39-5-202, MCA, is amended to read:

"39-5-202. Application for license or renewal. (1) Every applicant for an employment agency license or a renewal thereof shall file with the director a written application stating the name and address of the applicant, the street and number of the building in which the business of the employment agency is to be conducted, the name of the person who is to have the general management of the office, the name under which the business of the office is to be carried on, *and* whether or not the applicant is pecuniarily interested in the business to be carried on under the license. *The application must* be signed by the applicant and sworn to before a notary public and *must* identify anyone holding over 20% interest in the agency.

(2) If the applicant is a corporation, the application *must* state the names and addresses of the officers and directors of the corporation and *must* be signed and sworn to by the president and secretary thereof *before a notary public.*

(3) If the applicant is a partnership, the application *must* also state the names and addresses of all partners therein and *must* be signed and sworn to by all of them *before a notary public.*

(4) The application *must* also state whether or not the applicant, at the time of making the application or at any previous time, *has* been engaged in or interested in or employed by anyone engaged in the business of an employment agency.

(5) All applications for employment agency licenses *must* be accompanied by a copy of the form of contract to be used between the agency and the applicant."

Section 27. Section 39-5-403, MCA, is amended to read:

"39-5-403. Referral of violations to prosecuting attorneys — restraining actions. The director may refer such evidence as may be available to him concerning violations of this chapter or of any rule adopted hereunder to the attorney general or the *county* attorney of the county wherein the alleged violation arose who may, in his discretion, with or without such a reference, in addition to any other action he might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this chapter."

Section 28. Section 39-5-404, MCA, is amended to read:

"39-5-404. Written assurance of discontinuance. In the enforcement of this chapter, the attorney general *or the county* attorney may

accept an assurance of discontinuance from any person deemed in violation of any provisions of this chapter. Any such assurance shall be in writing and shall be filed with and subject to the approval of the *district* court of the county in which the alleged violator resides or has his principal place of business."

Section 29. Section 39-5-405, MCA, is amended to read:

"39-5-405. Civil penalty for violating court order. Any person who violates the terms of any court order or temporary or permanent injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than $2,000. For the purpose of this section, the court issuing any injunction shall retain continuing jurisdiction and in such cases the attorney general *or* the *county* attorney acting in the name of the state may petition for the recovery of civil penalties."

Section 30. Section 39-6-106, MCA, is amended to read:

"39-6-106. Apprenticeship agreements. *Apprenticeship* agreements *shall contain*:

(1) a statement of the trade or craft to be taught and the required hours for completion of apprenticeship, which *must* be not less than 4,000 hours of reasonably continuous employment;

(2) a statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process;

(3) a statement of the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction *must* be not less than 144 hours per year;

(4) a statement that apprentices *must* be not less than 16 years of age;

(5) a statement of the progressively increasing scale of wages to be paid the apprentice;

(6) provision for a period of probation during which the department of labor and industry *must* terminate an apprenticeship agreement at the request in writing of any party thereto. After the probationary period, the department *may* terminate the registration of an apprentice upon agreement of the parties.

(7) provision that the services of the department may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure;

(8) provision that if an employer is unable to fulfill his obligation under the apprenticeship agreement he may transfer such obligation to another employer;

(9) such additional standards as may be prescribed in accordance with this chapter."

Section 31. Section 39-31-103, MCA, is amended to read:

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"39-31-103. Definitions. When used in this chapter, the following definitions apply:

(1) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees.

(2) (a) "Public employee" means:

(i) except as provided in subsection (2)(b) of this section, a person employed by a public employer in any capacity; and

(ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.

(b) "Public employee" does not mean:

(i) an elected official;

(ii) a person directly appointed by the governor;

(iii) a supervisory employee, as defined in subsection (3) of this section;

(iv) a management official, as defined in subsection (4) of this section;

(v) a member of any state board or commission who serves the state intermittently;

(vi) a school district clerk;

(vii) a school administrator;

(viii) a registered professional nurse performing service for a health care facility;

(ix) a professional engineer; or

(x) an engineer-in-training.

(3) "Supervisory employee" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(4) "Management *official*" means *a representative* of management having authority to act for the agency on any matters relating to the implementation of agency policy.

(5) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes,

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wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(6) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

(7) "Board" means the board of personnel appeals provided for in 2-15-1705.

(8) "Person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(9) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402.

(10) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand *in* the proximate relation of employer and employee.

(11) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board."

Section 32. Section 39-31-208, MCA, is amended to read:

"39-31-208. Representation election at direction of board. (1) If the board or an agent of the board, *in the hearing provided for in 39-31-207,* finds that there is a question of representation, it shall direct an election by secret ballot to determine whether and by which labor organization the employees desire to be represented or whether they desire to have no labor organization represent them and shall certify the results thereof.

(2) Only those labor organizations which have been designated by more than 10% of the employees in the unit found to be appropriate shall be placed on the ballot.

(3) The board or an agent of the board shall determine who is eligible to vote in the election and shall establish rules governing the election.

(4) Unless the majority vote is for no representation by a labor organization and in any election where none of the choices for a representative on the ballot receives a majority, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election.

(5) A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative."

Section 33. Section 39-31-309, MCA, is amended to read:

"39-31-309. Factfinding proceedings. (1) The *factfinder* shall immediately establish dates and place of hearings.

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(2) The public employer and the exclusive representative *are* the only proper parties to factfinding proceedings.

(3) Upon request of either party *or* the *factfinder*, the board shall issue subpoenas for hearings conducted by the *factfinder*. The *factfinder* may administer oaths.

(4) Upon completion of the hearings, but no later than 20 days from the *date* of appointment, the *factfinder* shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the public employer and the exclusive representative. The *factfinder* may make this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the report is submitted to the parties, the report *must* be made public.

(5) The cost of factfinding proceedings *must* be equally borne by the board and the parties concerned.

(6) Nothing in 39-31-307 through 39-31-310 prohibits the *factfinder* from endeavoring to mediate the dispute in which he has been selected or appointed as *factfinder*."

Section 34. Section 39-31-401, MCA, is amended to read:

"39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;

(2) dominate, interfere, or assist in the formation or administration of any labor organization; *however*, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) discriminate in regard to hire or tenure of employment or any term or condition of employment *in order* to encourage or discourage membership in any labor organization; *however*, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, *as a condition of employment*, that an employee who is not or does not become a union member, *must* have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(4) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; *or*

(5) refuse to bargain collectively in good faith with an exclusive representative."

Section 35. Section 39-31-403, MCA, is amended to read:

"39-31-403. Remedies for unfair labor practices. Violations of the provisions of 39-31-401 or 39-31-402 are unfair labor practices remediable by the board *pursuant to this part*."

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Section 36. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) The word "administrator" refers to a person appointed by the commissioner of labor and industry to direct and administer the unemployment compensation laws and federal laws falling within the administrator's jurisdiction.

(2) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(3) "Annual total payroll" means the total of the 4 quarters of total payrolls of an employer preceding the computation date as fixed herein.

(4) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state.

(5) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(6) "Benefit year", with respect to any individual, means the 52 consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim and thereafter the 52 consecutive-week period beginning with the first day of the calendar week in which such individual files his next valid claim after the termination of his last preceding benefit year. If such filing *results* in an overlapping of benefit years, the new benefit year *begins on* the first Sunday following the expiration of his preceding benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period *is the period* applicable under the unemployment law of the paying state.

(7) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(8) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(9) "Contributions" means the money payments to the state unemployment compensation fund required by this chapter.

(10) "Division" means the employment security division of the department of labor and industry provided for in Title 2, chapter 15, part 17.

(11) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or subsequent to January 1, 1936, had

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in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203. *All* individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state *are considered* to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit *is* deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(12) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the division may approve.

(13) "Fund" means the unemployment compensation fund established by this chapter to which all contributions and payments in lieu of contributions are required and from which all benefits provided under this chapter shall be paid.

(14) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or his employer.

(15) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(16) (a) "Institution of higher education", for the purposes of this part, means an *educational* institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of *postgraduate* or *postdoctoral* studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(17) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

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(18) "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(19) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the division.

(b) The term "wages" *does* not include:

(i) the amount of any payment made to or on behalf of an employee by an employer on account of:

(A) retirement;

(B) sickness or accident disability;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from *public* assistance funds for services performed at the direction and request of such county welfare office.

(20) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(21) An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for 1 week of total unemployment."

Section 37. Section 39-51-202, MCA, is amended to read:

"39-51-202. Employer defined. "Employer" means:

(1) any employing unit whose total annual payroll within either the current or preceding calendar year exceeds the sum of $500;

(2) any individual or employing unit which acquired the organization, trade, or business or substantially all of the assets thereof of another which at the time of such acquisition was an employer subject to this chapter;

(3) any individual or employing unit which acquired the organization, trade, or business or substantially all the assets thereof of another employing unit not an employer subject to this chapter and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under subsection (1) of this section;

(4) any employing unit not an employer by reason of any other subsection of this section for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund or an employing unit which, as a condition for approval of this chapter for full tax credit against

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the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter;

(5) any employing unit which, having become an employer under subsection (1), (2), (3), or (4) has not, under 39-51-1101, ceased to be an employer subject to this chapter; or

(6) for the effective period of its election pursuant to 39-51-1102, any other employing unit which has elected to become fully subject to this chapter."

Section 38. Section 39-51-203, MCA, is amended to read:

"39-51-203. Employment defined. (1) "Employment", subject to other provisions of this section, means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" *includes* an individual's entire service performed within or both within and without this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or

(B) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service *is considered* to be localized within a state if:

(i) the service is performed entirely within such state; or

(ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government *is considered* to be employment subject to this chapter if the individual performing such services is a resident of this state and the division approves the election of the employing unit for whom such services are performed that the entire service of such individual *is considered* to be employment subject to this chapter.

(4) *Service* performed by an individual for wages *is considered* to be employment subject to this chapter unless and until it is shown to the satisfaction of the division that:

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(a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract and in fact;

(b) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(c) such individual is customarily engaged in an independently established trade, occupation, profession, or business.

(5) The term "employment" *includes* service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. *The* term "employment" *includes* service performed *after July 1, 1975,* by all individuals, including without limitations those individuals who work for the state of Montana, its university, any of its colleges, public schools, components or units thereof, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" *includes* service performed after December 31, 1971, by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term "employment" *includes* the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, after December 31, 1971, in the employ of an American employer, other than service which is *considered* employment under the provisions of subsection (2) of this section or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation which is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of sections (7)(a)(i) and (7)(a)(ii) of this subsection *are* met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(b) An "American employer", for purposes of this subsection, means a person who is:

(i) an individual who is a resident of the United States;

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(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

(8) Agricultural labor exempted under 39-51-204 *is* considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays *$20,000* or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs *10* or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has agricultural employment, all employees are covered under the chapter regardless of the amount of money expended for agricultural purposes.

(9) Domestic service exempted under 39-51-204(1)(b) *is* considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays $1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has domestic employment, all employees are covered under the chapter regardless of the amount of money expended for domestic purposes."

Section 39. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" *does* not include:

(a) agricultural labor, except as provided in 39-51-203(8);

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-203(9);

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of 18 in the employ of his father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress, provided that the division *must* enter into agreements with the proper agencies under such act of congress, which agreements shall

become effective in the manner *prescribed* in *the Montana Administrative Procedure Act for the adoption of rules*, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such act of congress or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under this chapter;

(g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salesmen paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital.

(2) "Employment" *does* not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

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(c) in the employ of a school which is not an institution of higher education, prior to December 31, 1977;

(d) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(e) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(f) for a state prison or other state correctional or custodial institution by an inmate of that institution."

Section 40. Section 39-51-304, MCA, is amended to read:

"39-51-304. Personnel. (1) *Except as otherwise provided*, the division is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under this chapter. The division may delegate to any such persons such power and authority as it *considers* reasonable and proper for the effective administration of this chapter and may in its discretion bond any person handling money or signing checks hereunder.

(2) No person who is an officer or committee member of any political party organization or who holds or is a candidate for any public office *may* be appointed or employed under this chapter.

(3) The division shall *hire in accordance with merit system principles adopted by the merit system council.*"

Section 41. Section 39-51-309, MCA, is amended to read:

"39-51-309. Representation of division and state in court. (1) In any civil action to enforce the provisions of this chapter the division and the state may be represented by any qualified attorney who is employed by the division and is designated by it for this purpose or, at the division's or board's request, by the attorney general.

(2) All criminal actions for violation of any provision of this chapter or of any rules issued pursuant thereto shall be prosecuted by the attorney general of the state or, at his request and under his direction, by the *county* attorney of the county wherein the crime was committed."

Section 42. Section 39-51-401, MCA, is amended to read:

"39-51-401. Unemployment compensation account — establishment and control. There is hereby established separate and apart from all public money or funds of this state an account in the agency fund known as the unemployment compensation account, which shall be administered by the division exclusively for the purposes of this chapter. Any

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reference to the unemployment compensation fund in this code *means* the unemployment compensation account in the agency fund. All money in the account shall be mingled and undivided. This account shall consist of:

(1) all contributions collected under this chapter and payments made in lieu of contributions as provided in *subsections* (2) and (3) *of 39-51-1106*;

(2) interest earned upon any money in the account;

(3) any property or securities acquired through the use of money belonging to the account;

(4) all earnings of such property or securities; and

(5) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended."

Section 43. Section 39-51-402, MCA, is amended to read:

"39-51-402. Unemployment compensation account — state treasurer ex officio custodian — accounts and deposits. (1) The state treasurer *is the* ex officio treasurer and custodian of the unemployment compensation account and shall administer such account in accordance with the directions of the division and shall issue his warrants upon it in accordance with such regulations as the division shall prescribe. He shall maintain within the account three separate accounts:

(a) a clearing account;

(b) an unemployment trust fund account; and

(c) a benefit account.

(2) All money payable to the unemployment compensation account, upon receipt thereof by the division, *must* be forwarded to the treasurer who shall immediately deposit *it* in the clearing account. Refunds payable pursuant to 39-51-1110 may be paid from the clearing account upon warrants issued by the treasurer under the direction of the division. After clearance thereof, all other money in the clearing account *must* be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provision of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(3) The benefit account *consists* of all money requisitioned for the payment of benefits from this state's account in the unemployment trust fund.

(4) Except as herein otherwise provided, money in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the division, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium *may* be paid out of the unemployment compensation account.

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(5) The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the unemployment compensation account in an amount fixed by the division and in a form prescribed by law or approved by the attorney general. Premiums for *the* bond shall be paid from the unemployment compensation administration account."

Section 44. Section 39-51-1109, MCA, is amended to read:

"39-51-1109. Contribution appeals. Any person aggrieved by any decision, determination, or redetermination of the division involving contribution liability, contribution rate, application for refund, or the charging of benefit payments to employers making payment in lieu of contributions is entitled to a review by the division or its authorized representative, hereinafter referred to as a deputy. The decision of the deputy *is considered* the decision of the division. The division or the deputy conducting the review may refer the matter to an appeals referee, may decide the application for review on the basis of such facts and information as may be obtained, or may hear argument to secure further facts. After such review, notice of the decision *must* be given to the employing unit. Such decision made pursuant to such review *is considered* the final decision of the division unless the employing unit or any other such interested party, within 5 calendar days after delivery of such notification or within 7 calendar days after such notification was mailed to his *last-known* address, files an appeal from this decision. Such appeal will be referred to an appeals referee who shall make his decisions with respect thereto in accordance with the procedure prescribed in *39-51-2403*."

Section 45. Section 39-51-1201, MCA, is amended to read:

"39-51-1201. Experience rating and classification of employers. (1) The division shall for each calendar year classify employers in accordance with their actual contributions and unemployment experience and shall determine for each employer the experience rate which shall apply to him throughout the calendar year. The division shall apply such form of classification or experience rating system which is best calculated to rate individually and most equitably the employment for each employer and to encourage the stabilization of employment.

(2) In making such classification, the division shall take *into* account each of the following factors relating to the unemployment hazard shown by each employer on the basis of:

(a) number of years the employer has paid contributions;

(b) average quarterly percentage declines in total payrolls for the last 3 fiscal years ending June 30; and

(c) average annual net percentage declines in total payrolls for the last 3 fiscal years ending June 30, the computation date.

(3) Wages shall be adjusted in the determination of the annual and quarterly decrease percentages of any employer's payroll in whose establishment there was in any year in the qualifying period of such employer a stoppage of work due to a strike which caused a decrease in such

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employer's payroll of such magnitude that his actual quarterly and annual payroll caused by such a decrease when used with other annual and quarterly payroll decreases, if any, in his qualifying period would cause an increase in such employer's contribution rate. An employer's adjusted quarterly payroll for that quarter in which such stoppage of work existed shall be determined by multiplying each such payroll or adjusted payroll for the quarter immediately preceding the quarter in which such stoppage of work existed by the average quarterly variation ratio. The average quarterly variation ratio shall be computed by:

(a) dividing the payroll or, if adjusted, the adjusted payroll for that quarter in each of the prior years of an employer's qualifying period which corresponds to the respective quarter in which a stoppage of work due to a strike existed by the payroll or adjusted payroll for the respective quarter immediately preceding such corresponding quarter; and

(b) totaling the ratio thus obtained and dividing by the number of such ratios."

Section 46. Section 39-51-1303, MCA, is amended to read:

"39-51-1303. Collection of unpaid contributions by civil action. (1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due *must* be collected by civil action in the name of the division, Montana department of labor and industry, and the employer adjudged in default shall pay the costs of such action.

(2) Civil actions brought under this section to collect contributions or interest thereon from an employer *must* be heard by the court at the earliest possible date and *are* entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers' compensation law of this state.

(3) *An action* for the collection of contributions due *must* be brought within 5 years after the due date of such contributions *or it is* barred."

Section 47. Section 39-51-2104, MCA, is amended to read:

"39-51-2104. General benefit eligibility conditions. An unemployed individual *is* eligible to receive benefits for any week of total unemployment within his benefit year only if the division finds that:

(1) he has registered for work at and thereafter has continued to report at an employment office in accordance with such regulation as the division may prescribe, except that the division may, by regulation, prescribe that *in* cases *in* which it finds such requirements oppressive or inconsistent with the purposes of this chapter, *an unemployed individual may register* and *report* for work by mail or through other governmental agencies;

(2) he has made a claim for benefits in accordance with the provisions of 39-51-2401;

(3) he is able to work and is available for work and is seeking work; provided, however, that no claimant *is* considered ineligible in any week of

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unemployment for failure to comply with the provisions of this subsection if such failure is due to an illness or disability which occurs after he has registered for work and no suitable work has been offered to such claimant after the beginning of such illness or disability;

(4) prior to any week for which he claims benefits he has been totally unemployed for a waiting period of 1 week. However, if claimant's benefit year expires during a period of compensable unemployment, claimant will continue to receive weekly benefits in a new benefit year, if otherwise eligible, without interruption to serve the waiting week for the new benefit year but will thereafter be required to serve the waiting week before receiving benefits during subsequent unemployment in the new benefit year. No week *is* counted as a week of total unemployment for the purposes of this subsection:

(a) if benefits have been paid with respect thereto;

(b) unless the individual was eligible for benefits with respect thereto;

(c) unless it occurs within the benefit year of the claimant;

(d) unless it occurs after benefits first could become payable to any individual under this chapter."

Section 48. Section 39-51-2108, MCA, is amended to read:

"39-51-2108. Payment of benefits based on service in public, charitable, or educational organizations. Benefits based on service in employment defined in *subsections* (5) and (6) *of 39-51-203* and *subsections* (2) and (3) *of 39-51-204 are* payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research, or principal administrative capacity for an educational institution *may* not be paid to an individual for any week of unemployment which begins during the period between 2 successive academic years or during a similar period between 2 regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual has a contract to perform services in any such capacity for any such educational institution for both such academic years or both such terms."

Section 49. Section 39-51-2304, MCA, is amended to read:

"39-51-2304. Disqualification for failure to apply for or to accept suitable work. (1) Effective April 1, 1977, an individual *is* disqualified for benefits if he *fails* without good cause either to apply for available and suitable work when so directed by the employment office or the division or to accept suitable work offered to him which he is physically able and mentally qualified to perform or to return to his customary self-employment, if any, when so directed by the division. Such disqualification *continues* for the week in which such failure *occurs* and until *the individual* has performed services, other than self-employment, for which remuneration is received equal to or in excess of his weekly benefit amount in 6 separate weeks subsequent to the date the act causing the disqualification occurred, with 6 weeks' reduction in benefit duration, as determined

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by the division, provided he has not left this work under disqualifying circumstances.

(2) In determining whether or not any work is suitable for an individual, the division shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(3) Notwithstanding any other provisions of this chapter, no work *may* be *considered* suitable and benefits *may* not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) if *the* position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization."

Section 50. Section 39-51-3206, MCA, is amended to read:

"39-51-3206. Liability for wrongful or improper receipt of benefits. Any person who, by reason of the nondisclosure or misrepresentation by him or by another of a material fact, irrespective of whether such nondisclosure or misrepresentation was known or fraudulent, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case or while he was disqualified from receiving benefits shall, in the discretion of the division, either be liable to have such sum deducted from any future benefits payable to him under this chapter or shall be liable to repay to the division for the unemployment compensation fund a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in this chapter for the collection of past due contributions. *An action* for collection of overpaid benefits *must* be brought within 5 years after the date of such overpayment *or it is* barred."

Section 51. Section 39-71-101, MCA, is amended to read:

"39-71-101. Short title. This chapter may be cited as the Workers' Compensation Act."

Section 52. Section 39-71-102, MCA, is amended to read:

"39-71-102. Reference to plans. Whenever compensation plan No. 1, 2, or 3 *is* referred to, such reference also *includes* all other sections which are applicable to the subject matter of such reference."

Section 53. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the *following* meanings:

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(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the division of employment security of the Montana department of labor and industry. It is established at the nearest whole dollar number and *must* be adopted by the division of workers' compensation prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving wife or husband;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 25 years who is a full-time student in an accredited school;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury *(however*, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists*)*.

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer. Any person hauling or assisting in hauling of sugar beets or grains, in case of emergency, *is* considered engaged in casual employment.

(4) "Child" *includes* a posthumous child, a dependent stepchild, a child legally adopted prior to the injury, *and* an illegitimate child legitimized prior to the injury.

(5) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

(6) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(7) "Husband" or "widower" means only a husband or widower living with or legally entitled to be supported by the deceased at the time of her injury.

(8) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the industrial insurance account under compensation plan No. 3, or the uninsured employers' fund provided for in *part 5 of this chapter.*

(9) "Invalid" means one who is physically or mentally incapacitated.

(10) "Order" means any decision, rule, direction, requirement, or standard of the division or any other determination arrived at or decision made by the division.

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(11) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year; provided, that an estimate may be made by the division for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the division, as the case may actually be on December 31 of such current year.

(12) "Permanent partial disability" means a condition resulting from injury as defined in this chapter that results in the actual loss of earnings or earning capability less than total that exists after the injured *worker* is as far restored as the permanent character of the injuries will permit.

(13) "Permanent total disability" means a condition resulting from injury as defined in this chapter that results in the loss of actual earnings or earning capability that exists after the injured *worker* is as far restored as the permanent character of the injuries will permit and which results in the *worker* having no reasonable prospect of finding regular employment of any kind in the normal labor market.

(14) The term "physician" *includes* "surgeon" and in either case *means* one authorized by law to practice his profession in this state.

(15) "The plant of the employer" *includes* the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(16) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(17) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(18) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(19) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured *worker* is as far restored as the permanent character of the injuries will permit.

(20) "Wages" means the average gross earnings received by the employee at the time of the injury for the usual hours of employment in a week, and overtime is not to be considered. Sick leave benefits accrued by employees of public corporations, as defined by subsection (16) of this section, are considered wages.

(21) "Wife" or "widow" means only a wife or widow living with or legally entitled to be supported by the deceased at the time of the injury.

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(22) "Year", unless otherwise specified, means calendar year."

Section 54. Section 39-71-302, MCA, is amended to read:

"39-71-302. What included in computing payroll. In computing the payroll, the entire compensation received by every *worker* employed under this chapter *is* included, whether in the form of salary, wage, piecework, or otherwise and whether payable in money, board, or otherwise."

Section 55. Section 39-71-304, MCA, is amended to read:

"39-71-304. Books, records, and payrolls to be open to inspection — penalty for refusal. The books, records, and payrolls of the employer pertinent to the administration of this chapter *must* always be open to inspection by the division or any duly authorized employee thereof for the purpose of ascertaining the correctness of the payroll, the number of *persons* employed, and such other information as may be necessary for the division and its management under this chapter. Refusal on the part of the employer to submit said books, records, and payrolls for such inspection shall subject the offending employer to a penalty of $100 for each offense, to be collected by civil action in the name of the state and paid into the state treasury."

Section 56. Section 39-71-306, MCA, is amended to read:

"39-71-306. Plan one employers and plan two insurers to file duplicate receipts paid for injuries and statements of medical expenditures. Every employer coming under the provisions of compensation plan No. 1 and every insurer coming under the provisions of compensation plan No. 2 shall, on or before the 15th day of each and every month, file with the division:

(1) duplicate receipts for all payments made during the previous month to injured workers or their beneficiaries or dependents; and

(2) statements showing the amounts expended during the previous month for medical, surgical, and hospital services *for injured workers* and for the burial of *deceased* workers."

Section 57. Section 39-71-309, MCA, is amended to read:

"39-71-309. Hospitals to submit schedule of fees and charges — effective period of schedule — when to be submitted. All hospitals must submit to the division a schedule of fees and charges for treatment of injured *workers* to be in effect for at least a 12-month period unless the division and the hospital agree to interim amendments of the schedule. The schedule must be submitted at least 30 days prior to its effective date and *may* not exceed the charges prevailing in the hospital for similar treatment of private patients."

Section 58. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in

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39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under *this* chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116(3);

(c) employment of members of an employer's family dwelling in the employer's household;

(d) employment of sole proprietors or working members of a partnership;

(e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(f) any person performing services in return for aid or sustenance only;

(g) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter."

Section 59. Section 39-71-406, MCA, is amended to read:

"39-71-406. Deduction from wages of any part of premium a misdemeanor — hospital contributions not prohibited. It *is* unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of his *workers*, and the making or attempt to make any such deduction *is* a misdemeanor, except that nothing in this section shall be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this chapter provided."

Section 60. Section 39-71-410, MCA, is amended to read:

"39-71-410. Employees bound by plan adopted by employer — election not to be bound by corporate officers. (1) Every employee whose employer is bound by the provisions of this chapter *is* subject to and bound by the provisions of that plan of compensation adopted by his employer, except that pursuant to such rules as the division shall from time to time promulgate and subject in all cases to the review of the division, officers of private corporations may elect not to be bound as employees under *this* chapter by a written notice in the form provided by the division, served in the following manner:

(a) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering *the* notice to the board of directors of the employer;

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(b) if the employer has elected to be bound by the provisions of compensation plan No. 2, by delivering *the* notice to the board of directors of the employer or the insurer;

(c) if the employer has elected to be bound or is bound by the provisions of compensation plan No. 3, by delivering *the* notice to the division.

(2) The appointment or election of an officer of a corporation for the purpose of excluding an employee from coverage under *this* chapter *does* not entitle such officer to elect not to be bound as an employee under *this* chapter. In any case, the notice *must* be signed by the officer under oath or equivalent affirmation and is subject to the penalties for false swearing.

(3) The division shall review any *election by* officers of private *corporations* not to be bound as an employee to assure compliance with this chapter."

Section 61. Section 39-71-411, MCA, is amended to read:

"39-71-411. Provisions of chapter exclusive remedy — nonliability of insured employer. For all employments covered under the Workers' Compensation Act or for which an election has been made for coverage under *this* chapter, the provisions of *this* chapter are exclusive. Except as provided in part 5 of this chapter for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death *of* or personal injury to *an employee* covered by the Workers' Compensation Act. The Workers' Compensation Act binds the employee himself, and in case of death binds his personal representative and all persons having any right or claim to compensation for his injury or death, as well as the employer and the servants and employees of such employer and those conducting his business during liquidation, bankruptcy, or insolvency."

Section 62. Section 39-71-501, MCA, is amended to read:

"39-71-501. Definition of uninsured employer. For the purposes of *this part*, "uninsured employer" *means* an employer who has not properly complied with the provisions of 39-71-401."

Section 63. Section 39-71-506, MCA, is amended to read:

"39-71-506. Collection of payments from uninsured employer by suit. If, upon demand of the division, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (1) and (2) of 39-71-504, the sums may be collected by the division through suit. The division may settle through compromise with an uninsured employer the amount due the fund under *39-71-504*."

Section 64. Section 39-71-510, MCA, is amended to read:

"39-71-510. Limitation on benefit entitlement under fund. Notwithstanding the provisions of 39-71-407, *39-71-502, and 39-71-503*, injured employees or an employee's beneficiaries who elect to receive benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund *must* be paid in accordance with the sums in the fund. If

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the division determines at any time that the sums in the fund are not adequate to fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future."

Section 65. Section 39-71-602, MCA, is amended to read:

"39-71-602. Statute of limitation not to apply during minority or mental incompetency unless guardian appointed. No limitation of time as provided in 39-71-601 or in this chapter, known as *the* Workers' Compensation Act, shall run as against any injured *worker* who is mentally incompetent and without a guardian or an injured minor under 18 years of age who may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitations as provided for in 39-71-601 shall begin to run on the date of appointment of such guardian or when such minor arrives at 18 years *of age*, whichever date *is* earlier."

Section 66. Section 39-71-603, MCA, is amended to read:

"39-71-603. Notice of claim for injuries other than death to be submitted within sixty days — exception — actual notice. No *claim* to recover compensation under this *chapter* for injuries not resulting in death *may* be maintained unless, within 60 days after the occurrence of the accident which is claimed to have caused the injury, notice in writing stating the name and address of the person injured, the time and place where the accident occurred, and the nature of the injury and signed by the person injured or someone in his behalf *is* served upon the employer or the insurer, except as otherwise provided in 39-71-602. However, actual knowledge of such accident and injury on the part of such employer or his managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the injury *is* equivalent to such service."

Section 67. Section 39-71-721, MCA, is amended to read:

"39-71-721. Compensation for injury causing death. (1) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased, as the case may be, *is entitled to* the same compensation as though the death occurred immediately following the injury, but the period during which the death benefit *is* paid shall be reduced by the period during or for which compensation was paid for the injury.

(2) To beneficiaries as defined in subsections (2)(a) through (2)(d) of 39-71-116, weekly compensation benefits for injury causing death *are computed at* 66 ⅔% of the decedent's wages. The maximum weekly compensation benefits *may* not exceed the state's average weekly wage. The minimum weekly compensation for death *is* 50% of the state's average weekly wage, but in no event *may* it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in subsections (2)(e) and (2)(f) of 39-71-116, weekly benefits *must* be paid to the extent of the dependency

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at the time of the injury, subject to a maximum of 66 ⅔% of the decedent's wages. The maximum weekly compensation *may* not exceed the state's average weekly wage.

(4) If the decedent leaves no beneficiary as defined in 39-71-116(2), a lump-sum payment of $3,000 *must* be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of such beneficiary to compensation under this chapter *ceases*. Death benefits *must* be paid to a widow or widower for life or until remarriage, and in the event of remarriage, 2 years' benefits *must* be paid in a lump sum to the widow or widower.

(6) In all cases, benefits *must* be paid to beneficiaries, as defined in 39-71-116(2)."

Section 68. Section 39-71-738, MCA, is amended to read:

"39-71-738. Adjustment of compensation in case of further injuries. Should a further accident occur to a *worker* who is already receiving compensation hereunder or who has been previously the recipient of a payment under this chapter, his further compensation *is* adjusted according to the other provisions of this chapter and with regard to his past receipt of compensation."

Section 69. Section 39-71-739, MCA, is amended to read:

"39-71-739. Compensation in case of changes in degree of injury. If aggravation, diminution, or termination of disability takes place or *is* discovered after the rate of compensation *is* established or compensation *is* terminated in any case where the maximum payments for disabilities as provided in this chapter *are* not reached, adjustments may be made to meet such changed conditions by increasing, diminishing, or terminating compensation payments in accordance with the provisions of this chapter."

Section 70. Section 39-71-801, MCA, is amended to read:

"39-71-801. Occupational deafness compensated as provided in part. Regardless of other definitions of injury and time limitations imposed by this *chapter*, compensation *is* awarded for occupational deafness as provided in this part."

Section 71. Section 39-71-807, MCA, is amended to read:

"39-71-807. Compensation for wage loss where employee transferred due to occupational deafness. An employee who because of occupational deafness is transferred by his employer to other employment and thereby sustains actual wage loss *must* be compensated at the rate provided in 39-71-703, not exceeding $3,500 in the aggregate from all employers. "Time of injury", "incurred such injury", *or* "date of injury" in such case *is* the date of wage loss."

Section 72. Section 39-71-813, MCA, is amended to read:

"39-71-813. Limitation provisions applicable — when provisions begin to run. The limitation provisions in this *chapter* control

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claims arising under this part. Such provisions run from the first date upon which claim may be filed or from the date of subsequent death, provided that no claim *may* accrue to any dependent unless an award has been issued or liability admitted."

Section 73. Section 39-71-901, MCA, is amended to read:

"39-71-901. Definitions. As used in this part, the following definitions apply:

(1) "Vocationally handicapped" means a person who has a medically certifiable permanent physical impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if *the* employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

(2) "Certifying agency" means the division of workers' compensation.

(3) "Certificate" means documentation issued by the certifying agency to an individual who is vocationally handicapped.

(4) "Fund" means the subsequent injury fund."

Section 74. Section 39-71-902, MCA, is amended to read:

"39-71-902. Fund to receive payment from insurer for each death under chapter — assessment of insurers. (1) In every case of the death of an employee under this *chapter*, the insurer shall pay to the fund the sum of $1,000. In addition, the division may assess every insurer an amount not to exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment *must* be transmitted annually to the subsequent injury fund by the employer or insurer.

(2) When, in *the* judgment of the administrator, the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities, the administrator may at his discretion suspend or reduce further collection of assessments for a period of time determined by the administrator."

Section 75. Section 39-71-903, MCA, is amended to read:

"39-71-903. Procedure and practice. When a vocationally handicapped person receives a personal injury, the procedure and practice provided in this *chapter* applies to all proceedings under this part, except where specifically otherwise provided herein."

Section 76. Section 39-71-907, MCA, is amended to read:

"39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter — employer liability for compensation limited. A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of his employment and resulting in death or disability *must* be paid compensation in the manner and to the extent provided in this *chapter* or, in case of his death resulting from such injury, the compensation *must* be paid to his beneficiaries or dependents. The liability of the employer for

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payment of compensation, for furnished medical care, and burial as provided in this *chapter is* limited to those benefits occurring during the period of 104 weeks after the date of injury. Thereafter, all compensation and the cost of all medical care and burial *is* the liability of the fund."

Section 77. Section 39-71-908, MCA, is amended to read:

"39-71-908. Notification of fund of its potential liability under part — review by fund. Not less than 90 or more than 150 days before the expiration of 104 weeks after the date of injury, the employer, carrier, or the industrial insurance fund, as the case may be, shall notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund thereafter may review, at reasonable times, such information as the employer, carrier, or industrial insurance fund *has* regarding the accident and the nature and extent of the injury and disability."

Section 78. Section 39-71-910, MCA, is amended to read:

"39-71-910. Procedure for resolving disputes as to liability under part. (1) If an employee was employed or retained in employment under the provisions of this part and a dispute or controversy arises as to payment of benefits or the liability therefor, the division shall hold a hearing and resolve all disputes. On motion made in writing by the employer, carrier, or industrial insurance fund, the administrator shall join the fund as a party defendant.

(2) The division, within 5 days of the entry of an order joining the fund as a party defendant, shall give the fund written notice thereof not less than 20 days before the date of hearing and shall include the name of *the* employee *and the* employer and the date of the alleged injury or disability. The fund named as a defendant shall have 10 days after the date of notification to file objections to being named as *a* party defendant. On the date of the hearing at which the liability of the parties is determined, the hearing examiner first shall hear arguments and take evidence concerning the joinder as party defendant. If the fund has filed timely objection and if argument and evidence warrant, the hearing examiner shall grant a motion to dismiss.

(3) At the time of the hearing, the employer and fund may appear, cross-examine witnesses, give evidence, and defend both on the issue of liability of the employer to the employee and on *the* issue of the liability of the fund.

(4) The hearing examiner shall make findings of fact and conclusions of law determining the respective liability of the employer and the fund."

Section 79. Section 39-71-1001, MCA, is amended to read:

"39-71-1001. Referral of disabled workers to department of social and rehabilitation services for vocational rehabilitation. The division shall refer to the department of social and rehabilitation services workers who have become permanently disabled as the result of injuries sustained within the scope and course of employment by an employer enrolled under the Workers' Compensation Act and who, in the opinion of

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the division, can be vocationally rehabilitated. The department of social and rehabilitation services shall provide for the vocational rehabilitation of the injured workers under the provisions of *Title 53, chapter 7, parts 1 and 2.*"

Section 80. Section 39-71-1003, MCA, is amended to read:

"**39-71-1003. Eligibility for benefits under chapter not affected — other expenses payable.** The eligibility of any injured *worker* to receive other benefits under the Workers' Compensation Act *is* in no way affected by his entrance upon a course of vocational rehabilitation as herein provided, but he may be paid, in addition thereto, upon the certification of the *department of social and rehabilitation services* from funds herein provided:

(1) his actual and necessary travel expenses from his place of residence to the place of training and return;

(2) his living expenses while in training in an amount not in excess of $50 per week; *and*

(3) his expenses for tuition, books, and necessary equipment in training."

Section 81. Section 39-71-2101, MCA, is amended to read:

"**39-71-2101. General requirements for electing coverage under plan.** An employer may elect to be bound by compensation plan No. 1 upon furnishing satisfactory proof to the division of his solvency and financial ability to pay the compensation and benefits in this chapter provided for and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective, *and* may, by order of the division, make such payments directly to his employees as they may become entitled to receive under the terms and conditions of this chapter."

Section 82. Section 39-71-2201, MCA, is amended to read:

"**39-71-2201. Election to be bound by plan.** (1) Any employer except those specified in *39-71-403* may, by filing his election to become bound by compensation plan No. 2, insure his liability to pay the compensation and benefits provided by this chapter with any insurance company authorized to transact such business in this state.

(2) Any employer electing to become bound by compensation plan No. 2 shall make his election on the form and in the manner prescribed by the division."

Section 83. Section 39-71-2206, MCA, is amended to read:

"**39-71-2206. Deposits by insurer with division to guarantee payment of liability.** (1) Before issuance of any policy by an insurer as herein authorized, *the* insurer must deposit with the division bonds of the United States or the state of Montana or of any school district, county, city, or town in the state of Montana or a corporate surety bond made out to and approved by the division in an amount not less than $5,000 or more

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than $100,000, as the division may determine. If any insurer fails to discharge any liability after the amount thereof *is* determined by the division and within the time limited by the division, the division shall convert the bonds or such part thereof as is necessary into cash and from the proceeds liquidate such liability, and thereafter the insurer must make an additional deposit to meet any deficiency caused thereby. It is intended to give the division the discretion in the matter of whether an insurer has failed to discharge any liability.

(2) Within 30 days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the division for the protection and guarantee of the payment of such liability in such sum as the division may direct. However, if the division *considers* the amount on deposit by the insurer under the provisions of subsection (1) of this section sufficient to cover all liabilities of the insurer, then no further deposit *may* be required.

(3) Any deposit made under the provisions of compensation plan No. 2 *must* be held in trust by the division as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the division as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor by withdrawing the same or any part thereof and substituting other deposits therefor. Upon proof of the final payment of the liability for which such deposit was made, any deposit remaining *must* be returned to the depositor. All earnings made by such deposit *must* first *be* applied upon any liability of the depositors, and if no such liability exists, then such earnings *must* upon demand be delivered to such depositor. The division and its bondsmen *are* liable for the value and safekeeping of such deposit and shall at any time, upon demand of *a* depositor, account for the same and the earnings thereof."

Section 84. Section 39-72-101, MCA, is amended to read:

"39-72-101. Short title. This chapter *may be cited* as *the* "Occupational Disease Act of Montana"."

Section 85. Section 39-72-102, MCA, is amended to read:

"39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116(2).

(2) "Child" is as defined in 39-71-116(4).

(3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing any work for remuneration or profit. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "partial permanent disability".

(4) "Division" is as defined in 39-71-116(5).

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(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

(7) "Husband" is as defined in 39-71-116(7).

(8) "Independent contractor" is as defined in 39-71-120.

(9) "Insurer" is as defined in 39-71-116(8). The term includes an employer who is self-insured under compensation plan No. 1.

(10) "Invalid" is as defined in 39-71-116(9).

(11) "*Occupational* disease" *means* all diseases arising out of or contracted from and in the course of employment.

(12) "Order" is as defined in 39-71-116(10).

(13) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(14) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO_2) *and* characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.

(15) "Wages" is as defined in 39-71-116(20).

(16) "Wife" is as defined in 39-71-116(21).

(17) "Year" is as defined in 39-71-116(6) and 39-71-116(22)."

Section 86. Section 39-72-307, MCA, is amended to read:

"39-72-307. Deduction from wages of any part of premium a misdemeanor — hospital contributions not prohibited. It *is* unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of his *workers*, or any of them, and the making or attempt to make any such deduction *is* a misdemeanor, except that nothing in this section *may* be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this chapter provided."

Section 87. Section 39-72-508, MCA, is amended to read:

"39-72-508. Death due to pneumoconiosis. The claimant must submit the evidence necessary to establish that the miner's death was due to pneumoconiosis and that the pneumoconiosis arose out of employment in coal mines. Death will be found due to a *respiratory* disease when death is ascribed to a chronic dust disease or to another chronic disease of the lung. Death will not be found due to a *respiratory* disease in those cases in which the disease reported does not suggest a reasonable possibility that death was in fact due to pneumoconiosis; e.g., cancer of the lung, disease due to trauma, or pulmonary emboli. However, the presumptions established in subsections (2) and (3) of 39-72-501 apply."

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Section 88. Section 39-72-701, MCA, is amended to read:

"39-72-701. Compensation for total disability or death due to occupational disease other than pneumoconiosis. The compensation to which an employee temporarily totally disabled or permanently totally disabled by an occupational disease *other than pneumoconiosis*, or the beneficiaries and dependents of the employee in the case of death caused by an occupational disease *other than pneumoconiosis, are* entitled under this chapter shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time as is provided in cases of temporary total disability, permanent total disability, and in cases of injuries causing death under the Workers' Compensation Act."

Section 89. Section 39-72-702, MCA, is amended to read:

"39-72-702. Compensation for total disability or death due to pneumoconiosis. Benefit payments for total disability or death due to pneumoconiosis shall, for the purpose of this chapter, be made as follows:

(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability at the rate of $155 per month.

(2) In the case of death of a miner due to pneumoconiosis or of a miner receiving benefits under *subsection (1)*, benefits shall be paid to the miner's surviving spouse, if any, at the rate the deceased miner would receive such benefits if totally disabled.

(3) In the case of an individual entitled to benefit payments under subsection (1) or (2) who has one or more dependents, the benefit payments *must* be increased at the rate of 50% of such benefit payments if such individual has one dependent, 75% if such individual has two dependents, and 100% if such individual has three or more dependents."

Section 90. Section 39-72-708, MCA, is amended to read:

"39-72-708. Prohibiting supplementing of benefits. No person receiving compensation or benefits under *chapter 73 of this title is* entitled to compensation or benefits under this chapter."

Section 91. Section 39-73-109, MCA, is amended to read:

"39-73-109. Payment of benefits to surviving spouse. (1) Upon the death of a person receiving payments for silicosis under 39-73-104 or 39-73-108, the surviving spouse, as long as such spouse remains unmarried, is entitled to receive the payments granted the deceased spouse.

(2) A person who otherwise is qualified to receive payments under subsection (1) of this section but whose spouse died prior to March 14, 1974, is hereby made eligible to begin receiving one-half of those payments; provided, however, a person is not eligible for these payments if *such spouse's* taxable income is $6,800 or more per year."

Section 92. **Repealer.** Sections 41-901 through 41-909, 92-613, and 92-1340, R.C.M. 1947, are repealed.

Approved March 31, 1979.

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CHAPTER NO. 398

AN ACT TO MODIFY THE GROUNDS FOR RECALL OF A PUBLIC OFFICER; AMENDING SECTION 2-16-603, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-16-603, MCA, is amended to read:

"2-16-603. Officers subject to recall — grounds for recall. (1) Every person holding a public office of the state or any of its political subdivisions, either by election or appointment, is subject to recall from such office.

(2) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for his successor. A public officer holding an appointive office may be recalled by the qualified electors entitled to vote for the successor or successors of the elective officer or officers who have the authority to appoint a person to that position.

(3) Physical or mental lack of fitness, incompetence, violation of his oath of office, *official misconduct,* or *conviction of* a felony offense enumerated in Title 45 is the only basis for recall. No person may be recalled for performing a mandatory duty of the office he holds or for not performing any act that, if performed, would subject him to prosecution for official misconduct."

Approved March 31, 1979.

CHAPTER NO. 399

AN ACT TO REVISE THE STATUTES REGARDING THE PROCEDURE FOR OBTAINING AND DISSOLVING OR MODIFYING PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS; PROVIDING THAT TEMPORARY RESTRAINING ORDERS WILL EXPIRE WITHIN 10 DAYS UNLESS RENEWED; PROVIDING FOR THE FORM AND SCOPE OF PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS; AMENDING SECTIONS 27-19-201, 27-19-301, 27-19-303, 27-19-305, 27-19-306, 27-19-313, 27-19-401, 27-19-403, 27-19-405, AND 27-19-406, MCA; AND REPEALING SECTIONS 27-19-302, 27-19-304, 27-19-311, AND 27-19-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-19-201, MCA, is amended to read:

"27-19-201. When preliminary injunction may be granted. An injunction order may be granted in the following cases:

(1) when it shall appear that the *applicant* is entitled to the relief demanded and such relief or any part thereof consists in restraining the

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commission or continuance of the act complained of, either for a limited period or perpetually;

(2) when it shall appear that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the *applicant*;

(3) when it shall appear during the litigation that the *adverse party* is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the *applicant's* rights, respecting the subject of the action, and tending to render the judgment ineffectual;

(4) when it appears that the *adverse party*, during the pendency of the action, threatens or is about to remove or to dispose of his property with intent to defraud the *applicant*, an injunction order may be granted to restrain the removal or disposition."

Section 2. Section 27-19-301, MCA, is amended to read:

"27-19-301. When notice of application required. *No preliminary injunction may be issued without reasonable notice to the adverse party of the time and place of the making of the application therefor.*"

Section 3. **When hearing on application required.** Before granting an injunction order, the court or judge shall make an order requiring cause to be shown, at a specified time and place, why the injunction should not be granted, and the adverse party may in the meantime be restrained as provided in 27-19-305.

Section 4. Section 27-19-303, MCA, is amended to read:

"28-19-303. Time of granting injunction, evidence required. The injunction order may be granted *after the hearing* at any time before judgment. *Upon the hearing each party may present affidavits or oral testimony.* An injunction order shall not be granted on *affidavits* unless:

(1) *they are* duly verified;

(2) the material allegations of the *affidavits* setting forth the grounds *for the order* be made positively and not upon information and belief."

Section 5. Section 27-19-305, MCA, is amended to read:

"27-19-305. Temporary restraining order. Where an application for an injunction is made upon notice or an order to show cause, either before or after answer, the court or judge may enjoin the *adverse party*, until the hearing and decision of the application, by an order which is called a *temporary* restraining order."

Section 6. **Form and scope of injunction or restraining order.** An order granting an injunction or a restraining order shall:

(1) set forth the reasons for its issuance;

(2) be specific in its terms;

(3) describe in reasonable detail, and not by reference to the complaint or any other document, the act or acts sought to be restrained; and

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(4) be binding only upon the parties to the action; their officers, agents, employees, and attorneys; and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Section 7. **When restraining order may be granted without notice.** A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if:

(1) it clearly appears from specific facts shown by affidavit or by the verified complaint that a delay would cause immediate and irreparable injury to the applicant before the adverse party or his attorney could be heard in opposition; and

(2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his claim that notice should not be required.

Section 8. Section 27-19-306, MCA, is amended to read:

"27-19-306. Security for damages. (1) On granting an injunction or restraining order, the court or judge *shall* require a written undertaking *to be given by the applicant, in such sum as the court considers proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. The undertaking may not be required in domestic disputes or when the state or a state agency, a county or subdivision thereof, or a municipal corporation is the party seeking the injunction or restraining order. In any case, the court in its discretion may waive the undertaking in the interest of justice.*

(2) Within 5 days after the service of the injunction, the *party enjoined* may except to the sufficiency of the sureties. If *he* fails to do so, *he* is deemed to have waived all objections to them. When excepted to, the *applicant's* sureties, upon notice to the *party enjoined* of not less than 2 or more than 5 days, must justify before a judge or clerk in the same manner as upon bail on arrest, and upon failure to justify or if others in their place fail to justify at the time and place appointed, the order granting an injunction shall be dissolved."

Section 9. **Contents and filing of restraining order granted without notice.** Each temporary restraining order granted without notice must:

(1) be indorsed with the date and hour of its issuance;

(2) be filed immediately in the clerk's office and entered in the record;

(3) define the injury and state why such injury is irreparable and why the order was granted without notice; and

(4) expire by its terms within such time after entry, not to exceed 10 days, as the court or judge fixes.

Section 10. **Extension of expiration date.** The time fixed in the order for its expiration may be extended, for good cause shown, for a like

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period or, if the party against whom the order is directed consents, for a longer period. The reasons for the extension must be entered in the record.

Section 11. **Application for injunction to be heard without delay.** Whenever a temporary restraining order is granted without notice, the application for an injunction must be set for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. At the hearing the party who obtained the temporary restraining order shall proceed with the application for an injunction, or if he does not do so, the court or judge shall dissolve the temporary restraining order.

Section 12. **Motion to dissolve or modify restraining order.** On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice as the court or judge may prescribe, the adverse party may appear and move that the order be dissolved or modified. The court shall hear and determine such motion as expeditiously as the ends of justice require.

Section 13. Section 27-19-313, MCA, is amended to read:

"27-19-313. New undertaking for security following hearing. On a hearing to show cause, the court or judge may require a new undertaking, in the same or a different sum, to be given by the *party who obtained the order*, with like sureties and to the like effect as upon granting of the original order. The persons executing the new undertaking become liable thereon as if they had executed it upon the granting of the original order. The persons who executed the original undertaking remain liable thereon until the new undertaking is given and approved, and no longer."

Section 14. Section 27-19-401, MCA, is amended to read:

"27-19-401. Application to dissolve or modify injunction. *The party enjoined* may apply to the judge who granted the injunction order or to the court in which the action is brought to dissolve or modify the same. The application may be made upon *reasonable notice or upon an order to show cause returnable at a specified time or immediately after service thereof. The application must be supported by an affidavit showing that there is not sufficient ground for the injunction to continue or that the scope of the injunction is too broad.*"

Section 15. Section 27-19-403, MCA, is amended to read:

"27-19-403. New undertaking for security following hearing. Upon the hearing of an application to vacate or modify an injunction order, the court or judge may require a new undertaking, in the same or a different sum, to be given by the *party who obtained the order*, with like sureties and to the like effect as upon granting of the original order. The persons executing the new undertaking become liable thereon as if they had executed it upon the granting of the original order. The persons who executed the original undertaking remain liable thereon until the new undertaking is given and approved, and no longer."

Section 16. Section 27-19-405, MCA, is amended to read:

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"27-19-405. Enjoined party's undertaking for security upon dissolution. Upon the hearing mentioned in 27-19-403, the court or judge may vacate the injunction order upon the *enjoined party's* executing an undertaking in such form and amount and with such sureties as the court or judge shall direct, conditioned to indemnify the *party who obtained the injunction order* against loss sustained by reason of vacating such injunction order."

Section 17. Section 27-19-406, MCA, is amended to read:

"27-19-406. Costs upon dissolution. Where an injunction order is granted and the same is afterward dissolved upon application of the party enjoined thereby, the court or judge to whom the application to dissolve is made may award as costs of the application, against the *party who obtained the injunction* and in favor of the party applying, such sum as to the court or judge may appear just, not less than $10 or more than $100."

Section 18. **Repealer.** Sections 27-19-302, 27-19-304, 27-19-311, and 27-19-402, MCA, are repealed.

Approved March 31, 1979.

CHAPTER NO. 400

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO STATEWIDE BALLOT ISSUES; AMENDING SECTIONS 13-27-201, 13-27-202, 13-27-301, 13-27-303, 13-27-306, 13-27-310, 13-27-312, 13-27-313, 13-27-315, 13-27-401, 13-27-405, 13-27-406, 13-27-410, 13-27-501, 13-27-502, AND 85-8-624, MCA; AND REPEALING SECTION 13-27-314, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-27-201, MCA, is amended to read:

"13-27-201. Form of petition generally. (1) A petition for the initiative, the referendum, or to call a constitutional convention must be substantially in the form provided by this chapter. Clerical or technical errors that do not interfere with the ability to judge the sufficiency of signatures on the petition do not render a petition void.

(2) Petition sheets may not exceed 8 ½ x 14 inches in size. Separate sheets of a petition may be fastened in sections of not more than 25 sheets. Near the top of each sheet containing signature lines must be printed the title of the statute or constitutional amendment proposed or the measure to be referred or a statement that the petition is for the purpose of calling a constitutional convention. If signature lines are printed on both the front and back of a petition sheet, the information required above must appear on both the front and back of the sheet. The complete text of the measure proposed or referred must be attached to or contained within each signature sheet if sheets are circulated separately. *The text of*

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the measure must be in the bill form provided in the most recent issue of the bill drafting manual furnished by the legislative council. If sheets are circulated in sections, the complete text of the measure must be attached to each section."

Section 2. Section 13-27-202, MCA, is amended to read:

"13-27-202. Approval of form required. *(1)* Before a petition may be circulated for signatures, a sample sheet must be submitted to the secretary of state in the form in which it will be circulated. *The sample petition may not be submitted to the secretary of state more than 1 year prior to the final date for filing the signed petition with the secretary of state.* The secretary of state shall refer a copy of the *petition* sheet to the attorney general for his approval. The secretary of state and attorney general must each review the *petition* for sufficiency as to form and approve or reject the form of the petition, stating *the* reasons *for rejection, if any.*

(2) The secretary of state shall review the comments *and statements* of the attorney general *received pursuant to 13-27-312* and make a final decision as to the approval or *rejection* of the form of the *petition.* The secretary of state *shall send written notice to* the person who submitted the *petition* sheet of the approval within *28 days after submission of* the *petition* sheet. *The secretary of state shall send written notice if the petition has been rejected together with reasons for rejection within 14 days after submission of the petition sheet.*"

Section 3. Section 13-27-301, MCA, is amended to read:

"13-27-301. Submission of petition sheets. Signed sheets or sections of petitions shall be submitted to the official responsible for registration of electors in the county in which the signatures were obtained no sooner than *9 months* and no later than 2 weeks before the final date for filing the petition with the secretary of state."

Section 4. Section 13-27-303, MCA, is amended to read:

"13-27-303. Verification of signatures by county official. The county official receiving the sheets or sections of a petition shall check the names of all signers to verify they are registered electors of the county. In addition, the official shall randomly select signatures on each sheet or section and compare them with the signatures of the electors as they appear in the registration records of the office. If all the randomly selected signatures appear to be genuine, the number of signatures of registered electors on the sheet or section may be certified to the secretary of state without further comparison of signatures. If any of the randomly selected signatures do not appear to be genuine, all signatures on that sheet or section must be compared with the signatures in the registration records of the office."

Section 5. Section 13-27-306, MCA, is amended to read:

"13-27-306. Challenge to signatures by elector of county. A registered elector of a county having reason to believe that signatures on a petition that were not among those actually compared with signatures in the registration records of the county are not genuine may file a sworn

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statement or affirmation of his belief and request for comparison of those signatures he believes are not genuine with the county official certifying the sheet or section of the petition. If any of the challenged signatures are not genuine, the county official must compare all signatures on that sheet or section and issue an amended certificate to the secretary of state, giving the correct number of valid signatures, *on or before the deadline, as provided for in 13-27-104, for filing in the office of the secretary of state.*"

Section 6. Section 13-27-310, MCA, is amended to read:

"**13-27-310. Transmittal of issues referred by the legislature and ballot forms to the attorney general.** (1) The secretary of state shall transmit a copy of the form in which *a ballot* issue *proposed by petition* will appear on the ballot to the attorney general on the same day the completed petition *is certified* to the governor.

(2) The secretary of state shall transmit a copy of an act referred to the people or a constitutional amendment proposed by the legislature and a copy of the form in which the issue will appear on the ballot to the attorney general no later than 6 months before the election at which the issue will be voted on by the people.

(3) If the ballot form is not approved by the attorney general pursuant to 13-27-313, the secretary of state shall immediately submit a new ballot form to the attorney general."

Section 7. Section 13-27-312, MCA, is amended to read:

"**13-27-312. Review of petition by attorney general — preparation of statement.** *(1) Upon receipt of a petition from the office of the secretary of state pursuant to 13-27-202, the attorney general shall examine the petition as to form. If the petition form is approved, the attorney general shall prepare and transmit to the secretary of state a concise statement not exceeding 100 words. This statement shall express a true and impartial explanation of the purpose of the proposed ballot issue in plain, easily understood language. The statement may not be an argument and may not be written so as to create prejudice for or against the measure. The statement prepared pursuant to this subsection, unless altered by a court under [section 10], is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.*

(2) At the same time the statement of purpose is prepared, the attorney general shall prepare statements of the implication of a vote for or against a ballot issue. The statements of implication may be no more than 25 words each and shall be in simple, impartial language clearly explaining the meaning of a vote for and a vote against the issue. The statements of implication prepared pursuant to this section, unless altered by a court under [section 10], are the statements to be used on the petition and the ballot if the measure is placed on the ballot. The statements of implication shall be placed beside the diagram provided for marking of the ballot in a manner similar to the following example:

☐ *FOR extending the right to vote to persons 18 years of age*

☐ *AGAINST extending the right to vote to persons 18 years of age*

(3) If the petition is rejected as to form, the attorney general shall forward his comments to the secretary of state within 10 days after receipt of the petition by the attorney general. If the petition is approved as to form, the attorney general shall forward the statement of purpose and the statements of implication to the secretary of state within 21 days after receipt of the petition by the attorney general."

Section 8. Section 13-27-313, MCA, is amended to read:

"13-27-313. Review of ballot forms by attorney general. *The* attorney general *shall examine each ballot form submitted to his office pursuant to 13-27-310 and within 20 days of receipt of the ballot form* shall notify the secretary of state of his approval or *rejection* of the ballot form. If the ballot form is *rejected*, the attorney general *shall approve or reject a new ballot form submitted by the secretary of state pursuant to 13-27-310(3)* within 5 days of receiving the new form."

Section 9. Section 13-27-315, MCA, is amended to read:

"13-27-315. Statements by attorney general on issues referred by legislature. *(1) At the same time the attorney general, pursuant to 13-27-313, informs the secretary of state of the approval or rejection of a ballot form for an issue proposed by the legislature, the attorney general shall forward to the secretary of state a statement, not exceeding 100 words, expressing a true and impartial explanation of the purpose of the measure in plain, easily understood language. The statement may not be an argument and may not be written to create a prejudice for or against the issue. The statement prepared under this section is known as the attorney general's explanatory statement.*

(2) If statements of the implication of a vote for or aganist a ballot issue have not been provided by the legislature, the attorney general shall prepare the statements. Requirements for statements of implication for ballot issues referred by the legislature are the same as those provided in 13-27-312 for other ballot issues. Statements of implication prepared by the attorney general must be returned to the secretary of state no later than the time specified for approval of the ballot form."

Section 10. **Court review of attorney general statements.** (1) If the proponents of a ballot measure believe that the statement of purpose or the statements of implication of a vote formulated by the attorney general pursuant to 13-27-312 do not satisfy the requirements of 13-27-312, they may, within 10 days of receipt of the notice from the secretary of state provided for in 13-27-202, file an action in the district court in and for the county of Lewis and Clark challenging the adequacy of the statement and requesting the court to alter the statement.

(2) If the opponents of a ballot measure believe that the statement of purpose or the statements of implication of a vote formulated by the attorney general pursuant to 13-27-312 do not satisfy the requirements of 13-27-312, they may, within 10 days of the date of certification to the governor that the completed petition has been officially filed, file an action in the district court in and for the county of Lewis and Clark challenging

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the adequacy of the statement and requesting the court to alter the statement.

(3) (a) Notice shall be served upon the secretary of state and upon the attorney general. The action takes precedence over other cases and matters in the district court. The court shall examine the proposed measure and the challenged statement and shall as soon as possible render a decision and certify to the secretary of state a statement which the court determines will meet the requirements of 13-27-312.

(b) A statement certified by the court shall be placed on the petition for circulation and on the official ballot.

(4) A copy of the petition in final form must be filed in the office of the secretary of state by the proponents.

(5) Any party may appeal the order of the district court to the Montana supreme court by filing a notice of appeal within 5 days of the date of the order of the district court.

Section 11. Section 13-27-401, MCA, is amended to read:

"13-27-401. Voter information pamphlet. (1) The secretary of state shall prepare for printing a voter information pamphlet containing the following information for each ballot issue to be voted on at an election, as applicable:

(a) *ballot* title and complete text of the issue;

(b) the form in which the issue will appear on the ballot;

(c) arguments advocating approval and rejection of the issue; and

(d) rebuttal arguments.

(2) The pamphlet shall also contain a notice advising the recipient where additional copies of the pamphlet may be obtained.

(3) Whenever more than one ballot issue is to be voted on at a single election, the secretary of state may publish a single pamphlet for all of the ballot issues. The secretary of state may arrange the information in the order which seems most appropriate, but the information for all issues in the pamphlet shall be presented in the same order."

Section 12. Section 13-27-405, MCA, is amended to read:

"13-27-405. Committee expenses. Each committee is entitled to receive funds for the preparation of arguments and expenses of members not to exceed *$100* for a three-member committee and *$200* for a five-member committee. Itemized claims for actual expenses incurred, approved by a majority of the committee, shall be submitted to the secretary of state for payment from funds appropriated for that purpose."

Section 13. Section 13-27-406, MCA, is amended to read:

"13-27-406. Limitation on length of argument — time of filing. An argument advocating approval or rejection of a ballot issue is limited to 500 words and shall be filed, in typewritten form, with the

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secretary of state no later than *85* days before the election at which the issue will be voted on by the people. A majority of the committee responsible for preparation must approve and sign each argument filed. Separate signed letters of approval of an argument may be filed with the secretary of state by members of a committee if necessary to meet the filing deadline."

Section 14. Section 13-27-410, MCA, is amended to read:

"13-27-410. Printing and distribution of voter information pamphlet. (1) The secretary of state shall arrange with the department of administration by requisition for the printing and delivery of a voter information pamphlet for all ballot issues to be submitted to the people at least 90 days before the election at which they will be submitted. The requisition shall include a delivery list providing for shipment of the required number of pamphlets to each county and to the secretary of state.

(2) The secretary of state shall estimate the number of copies necessary to furnish one copy to every voter in each county, *except that two or more voters with the same mailing address and the same last name may be counted as one voter. The secretary of state shall* provide for an extra supply of the pamphlets in determining the number of voter pamphlets to be ordered in the requisition.

(3) The department of administration shall call for bids and contract with the lowest bidder for the printing and delivery of the voter information pamphlet. The contract shall require completion of printing and shipment, as specified on the delivery list, of the voter information pamphlets by not later than 30 days before the election at which the ballot issues will be voted on by the people.

(4) The county official responsible for voter registration in each county shall mail one copy of the voter information pamphlet to each registered voter in the county, *except that two or more voters with the same mailing address and the same last name may be counted as one voter. The mailing shall take place* no later than 2 weeks after the pamphlets are received from the printer.

(5) Ten copies of the voter information pamphlet shall be available at each precinct for use by any voter wishing to read the explanatory information and complete text before voting on the ballot issues."

Section 15. Section 13-27-501, MCA, is amended to read:

"13-27-501. Secretary of state to certify ballot form. The secretary of state shall furnish to the official of each county responsible for preparation and printing of the ballots, at the same time as he certifies the names of the persons who are candidates for offices to be filled at the election, a certified copy of the form in which each ballot issue to be voted on by the people at that election is to appear on the ballot. Unless otherwise provided in the legislative act or petition placing the issue on the ballot, the secretary of state shall list for each issue the number, the method of placement on the ballot, the title, *the attorney general's explanatory statement, if applicable,* and the statements of the implication of a vote

for or against the issue that are to be placed beside the diagram for marking the ballot. The secretary of state shall use for each ballot issue the title of the legislative act *or* legislative constitutional proposal or *the title provided by the attorney general or district court.* Following the number of the ballot issue, the secretary of state shall include one of the following statements to identify why the issue has been placed on the ballot:

(1) an act referred by the legislature;

(2) an amendment to the constitution proposed by the legislature;

(3) an act of the legislature referred by referendum petition; or

(4) a law or constitutional amendment proposed by initiative petition."

Section 16. Section 13-27-502, MCA, is amended to read:

"13-27-502. Preparation of ballots by county officials. Each of the county officials responsible for the preparation and printing of the ballots shall print the ballot issues on the official ballot in the form and order in which the issues have been certified by the secretary of state. All ballot issues shall be placed on the official ballot prescribed by 13-12-212, 13-17-205 and 13-17-206, or 13-18-201 through 13-18-206 unless specific written approval by the secretary of state for placing the ballot issues on a separate ballot is received by the official responsible for printing the ballot. The secretary of state may issue such approval only when the number of issues to be voted on at an election makes it *impractical* to print the entire ballot, including the ballot issues, on the official ballot as prescribed by 13-12-212, 13-17-205 and 13-17-206, or 13-18-201 through 13-18-206."

Section 17. **Limitation on title of referred legislation.** All bills referred by the legislature to a vote of the people shall have a title of no more than 100 words.

Section 18. Section 85-8-624, MCA, is amended to read:

"85-8-624. Assessments on improvements — taxpayers' approval, limitations, and election procedures. (1) It shall require a vote of the persons on the assessment rolls in any existing district to make Chapter 409, Laws of 1973, applicable to such districts.

(2) Nothing in Chapter 409, Laws of 1973, confers upon districts created for drainage purposes only the authority to levy assessments on benefits to improvements.

(3) The election provided for by subsection (1) shall be governed by the following rules:

(a) Notice of the election shall be as provided in 85-8-303, except that the form of the ballot shall be as hereinafter provided.

(b) The manner of conducting the election shall be as provided in 85-8-304.

(c) The qualifications of electors shall be as provided in 85-8-305, except that, in addition to persons holding title or evidence of title to lands within the district, any person as therein defined who does not own

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land within the district but has been assessed or will have his improvements assessed under Chapter 409, Laws of 1973, or who will be assessed for benefits received shall be entitled to one vote. Commissioners shall prepare a list of such persons and give them notice as provided in 85-8-303.

(d) The commissioners of any district in existence prior to March 21, 1973, who wish to hold an election to determine if the district shall be governed by Chapter 409, Laws of 1973, shall at any regular or special meeting adopt a resolution calling for an election to determine whether or not the voters of said district wish to be governed by Chapter 409, Laws of 1973. The resolution shall contain a short summary of the changes made by Chapter 409, Laws of 1973, and shall include the summary as part of the notice provided for by 85-8-303. In addition, the commission shall provide copies of Chapter 409, Laws of 1973, to any person interested in obtaining a copy of the same and the notice to the persons in the district calling the election shall describe where and how copies may be obtained. The commissioners may authorize a reasonable charge for providing said copies, not to exceed 20 cents per page.

(e) The ballot shall include the summary as provided for in the preceding subsection and the form of the ballot shall conform, as closely as possible, to that set forth in *Title 13, chapter 27.*

(f) A simple majority of those who cast valid ballots shall determine the outcome of the election."

Section 19. **Repealer.** Section 13-27-314, MCA, is repealed.

Approved March 31, 1979.

CHAPTER NO. 401

AN ACT REQUIRING TUITION PAYMENT FOR A HIGH SCHOOL STUDENT ATTENDING A HIGH SCHOOL IN A DISTRICT OUTSIDE HIS RESIDENT DISTRICT AND CREATING A HIGH SCHOOL TUITION FUND; AMENDING SECTIONS 20-5-311 THROUGH 20-5-313, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-311, MCA, is amended to read:

"20-5-311. High school tuition. (1) Any child may be enrolled in and attend a high school outside of the *high school district* in which he resides when such high school is located in Montana or in a county of another state that is adjacent to the state of Montana. When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before July 1 of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. Such application shall be made on a tuition agreement form supplied by the county superintendent and shall be approved by the trustees of the district where the child wishes to attend school and the *trustees* of the child's *district*

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of residence before permission to enroll in and attend a school outside of the *district* under the provisions of this section shall be granted.

(2) The *trustees* shall approve a tuition application when a child lives closer to a high school of another *district* than any high school located within his resident *district* or when, due to road or geographic conditions, it is impractical to attend *the* high school *nearest* his *residence*. In approving such a tuition application the *trustees are* not required to approve a tuition application for a student seeking to attend a high school outside the state of Montana if the resident district provides transportation. In approving a tuition agreement under this provision, the *trustees* may require the child to attend the high school closest to his residence. The *trustees* may approve any other tuition application that satisfies the geographic requirements of this section.

(3) The trustees of the district where the child wishes to attend school shall approve or disapprove any tuition application submitted to them under the provisions of this section within 15 days after the receipt of the application.

(4) The county superintendent shall notify the parent or guardian and the trustees of the district where the child wishes to attend school of the tuition agreement approval or disapproval. If a tuition agreement is disapproved by the *trustees*, the parent may appeal such disapproval to the *trustees* for *their* reconsideration and, subsequently, to the superintendent of public instruction under the provision for the appeal of controversies in this title. The approval of any tuition agreement by the approval agents or upon appeal shall authorize the child named in such agreement to enroll in and attend the school named in such agreement for the ensuing school fiscal year."

Section 2. Section 20-5-312, MCA, is amended to read:

"20-5-312. Reporting, budgeting, and payment for high school tuition. (1) At the close of the school term of each school fiscal year, the trustees of each high school district shall determine the rate of tuition for the current school fiscal year by:

(a) totaling the actual expenditures from the district general fund, retirement fund, and debt service fund;

(b) dividing the amount determined in subsection (1)(a) above by the ANB of the district for the current fiscal year, as determined under the provisions of 20-9-311; and

(c) subtracting the total of the per-ANB amount allowed by 20-9-316 through 20-9-321 that represents the foundation program as prescribed by 20-9-303 plus the per-ANB amount determined by dividing the state financing of the district permissive levy by the ANB of the district, from the amount determined in subsection (1)(b) above.

(2) Before July 15, the trustees shall report to the county superintendent of the county in which the district is located:

(a) the names, addresses, and resident *districts* of the pupils attending the schools of the district under an approved tuition agreement;

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(b) the number of days of school attended by each pupil;

(c) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, shall have the authority to waive; and

(d) the rate of current school fiscal year tuition, as determined under the provisions of this section.

(3) When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the superintendent of each *district* in which the reported pupils reside.

(4) When the *district* superintendent receives a tuition report or reports for high school pupils residing in his *district* and attending an *out-of-district* high school under approved tuition agreements, he shall determine the total amount of tuition due such *out-of-district* high schools on the basis of the following per-pupil schedule: the rate of tuition, number of pupils attending under an approved tuition agreement, and other information provided by each high school district where resident *district* pupils have attended school.

(5) The total amount of the high school tuition, with consideration of any tuition waivers, *for pupils attending a high school outside the county of residence* shall be financed by the county basic special tax for high schools as provided in 20-9-334. In December, the county superintendent shall cause the payment by county warrant of the high school tuition obligations established under this section out of the first moneys realized from the county basic special tax for high schools. The payment shall be made to the county treasurer of the county where each high school entitled to tuition is located. The county treasurer shall credit such tuition receipts to the general fund of the applicable high school district, and the tuition receipts shall be used in accordance with the provisions of 20-9-141.

(6) For pupils attending a high school outside their district of residence but within the county of residence, the total amount of the tuition, with consideration of any tuition waivers, must be paid during the ensuing school fiscal year. The trustees of the sending high school district shall include the tuition amount in the tuition fund of the preliminary and final budgets. This budgeted tuition amount is not subject to the budget adjustment provisions of 20-9-132. The county superintendent shall report the net tuition fund levy requirement for each high school district to the county commissioners on the second Monday of August, and a levy on the district shall be made by the county commissioners in accordance with 20-9-142. This levy requirement shall be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget the sum of the cash balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated money that may be realized in the tuition fund. The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county superintendent's notification. Payments shall be made whenever there is a sufficient amount of cash available in the tuition fund but no later than the end of the school fiscal year for which the budget is adopted. However, if the trustees of

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either the sending or receiving high school feel the transfer privilege provided by this subsection is being abused they may appeal to the county superintendent of schools who shall hold a hearing and either approve or disapprove the transfer."

Section 3. Section 20-5-313, MCA, is amended to read:

"**20-5-313. Individual tuition for high school pupil.** (1) Any child eligible to attend high school may attend school in *the* high school district *in which he resides* without payment of tuition.

(2) No provision of this title shall be construed to deny a parent the right to send his child, at his own expense, to any high school outside of his *district* of residence when the parent agrees to pay the tuition acceptable to the trustees of the high school district operating such high school. When the attendance is approved, the parent shall pay tuition at the rate fixed by the trustees."

Approved March 31, 1979.

CHAPTER NO. 402

AN ACT TO PROVIDE MORE EQUAL ACCESS TO THE COURTS OF MONTANA BY ALLOWING THE COURT TO AWARD COSTS AND ATTORNEYS' FEES TO PLAINTIFFS AND DEFENDANTS WHO ARE SUCCESSFUL IN A LAW SUIT AGAINST A GOVERNMENTAL ENTITY IF THE ENTITY'S CLAIM OR DEFENSE IS FRIVOLOUS OR PURSUED IN BAD FAITH; AMENDING SECTIONS 18-1-404 AND 25-10-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Award of costs against governmental entity when suit or defense is frivolous or pursued in bad faith.** In any civil action brought by or against the state, a political subdivision, or an agency of the state or a political subdivision, the opposing party, whether plaintiff or defendant, is entitled to the costs enumerated in 25-10-201 and reasonable attorney's fees as determined by the court if:

(1) he prevails against the state, political subdivision, or agency; and

(2) the court finds that the claim or defense of the state, political subdivision, or agency that brought or defended the action was frivolous or pursued in bad faith.

Section 2. **Effect on other provisions of law.** Costs may be granted pursuant to [section 1] notwithstanding any other provision of the law to the contrary.

Section 3. Section 18-1-404, MCA, is amended to read:

"**18-1-404. Liability of state — limitations — costs.** (1) The state of Montana shall be liable in respect to any contract entered into in

the same manner and to the same extent as a private individual under like circumstances, except the state of Montana shall not be liable for interest prior to or after judgment or for punitive damages.

(2) Costs *may be allowed as provided in [sections 1 and 2]. In all other cases, costs* shall be allowed in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant, except that such costs shall not include attorney's fees."

Section 4. Section 25-10-103, MCA, is amended to read:

"25-10-103. When costs discretionary. *Unless otherwise provided in* actions *other* than those mentioned in 25-10-101, costs may be allowed or not and, if allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the court, but no costs can be allowed in an action for the recovery of money or damages when the plaintiff fails to recover more than $50 or in an action to recover the possession of personal property when the value of the property is not more than $50."

Approved March 31, 1979.

CHAPTER NO. 403

AN ACT TO REQUIRE THE IDENTIFICATION OF THE ACTUAL MANUFACTURER OF ALL DRUG PRODUCTS IN ORDER TO FACILITATE THE IMPLEMENTATION OF THE MONTANA DRUG PRODUCT SELECTION ACT; AMENDING SECTIONS 50-31-301 AND 50-31-306, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-31-301, MCA, is amended to read:

"50-31-301. Definitions. As used in this part, the *following definitions apply:*

(1) "*Established* name", with respect to a drug or ingredient thereof, means:

(a) the applicable official name designated pursuant to section 508 of the federal act;

(b) if there is no such name and such drug or such ingredient is an article recognized in an official compendium, then the official title thereof in such compendium; or provided that, where subsection (1)(b) of this section applies to an article recognized in the United States Pharmacopoeia and in the Homeopathic Pharmacopoeia under different official titles, the official title used in the United States Pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply;

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(c) if neither subsection (1)(a) nor (1)(b) of this section applies, then the common or usual name, if any, of such drug or of such ingredient.

(2) "*Antibiotic* drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by a microorganism and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of any such substance).

(3) "Manufacturer" means a person who mixed the final ingredients and prepared the final drug product."

Section 2. Section 50-31-306, MCA, is amended to read:

"50-31-306. When drug or device misbranded. (1) A drug or device shall be deemed to be misbranded:

(a) if its labeling is false or misleading in any particular;

(b) if in package form unless it bears a label containing:

(i) the name and place of business of the manufacturer, packer, or distributor, *except that a prescription drug must contain the name and place of business of the manufacturer as well as the packer or distributor*; and

(ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variation shall be permitted and exemptions as to small packages shall be allowed in accordance with regulations prescribed by the department or issued under the federal act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, sulphonmethane, or any chemical derivative of such substance which, after investigation, has been found to be and designated as habit-forming by regulations issued by the department under this chapter or by regulations issued pursuant to section 502(d) of the federal act, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit-forming";

(e) if it is a drug, unless its label bears to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula):

(i) the established name (as defined in 50-31-301(1)) of the drug, if such there be; and

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(ii) in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained therein; provided that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subsection (1)(e)(ii), shall apply only to prescription drugs; provided further that, to the extent that compliance with the requirements of this subsection (1)(e)(ii) is impracticable, exemptions shall be allowed under regulations promulgated by the department or under the federal act;

(f) unless its labeling bears:

(i) adequate directions for use; provided that, where any requirement of this subsection (1)(f)(i), as applied to any drug or device, is not necessary for the protection of the public health, the department shall promulgate regulations exempting such drug or device from such requirements; provided further that articles exempted under regulations issued under section 502(f) of the federal act may also be exempt; and

(ii) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users;

(g) if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein; provided that the method of packing may be modified with the consent of the department or if consent is obtained under the federal act. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirement of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia; provided further that, in the event of inconsistency between the requirements of this subsection and those of subsection (e) as to the name by which the drug or its ingredients shall be designated, the requirements of subsection (e) shall prevail.

(h) if it has been found by the department or under the federal act to be a drug liable to deterioration, unless it is packaged in such form and manner and its label bears a statement of such precautions as the regulations issued by the department or under the federal act require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the department shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

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(i) if it is a drug and its container is so made, formed, or filled as to be misleading;

(j) if it is an imitation of another drug;

(k) if it is offered for sale under the name of another drug;

(l) if it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(m) if it is, purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act; and

(ii) such certificate or release is in effect with respect to such drug;

(n) if it is, purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, any other antibiotic drug, or any derivative thereof, unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act; and

(ii) such certificate or release is in effect with respect to such drug; provided that subsection (1)(n) shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act;

(o) if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of 50-31-108 or of the federal act;

(p) in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(i) the established name, as defined in 50-31-301(1);

(ii) the formula showing quantitatively each ingredient of such drug to the extent required for labels under section 502(e) of the federal act; and

(iii) such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the federal act;

(q) if a trademark, trade name, or other identifying mark, imprint, or device or another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

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(2) A drug which is subject to 50-31-307 shall be deemed to be misbranded if, at any time prior to dispensing, its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which 50-31-307 does not apply shall be deemed to be misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence."

Section 3. **Effective date.** This act is effective January 1, 1980.

Approved March 31, 1979.

CHAPTER NO. 404

AN ACT TO REVISE AND CLARIFY THE PROHIBITIONS AGAINST CORPORATE CONTRIBUTIONS AND EXPENDITURES IN POLITICAL CAMPAIGNS; AMENDING SECTION 13-35-227, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-35-227, MCA, is amended to read:

"13-35-227. Prohibited contributions from corporations. *(1) A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee which supports or opposes a candidate or a political party.*

(2) A person, candidate, or political committee may not accept or receive a corporate contribution described in subsection (1).

(3) This section does not prohibit the establishment or administration of a separate, segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee, or a member of the corporation.

(4) A person who violates this section is subject to the civil penalty provisions of [section 244 of Senate Bill No. 65, 46th Legislature]."

Approved March 31, 1979.

CHAPTER NO. 405

AN ACT TO REQUIRE DISTRICT COURT PROGRAMS FUNDED BY THE COUNTY TO BE SUBJECT TO THE COUNTY BUDGET LAW; AMENDING SECTIONS 7-6-2311, 7-6-2313, AND 40-3-114, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2311, MCA, is amended to read:

"7-6-2311. Filing of estimate of revenues and expenses with county clerk. (1) Before June 1 each year the county clerk and recorder

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shall notify in writing each county official in charge of an office, department, service, institution, *or county-funded district court program* of the county to file with the county clerk and recorder, before June 10, detailed and itemized estimates, both of the probable revenues from sources other than taxation and of all expenditures required by the office, department, service, or institution for the next fiscal year.

(2) (a) The county commissioners shall submit to the county clerk and recorder the estimate of expenditures for all purposes for the board and a detailed statement showing all new road and bridge construction to be financed from county road and bridge funds, from any special road or bridge fund, from any special highway fund, and from bond issues issued or authorized for the next fiscal year, together with the cost of that construction as computed by the county surveyor or, if for construction in charge of a special engineer, then by that engineer. The county commissioners shall also submit to the county clerk and recorder detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies which are required to be approved at an election to be held.

(b) The county surveyor and any special engineer shall prepare the estimates of cost of road and bridge construction for the county commissioners. They shall also submit a .similar statement showing road and bridge maintenance expenditures as nearly as can be estimated.

(c) The county treasurer shall prepare the estimates for interest and debt reduction.

(d) The county clerk and recorder shall prepare all other estimates which properly fall within the duties of his office.

(3) The estimates required in this section shall be submitted on forms provided by the county clerk and recorder and prescribed by the department of community affairs. The forms may only be varied or departed from with permission and approval of that department. Each of the officials shall file the estimates within the time and in the manner provided in the form and notice.

(4) In the absence or disability of an official, the duties required by this section or 7-6-2312 devolve upon the official or employee in charge of the office, department, service, or institution."

Section 2. Section 7-6-2313, MCA, is amended to read:

"7-6-2313. Preparation of expenditure program and information on sources of revenue. (1) From those estimates the county clerk and recorder shall prepare a tabulation showing the complete expenditure program of the county for the current fiscal year and the sources of revenue by which it is to be financed.

(2) The tabulation shall set forth:

(a) the estimated receipts from all sources other than taxation for each office, department, service, institution, *or district court program funded by the county* for the current fiscal year;

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(b) the actual receipts for the last completed fiscal year;

(c) the surplus or unencumbered treasury balances at the close of that last fiscal year;

(d) the amount necessary to be raised by taxation;

(e) the estimated expenditure for each office, department, service, institution, *or district court program funded by the county* for the current fiscal year;

(f) the actual expenditures for the last completed fiscal year;

(g) all contracts or other obligations which will affect the current year revenues;

(h) the total amount of emergency warrants issued during the preceding fiscal year, with the amount issued for each emergency and the amount issued against each fund."

Section 3. Section 40-3-114, MCA, is amended to read:

"40-3-114. Budget. The provisions of the county budget system, Title 7, chapter 6, part 23, shall, except as provided by 40-3-125(3), be applicable to expenditures for the court of conciliation."

Approved March 31, 1979.

CHAPTER NO. 406

AN ACT TO CHANGE THE FILING TIME FOR A FINANCING STATEMENT WITH RESPECT TO A PURCHASE MONEY SECURITY INTEREST FROM 10 DAYS TO 20 DAYS AND TO CHANGE THE RULES ON PRIORITY OVER A CONFLICTING SECURITY INTEREST IN COLLATERAL TO GIVE A PURCHASE MONEY SECURITY INTEREST IN COLLATERAL PRIORITY IF IT IS PERFECTED WITHIN 20 DAYS RATHER THAN 10 DAYS AFTER THE DEBTOR RECEIVES POSSESSION OF THE COLLATERAL; AMENDING SECTIONS 30-9-301 AND 30-9-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-9-301, MCA, is amended to read:

"30-9-301. Persons who take priority over unperfected security interests — "lien creditor". (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:

(a) persons entitled to priority under 30-9-312;

(b) a person who becomes a lien creditor without knowledge of the security interest and before it is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other

buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts, contract rights, and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within *20* days after the collateral comes into possession of the debtor, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. Unless all the creditors represented had knowledge of the security interest such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest."

Section 2. Section 30-9-312, MCA, is amended to read:

"30-9-312. Priorities among conflicting security interests in the same collateral. (1) The rules of priority stated in the following sections shall govern where applicable: 30-4-208 with respect to the security interest of collecting banks in items being collected, accompanying documents and proceeds; 30-9-301 on certain priorities; 30-9-304 on goods covered by documents; 30-9-306 on proceeds and repossessions; 30-9-307 on buyers of goods; 30-9-308 on possessory against nonpossessory interests in chattel paper or nonnegotiable instruments; 30-9-309 on security interests in negotiable instruments, documents or securities; 30-9-310 on priorities between perfected security interests and liens by operation of law; 30-9-313 on security interests in fixtures as against interests in real estate; 30-9-314 on security interests in accessions as against interest in goods; 30-9-315 on conflicting security interests where goods lose their identity or become part of a product; and 30-9-316 on contractual subordination.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than 3 months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than 6 months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A purchase money security interest in inventory collateral has priority over a conflicting security interest in the same collateral if:

(a) the purchase money security interest is perfected at the time the debtor receives possession of the collateral; and

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(b) any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory, has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest; and

(c) such notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within *20* days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined as follows:

(a) in the order of filing if both are perfected by filing, regardless of which security interest attached first under 30-9-204(1) and whether it attached before or after filing;

(b) in the order of perfection unless both are perfected by filing, regardless of which security interest attached first under 30-9-204(1) and, in the case of a filed security interest, whether it attached before or after filing; and

(c) in the order of attachment under 30-9-204(1) so long as neither is perfected.

(6) For the purpose of the priority rules of the immediately preceding subsection, a continuously perfected security interest shall be treated at all times as if perfected by filing if it was originally so perfected and it shall be treated at all times as if perfected otherwise than by filing if it was originally perfected otherwise than by filing."

Approved March 31, 1979.

CHAPTER NO. 407

AN ACT GENERALLY REVISING THE LAW RELATING TO ASSAULTS AND INTENTIONAL TORTS OCCURRING BETWEEN SPOUSES; AMENDING SECTIONS 40-2-201 AND 45-5-506, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Right of person to sue spouse for intentional tort.** A person has a cause of action against his spouse for damages caused by the spouse's intentional tort against such person, and the common law doctrine of interspousal tort immunity is, to that extent, abolished.

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Section 2. Section 40-2-201, MCA, is amended to read:

"40-2-201. When husband's and wife's interests separate. Neither husband nor wife has any interest in the property of the other, except as mentioned in 40-2-102, but neither can be excluded from the other's dwelling *unless enjoined by a court.*"

Section 3. Section 45-5-506, MCA, is amended to read:

"45-5-506. Provisions generally applicable to sexual crimes. (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.

(2) Whenever the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as husband and wife regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart *whether* under a decree of judicial separation *or otherwise*. Where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse in a sexual act which he or she causes another person, not within the exclusion, to perform.

(3) In a prosecution under the preceding sections on sexual crimes (45-5-502 through 45-5-504) in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally incapacitated, it is a defense to such prosecution that the victim was a voluntary social companion of the defendant and the intoxicating substance was voluntarily and knowingly taken."

Approved March 31, 1979.

CHAPTER NO. 408

AN ACT TO PROVIDE FOR THE REESTABLISHMENT OF THE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS FOR A PERIOD OF 6 YEARS; TO REVISE THE BOARD MEMBERSHIP BY ADDING TWO PUBLIC MEMBERS; TO REDUCE BOARD MEMBERS' TERMS OF OFFICE FROM 5 TO 4 YEARS; TO LIMIT A BOARD MEMBER TO THREE TERMS; TO REVISE THE BOARD QUORUM REQUIREMENT; TO INCREASE FEES; TO PROVIDE FOR A 2-YEAR LICENSE RENEWAL; TO PROVIDE FOR PUBLISHING A ROSTER; TO PROVIDE THAT CHARGES MADE MUST BE ACTED UPON WITHIN 6 MONTHS; PROVIDING FOR VERIFICATION OF COMPETENCY; AMENDING SECTIONS 2-8-103, 2-15-1653, 37-67-201, 37-67-303, 37-67-315, 37-67-318, AND 37-67-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Board reestablished.** The board of professional engineers and land surveyors, created by 2-15-1653, is reestablished for a period of 6 years pursuant to 2-8-122.

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Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of public accountants, department of professional and occupational licensing, created by 2-15-1641;

(c) board of architects, department of professional and occupational licensing, created by 2-15-1651;

(d) state banking board, department of business regulation, created by 2-15-1803;

(e) state electrical board, department of professional and occupational licensing, created by 2-15-1654;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the investment commissioner, state auditor's office, created by 2-15-1901;

(h) board of landscape architects, department of professional and occupational licensing, created by 2-15-1652;

(i) board of county printing, department of community affairs, created by 2-15-1102;

(j) board of plumbers, department of professional and occupational licensing, created by 2-15-1655;

(k) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(l) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(m) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

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(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(n) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(t) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(u) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

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(c) board of horse racing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish and game, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631;

(j) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(k) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632."

Section 3. Section 2-15-1653, MCA, is amended to read:

"2-15-1653. Board of professional engineers and land surveyors. (1) There is a board of professional engineers and land surveyors.

(2) The board consists of *nine* members appointed by the governor. The members are:

(a) five professional engineers who have been engaged in the practice of engineering for at least 12 years and who have been in responsible charge of engineering teaching or important engineering work for at least 5 years and registered in Montana for at least 5 years. No more than two of these members may be from the same branch of engineering.

(b) two registered and practicing land surveyors who have been engaged in the practice of land surveying for at least 12 years and who have been in responsible charge of land surveying or important land surveying work for at least 5 years and registered in Montana for at least 5 years;

(c) two representatives of the public who are not engaged in or directly connected with the practice of engineering or land surveying.

(3) Each member shall be a citizen of the United States and a resident of this state. A member, after serving *three* consecutive terms, shall not be reappointed.

(4) Each member shall serve for a term of *4* years. The governor may remove a member for misconduct, incompetency, neglect of duty, or for any other sufficient cause.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

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Section 4. Section 37-67-201, MCA, is amended to read:

"37-67-201. Organization — meetings — quorum — seal. (1) The board shall hold at least two regular meetings each year. Special meetings shall be held at such time as the rules of the board may provide. Notice of all meetings shall be given in such manner as the rules may provide.

(2) The board shall elect annually the following officers: a chairman, a vice-chairman, and a secretary.

(3) A quorum of the board shall consist of not less than *five* members.

(4) The board shall adopt and have an official seal."

Section 5. Section 37-67-303, MCA, is amended to read:

"37-67-303. Application — contents — fees. (1) Applications for registration shall be on forms prescribed by the board and furnished by the department, shall contain statements made under oath showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five references, of whom three or more shall be engineers or land surveyors having personal knowledge of his engineering or land surveying experience.

(2) The fee for engineer-in-training is *as prescribed by the board but may not exceed $30,* which shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(3) The application fee for registration as a professional engineer is *as prescribed by the board but may not exceed $40* for those holding an engineer-in-training certificate validated for Montana. For those holding a valid engineer-in-training certificate from some other state, the application fee is *as prescribed by the board but may not exceed $50,* which includes cost of transfer of engineer-in-training certification and one examination. Upon approval of application for registration as a professional engineer, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a professional engineer.

(4) The department, subject to approval by the board, may, on application and payment of a fee *as prescribed by the board but not to exceed $60,* issue a certificate of registration as a professional engineer to a person who holds a certificate of qualification or registration issued to him by the committee on national engineering certification of the national council of engineering examiners or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.

(5) The fee for land surveyor-in-training is *as prescribed by the board but may not exceed $30,* which shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(6) The application fee for registration as a land surveyor is *as prescribed by the board but may not exceed $40* for those holding a land

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surveyor-in-training certificate validated in Montana. For those holding a valid land surveyor-in-training certificate from some other state, the application fee is *as prescribed by the board but may not exceed $50*, which includes cost of transfer of the certification. No additional fee is required for issuance of a certificate. Upon approval of application for registration as a land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a land surveyor.

(7) The application fee for registration as both a professional engineer and land surveyor is *as prescribed by the board but may not exceed $60* for those holding engineer-in-training and land surveyor-in-training certificates validated in Montana. For those holding valid engineer-in-training and land surveyor-in-training certificates from another state, the application fee is *as prescribed by the board but may not exceed $100.* The fee shall accompany the application. Upon approval of application for registration as a professional engineer and land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate.

(8) If the board denies issuance of a certificate of registration to any applicant, the initial fee deposited shall be retained as an application fee."

Section 6. Section 37-67-315, MCA, is amended to read:

"37-67-315. Annual renewal — fee — verification of competency. *(1)* Certificates of registration expire on December 31 *of the appropriate year* and become invalid on that date unless renewed. The department shall notify every person registered under this chapter of the date of the expiration of his certificate and the amount of the fee required for its renewal for *2 years*. This notice shall be mailed at least 1 month in advance of the date of the expiration of the certificate. Renewal may be made during the month of December *of the appropriate year* by the payment of a fee, not to exceed *$60 biennially*, as set by the board for either a professional engineer or land surveyor, or both.

(2) No certificate may be renewed unless the registrant submits a verified statement to the effect and the board is satisfied that he has maintained competency by:

(a) the continued practice of engineering or land surveying; or

(b) engaging in other activities that provide for the maintenance of competency as prescribed by board rule.

(3) Failure on the part of a registrant to renew his certificate *biennially* in the month of December *of the appropriate year* does not deprive him of the right of renewal; however, a registrant who fails to pay the renewal fee for *an additional renewal period* shall be considered a new applicant and is required to submit a new application."

Section 7. Section 37-67-318, MCA, is amended to read:

"37-67-318. Roster of licensees to be published by department. A roster showing the names and addresses of registered professional engineers and registered land surveyors shall be published by the department. Copies of this roster shall be mailed to each person registered. Copies shall also be placed on file with the secretary of state, the clerk of

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each incorporated city and town, and in the office of each county clerk and recorder within the state and furnished to the public on request at a fee established by the board."

Section 8. Section 37-67-331, MCA, is amended to read:

"37-67-331. Revocation, suspension, or refusal to renew certificate — grounds — procedure — reinstatement. (1) The board may reprimand or revoke, suspend, or refuse to renew the certificate of a registrant found guilty of:

(a) fraud or deceit in obtaining a certificate of registration;

(b) gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered professional engineer or land surveyor;

(c) a felony;

(d) violation of rules for professional conduct for professional engineers and land surveyors adopted by the board;

(e) if a land surveyor, failure to comply with the Corner Recordation Act.

(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. The charges shall be made by affidavit and subscribed and sworn to by the person making them and filed with the department. *The charges shall be investigated by the board and, unless the board dismisses the charges after investigation as unfounded or trivial, it shall act on the charges within 6 months after the date on which the charges were made. The board is considered to have acted on the charges if it has given notice by mail to the licensee of its intent to revoke, suspend, or refuse to renew his license and the notice contains the facts or conduct which warrant the intended action.*

(3) The board may require a registrant to take a written or oral examination, or both, in a proceeding to reprimand or revoke, suspend, or refuse to renew.

(4) If, after hearing, *five* or more members of the board vote in favor of sustaining the charges, the board shall reprimand, suspend, refuse to renew, or revoke the certificate of registration of the registered professional engineer or land surveyor.

(5) The board, for reasons it considers sufficient, may reissue a certificate of registration to a person whose certificate has been revoked if *five* or more members of the board vote in favor of the reissuance."

Section 9. **Transition.** A person appointed prior to July 1, 1979, to the board of professional engineers and land surveyors for a 5-year term shall serve until the expiration of such term. A member of the board appointed after July 1, 1979, shall serve for a term of 4 years as provided in section 3.

Section 10. **Effective date.** This act is effective on passage and approval.

Approved March 31, 1979.

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CHAPTER NO. 409

AN ACT TO PROVIDE THAT COURTS NOT OF RECORD DO NOT HAVE JURISDICTION OVER ACTIONS THAT MIGHT RESULT IN A JUDGMENT AGAINST THE STATE FOR THE PAYMENT OF MONEY; AMENDING SECTIONS 3-5-302, 3-10-301, 3-11-103, 25-30-101, 25-31-101, 25-31-102, 25-34-105, AND 25-35-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-302, MCA, is amended to read:

"3-5-302. Original jurisdiction. (1) The district court has original jurisdiction in:

(a) all criminal cases amounting to felony;

(b) all civil and probate matters;

(c) all cases at law and in equity;

(d) all cases of misdemeanor not otherwise provided for; and

(e) all such special actions and proceedings as are not otherwise provided for.

(2) The district court has exclusive original jurisdiction in all civil actions that might result in a judgment against the state for the payment of money.

(3) The district court has the power of naturalization and of issuing papers therefor in all cases where it is authorized to do so by the laws of the United States.

(4) The district court and its judges have power to issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in their respective districts. Injunctions and writs of prohibition and habeas corpus may be issued and served on legal holidays and nonjudicial days."

Section 2. Section 25-30-101, MCA, is amended to read:

"25-30-101. Applicability of district court and justice's court rules. (1) The provisions of 3-10-222, 3-10-231 through 3-10-234, 3-10-305, 3-10-306, 3-10-704 through 3-10-706, *25-31-102(2),* 25-31-111, 25-31-114 through 25-31-116, 25-31-304, 25-31-402(2), 25-31-405, parts 7 through 11 of chapter 31 of this title (except 25-31-701, 25-31-915, 25-31-1002, 25-31-1004, and 25-31-1005), chapter 33 of this title, chapter 9, part 10 of chapter 16, and part 1 of chapter 17 of Title 27, 27-17-401, and part 15 of chapter 18 of Title 27 are applicable to municipal courts except when they are inconsistent with the provisions of this chapter and chapter 6 of Title 3, the words "municipal court" being substituted for justice's court and "judge" for justice of the peace.

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(2) Except as otherwise provided by this chapter and chapter 6 of Title 3, the proceedings and practice in municipal court shall be the same as in district court."

Section 3. Section 3-10-301, MCA, is amended to read:

"**3-10-301. Civil jurisdiction.** *(1) Except as provided in subsection (2), the* justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed $1,500, exclusive of court costs;

(b) in actions for damages not exceeding $1,500, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding $1,500, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed $1,500;

(e) in actions for a fine, penalty, or forfeiture not exceeding $1,500, imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed $1,500, though the penalty may exceed that sum;

(g) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed $1,500, exclusive of court costs.

(2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money."

Section 4. Section 25-31-101, MCA, is amended to read:

"**25-31-101. Issues which cannot be presented in justice's court.** *(1)* The parties to an action in a justice's court cannot give evidence upon any question which involves the title or possession of real property or the legality of any tax, impost, assessment, toll, or municipal fine, nor can any issue presenting such question be tried by such court; provided that, in cases of forcible entry and unlawful detainer of which justices' courts have jurisdiction, any evidence otherwise competent may be given, and any question properly involved therein may be determined.

(2) A justice's court may not hear evidence on or try any issue involving the state's liability to make a payment of money, regardless of the basis of the claim against the state."

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Section 5. Section 25-31-102, MCA, is amended to read:

"25-31-102. Transfer to district court — dismissal. *(1)* If it appear from the answer of the defendant, verified by his oath, that the determination of the action will necessarily involve the question of title or possession to real property or the legality of any tax, impost, assessment, toll, or municipal fine, the justice must suspend all further proceedings in the action and certify the pleadings and, if any of the pleadings are oral, a transcript of the same from his docket to the clerk of the district court of the county; and from the time of filing such pleadings or transcript with the clerk, the district court shall have over the action the same jurisdiction as if it had been commenced therein. When the action is certified to the district court, upon the answer of the defendant, he must file an undertaking, to be approved by the justice, to the effect that he will pay all costs that may be awarded against him on the trial in the district court.

(2) If it appears at any point in the proceedings in a justice's court that the determination of the action will involve the question of the state's liability to make a payment of money, the justice shall sever that issue and dismiss the action as to it. If the issue is not severable, the justice shall dismiss the entire action."

Section 6. Section 3-11-103, MCA, is amended to read:

"3-11-103. Exclusive jurisdiction. *Except as provided in [section 7], the* city court has exclusive jurisdiction of:

(1) proceedings for the violation of an ordinance of the city or town, both civil and criminal;

(2) when the amount of the taxes or assessments sought does not exceed $300, actions for the collection of taxes or assessments levied for any of the following purposes, except that no lien on the property taxed or assessed for the nonpayment of the taxes or assessment may be foreclosed in any such action:

(a) city or town purposes;

(b) the erection or improvement of public buildings;

(c) the laying out, opening, or improving of a public street, sidewalk, alley, or bridge;

(d) the acquisition or improvement of any public grounds; and

(e) public improvements made or ordered by the city or town within its limits;

(3) actions for the collection of money due to the city or town or from the city or town to any person when the amount sought, exclusive of interest and costs, does not exceed $300;

(4) when the amount claimed, exclusive of costs, does not exceed $300, actions for:

(a) the breach of an official bond given by a city or town officer;

(b) the breach of any contract;

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(c) damages when the city or town is a party or is in any way interested;

(d) the enforcement of forfeited recognizances given to, for the benefit of, or on behalf of the city or town; and

(e) collection on bonds given upon an appeal taken from the judgment of the court in any action mentioned in subsections (4)(a) through (4)(d);

(5) actions for the recovery of personal property belonging to the city or town when the value of the property, exclusive of the damages for the taking or detention, does not exceed $300; and

(6) actions for the collection of a license fee required by an ordinance of the city or town."

Section 7. **Exceptions to civil jurisdiction.** City courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money.

Section 8. Section 25-34-105, MCA, is amended to read:

"25-34-105. Parties — representation. (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity, *except the state or any agency thereof.*

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court, except as set forth in subsection (3) herein.

(3) An individual shall represent himself in the small claims court. A partnership shall be represented by a partner or one of its employees. A union shall be represented by a union member or union employee. A corporation shall be represented by one of its employees. An association shall be represented by one of its members or by an employee of the association. Any other kind of organization or entity shall be represented by one of its members or employees.

(4) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

(5) No party may file an assigned claim in the small claims court.

(6) Notwithstanding any other provision of this section, an executor or administrator of a decedent's estate, a guardian, or a conservator may be a party in the small claims court."

Section 9. Section 25-35-105, MCA, is amended to read:

"25-35-105. Parties — representation. (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity, *except the state or any agency thereof.*

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court.

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(3) An individual may represent himself in a small claims court. A partnership may be represented by a partner or one of its employees. A union may be represented by a union member or union employee. A corporation may be represented by one of its employees. An association may be represented by one of its members or by an employee of the association. Any other kind of organization or entity may be represented by one of its members or employees.

(4) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

(5) No party may file an assigned claim in the small claims court.

(6) No party may file more than three claims in any calendar year.

(7) Notwithstanding any other provision of this section, a personal representative of a decedent's estate, a guardian, or a conservator may be a party in the small claims court."

Section 10. **Codification.** Section 7 is intended to be codified as an integral part of Title 3, chapter 11, part 1.

Approved March 31, 1979.

CHAPTER NO. 410

AN ACT TO REVISE THE LAW CONCERNING CUSTODY ORDERS; TO ALLOW EX PARTE TEMPORARY CUSTODY ORDERS; TO DELETE THE 2-YEAR RESTRICTION ON SEEKING MODIFICATION OF A CUSTODY ORDER; AMENDING SECTIONS 40-4-213, 40-4-219, AND 40-4-220, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-213, MCA, is amended to read:

"40-4-213. Temporary orders. (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in 40-4-220*(1)*. The court may award temporary custody under the standards of 40-4-212 after a hearing or *under the standards of 40-4-212 and 40-4-220(2) before a hearing. If* there is no objection, *the court may act* solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child require that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated."

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Section 2. Section 40-4-219, MCA, is amended to read:

"40-4-219. Modification. *(1)* The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child. In applying these standards the court shall retain the custodian appointed pursuant to the prior decree unless:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian; or

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him.

(2) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment."

Section 3. Section 40-4-220, MCA, is amended to read:

"40-4-220. Affidavit practice. *(1)* A party seeking a temporary custody order or modification of a custody decree shall submit, together with his moving papers, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

(2) (a) A party seeking a temporary custody order may request that the court grant a temporary assignment of custody ex parte. He shall so request in his moving papers and shall submit an affidavit showing that:

(i) no previous determination of custody has been made by a court and it would be in the child's best interest under the standards of 40-4-212 if temporary custody were placed with the person designated by the moving party; or

(ii) although a previous determination of custody has been made, the child's present environment endangers his physical or emotional health and an immediate change of custody would serve to protect the child's physical or emotional health.

(b) If the court finds from the affidavits submitted by the moving party that a temporary assignment of custody would be in the child's best interest under the standards of 40-4-212 or that the child's physical or emotional health is endangered and would be protected by a temporary assignment of custody, the court shall make an order placing temporary custody with the person designated by the moving party or with some other person designated by the court and shall require all parties to appear and show cause within 20 days from the execution of the order

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why, in the case of a temporary order issued under subsection (2)(a)(i), the temporary order should not remain in effect until further order of court or, in the case of a temporary order issued under subsection (2)(a)(ii), the court should not restore the child to the custodian from whom the child was removed by the temporary order."

Approved March 31, 1979.

CHAPTER NO. 411

AN ACT AMENDING SECTION 60-2-204, MCA, TO CLARIFY THAT THE STATE OF MONTANA IS RESPONSIBLE FOR THE ENTIRE COST OF CONSTRUCTION AND MAINTENANCE OF PUBLIC HIGHWAYS WHEN THE STATE ENTERS INTO AN AGREEMENT WITH A LOCAL GOVERNING BODY TO MAINTAIN PORTIONS OF THE PUBLIC HIGHWAY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-2-204, MCA, is amended to read:

"**60-2-204. Maintenance agreements with local governments.** The department may enter into an agreement with a local governing body to maintain portions of public highways within its boundaries upon such terms and conditions as may be agreed upon, *provided that, in the case of highways in the state maintenance system as defined in 60-2-105 and 60-2-203:*

(1) the department shall bear the entire cost of maintenance, operation, and construction work performed by the local governing body pursuant to these agreements; and

(2) the department is responsible for the entire cost of placement and maintenance of all traffic control devices involved in these agreements required by 61-8-203."

Approved March 31, 1979.

CHAPTER NO. 412

AN ACT TO EXEMPT FOUR PROFESSIONAL POSITIONS ON THE STAFF OF THE BOARD OF OIL AND GAS CONSERVATION FROM CERTAIN PROVISIONS OF THE STATE EMPLOYMENT CLASSIFICATION AND PAY PLAN; AMENDING SECTIONS 2-15-3303 AND 2-18-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3303, MCA, is amended to read:

"**2-15-3303. Board of oil and gas conservation — composition — allocation — quasi-judicial.** (1) There is a board of oil and gas conservation.

(2) The board consists of five members, two of whom shall be from the oil and gas industry and have had at least 3 years' experience in the production of oil and gas.

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(3) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply. *The board may also prescribe the duties and annual salary of four professional staff positions.*

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124."

Section 2. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials and their chief deputy and executive secretary;

(2) officers and employees of the legislative branch;

(3) judges and employees of the judicial branch;

(4) members of boards and commissions appointed by the governor, appointed by the legislature, or appointed by other elected state officials;

(5) officers or members of the militia;

(6) agency heads appointed by the governor;

(7) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(8) academic and professional administrative personnel who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(9) teachers under the authority of the department of institutions;

(10) personal staff of the elected officials enumerated in Article VI, section 1, of the constitution of Montana are exempt from 2-18-204, 2-18-205, 2-18-207, and 2-18-1011 through 2-18-1013;

(11) legal services staff and the special assistant attorneys general under the direct control of the attorney general; *and*

(12) four professional staff positions under the board of oil and gas conservation."

Approved March 31, 1979.

CHAPTER NO. 413

AN ACT CHANGING THE COUNTY SHARE OF PARTICIPATION IN THE AID TO DEPENDENT CHILDREN GRANTS; AMENDING SECTION 53-4-246, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-4-246, MCA, is amended to read:

"53-4-246. County share of participation. Each county *where the recipient of aid to dependent children resides* shall reimburse the department of social and rehabilitation services in the amount of 22.5% of the approved aid to dependent children grants, exclusive of the federal share."

Approved March 31, 1979.

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CHAPTER NO. 414

AN ACT CLARIFYING THE COMPENSATION OF PERSONS WHO SERVE ON REGIONAL COUNCILS FOR THE DEVELOPMENTALLY DISABLED; REQUIRING THE DEVELOPMENT AND CONTINUOUS MAINTENANCE OF HABILITATION PLANS FOR THE DEVELOPMENTALLY DISABLED; AND ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES PROMOTE RESEARCH RELATING TO DEVELOPMENTAL DISABILITIES; AMENDING SECTIONS 53-20-203, 53-20-205, AND 53-20-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-20-203, MCA, is amended to read:

"53-20-203. Responsibilities of department. The department shall:

(1) take cognizance of matters affecting the developmentally disabled citizens of the state;

(2) initiate a preventive developmental disabilities program which shall include but not be limited to the implementation of developmental disabilities care, treatment, prevention, and research as can best be accomplished by community-centered services. Every means shall be utilized to initiate and operate the service program in cooperation with local agencies under the provisions of 53-20-205 and 53-20-207.

(3) collect and disseminate information relating to developmental disabilities;

(4) prepare, with the assistance of the planning and advisory council, an annual comprehensive plan for the initiation and maintenance of developmental disabilities services in the state. The services shall include but not be limited to community comprehensive developmental disabilities services as referred to in 53-20-202.

(5) provide to the planning and advisory council a written quarterly report of planning, program, and fiscal activities of the department in regard to community-based services for the developmentally disabled;

(6) provide by rule for the evaluation of persons who apply for services or persons admitted into a program at a developmental disability facility;

(7) provide state personnel to assist regional councils provided for in 53-20-207;

(8) receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions to initiate and maintain developmental disabilities services within the state*; and*

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(9) require that habilitation plans be developed, implemented, and continuously maintained for all developmentally disabled persons who are served through a community-based program funded by the state."

Section 2. Section 53-20-205, MCA, is amended to read:

"53-20-205. Community services. (1) The department may establish and administer community comprehensive services, programs, clinics, or other facilities throughout the state for the purpose of aiding in the prevention, diagnosis, amelioration, or treatment of developmental disabilities. Programs, clinics, or other services may be provided directly by state agencies; indirectly through contract or cooperative arrangements with other agencies of government, regional or local, private or public agencies, or private professional persons; or in accredited health or long-term care facilities.

(2) The department may contract for programs for developmental disabilities services. Contracts entered into by the department shall contain specific conditions for performance by the contractor. It shall set minimum standards for programs and establish appropriate qualifications for persons employed in such programs.

(3) All developmental disabilities facilities and services shall comply with existing federal guidelines and with requirements which will enable the services and facilities to qualify for available aid funds. However, nothing herein requires facilities serving the developmentally disabled to meet the same or equal standards as licensed medical facilities unless the developmental disabilities facility is providing professional or skilled medical care.

(4) Comprehensive services, programs, clinics, or other facilities established or provided by the department under this part shall conform as nearly as possible to the plans of the advisory council created under 2-15-2204 and the regional councils provided for in 53-20-207.

(5) The department may promote scientific and medical research investigations relative to the incidence, cause, prevention, and care of persons with developmental disabilities."

Section 3. Section 53-20-207, MCA, is amended to read:

"53-20-207. Regional councils. (1) The department shall approve a citizens' organization as a regional council for each of the following five regions:

(a) region one, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Garfield, McCone, Richland, Dawson, Prairie, Wibaux, Treasure, Rosebud, Custer, Fallon, Powder River, and Carter Counties;

(b) region two, consisting of Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, and Cascade Counties;

(c) region three, consisting of Judith Basin, Fergus, Petroleum, Wheatland, Golden Valley, Musselshell, Sweet Grass, Stillwater, Yellowstone, Big Horn, and Carbon Counties;

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(d) region four, consisting of Powell, Lewis and Clark, Granite, Deer Lodge, Silver Bow, Jefferson, Broadwater, Meagher, Beaverhead, Madison, Gallatin, and Park Counties; and

(e) region five, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, and Ravalli Counties.

(2) Under guidelines adopted by the department, a citizens' organization approved by the department shall be broadly representative of the region, and at least one-third of its members shall be consumers or representatives of consumers or consumer organizations in the discipline of developmental disabilities.

(3) A citizens' organization shall be approved under procedures and rules adopted by the department.

(4) A regional council member who is not a full-time employee of the state or of a county is entitled to be reimbursed in an amount to be determined by the department, not to exceed $25, for each day actually and necessarily engaged in the performance of *council* duties and for *expenses* as provided in *2-18-501 through* 2-18-503. *A council member who is a full-time state or county employee may not be compensated for service as a member of a regional council but shall be reimbursed for expenses as provided for in 2-18-501 through 2-18-503.*

(5) A regional council shall:

(a) make an annual written review and evaluation of needs and services within the region and provide a copy of the review and evaluation to the planning and advisory council;

(b) advise the department, other state agencies, councils, local governments, and private organizations on programs for services to the developmentally disabled within the region; and

(c) develop a plan for a system of community-based services for the developmentally disabled within the region and provide a copy of the plan to the planning and advisory council."

Approved March 31, 1979.

CHAPTER NO. 415

AN ACT TO PROVIDE THAT LICENSE PLATES AND THE GROSS VEHICLE WEIGHT LICENSE OF A MOTOR VEHICLE MAY BE TRANSFERRED TO ANOTHER MOTOR VEHICLE WITHOUT TRANSFERRING OWNERSHIP OF THE FIRST VEHICLE AND THAT UPON SUCH TRANSFER THE REGISTRATION OF THE FIRST VEHICLE EXPIRES; AMENDING SECTIONS 61-3-335 AND 61-10-224, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-335, MCA, is amended to read:

"61-3-335. Transfer of license plates to another motor vehicle. *(1)* Should the transferor make application for the registration of

another motor vehicle at any time during the remainder of the current registration year as shown on the original certificate of registration, he may file an application in the office of the county treasurer where the motor vehicle is taxable, upon a form to be prepared and furnished by the division, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates from the motor vehicle for which originally issued to a motor vehicle acquired by the same person in whose name the original license plates were issued shall be made within 10 days from date of acquiring the vehicle. The use of the license plates shall not be legalized until proper transfer of license plates has been made.

(2) License plates may be transferred pursuant to this section without transferring ownership of the first vehicle.

(3) Upon transfer of the license plates, the registration of the motor vehicle from which the license plates were transferred expires. The certificate of registration for such vehicle must be surrendered to the county treasurer with the application for transfer."

Section 2. Section 61-10-224, MCA, is amended to read:

"**61-10-224. License transferable.** The certificate, registration, or license issued hereunder is transferable by the licensee *of a* truck, truck tractor, trailer, semitrailer, lowboy trailer, pole trailer, housetrailer, or passenger car to a replacement vehicle of the same type. *This gross vehicle weight license transfer may take place without the licensee transferring ownership of the first vehicle.* If *the transfer is to* a smaller vehicle, there shall be no refund."

Approved March 31, 1979.

CHAPTER NO. 416

AN ACT TO REQUIRE THE PUBLIC EMPLOYEES' RETIREMENT DIVISION OF THE DEPARTMENT OF ADMINISTRATION, IN COOPERATION WITH THE LEGISLATIVE COUNCIL, TO STUDY THE CONSOLIDATION OF THE MONTANA HIGHWAY PATROLMEN'S RETIREMENT SYSTEM AND THE MONTANA STATE GAME WARDEN'S RETIREMENT SYSTEM AS PART OF ITS 1980 ACTUARIAL EVALUATION AND TO REPORT TO THE 1981 LEGISLATURE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Study of consolidation of highway patrolmen's and game wardens' retirement systems.** The public employees' retirement division of the department of administration, in cooperation with the legislative council and the representatives of the employees affected, shall study the feasibility and the best means of consolidating the Montana

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highway patrolmen's retirement system and the Montana state game wardens' retirement system as part of its 1980 actuarial evaluation of those systems. The division shall report its findings and recommended legislation, if any, to the legislature before January 1, 1981.

Approved March 31, 1979.

CHAPTER NO. 417

AN ACT TO PROVIDE FOR JUSTICE'S COURT JURISDICTION OVER RESIDENTIAL LANDLORD-TENANT DISPUTES; AND PROVIDE THAT UNLAWFUL DETAINER AND CERTAIN FORCIBLE DETAINER PROVISIONS DO NOT APPLY TO RESIDENTIAL LANDLORD-TENANT ARRANGEMENTS; AMENDING SECTIONS 3-10-302, 70-24-103, AND 70-27-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-302, MCA, is amended to read:

"3-10-302. Jurisdiction over forcible entry, unlawful detainer, and residential landlord-tenant disputes. The justices' courts have concurrent jurisdiction with the district courts within their respective counties in actions of forcible entry and unlawful detainer *and in actions brought under Title 70, chapter 24.*"

Section 2. Section 70-24-103, MCA, is amended to read:

"70-24-103. General definitions. Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Court" means the appropriate district court or the appropriate justice's court.

(3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. "Dwelling unit", in the case of a person who rents space in a mobile home park but does not rent the mobile home, means the space rented and not the mobile home itself.

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(5) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part and also means a manager of the premises who fails to disclose his managerial position.

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(6) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(7) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

(8) "Person" includes an individual or organization.

(9) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances therein, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(10) "Rent" means all payments to be made to the landlord under the rental agreement.

(11) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(12) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of these facilities are used in common by occupants in the structure.

(13) "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.

(14) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others."

Section 3. Section 70-27-101, MCA, is amended to read:

"70-27-101. Application and jurisdiction. *(1) This chapter, except as it relates to forcible detainer as defined in 70-27-103(2) only and as it relates to forcible entry, does not apply to arrangements governed by chapter 24 of this title.*

(2) The district court of the county in which the property or some part of it is situated shall have jurisdiction of proceedings under this chapter, provided that justices' courts, within their respective counties, shall have concurrent jurisdiction."

Approved March 31, 1979.

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CHAPTER NO. 418

AN ACT TO ALLOW THE DEPARTMENT OF ADMINISTRATION TO EXEMPT THE DEPARTMENT OF INSTITUTIONS FROM THE PURCHASE OF SUITABLE CLOTHING FOR RESIDENTS OF THE BOULDER RIVER SCHOOL AND HOSPITAL; AMENDING SECTION 18-4-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-4-104, MCA, is amended to read:

"18-4-104. Purchases exempt from general requirements. (1) Fresh fruits and vegetables (other than potatoes) shall not be included in the supplies to be purchased as provided in this chapter. The department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized account shall be kept of these purchases and the account shall be furnished to the department.

(2) Likewise, when immediate delivery of articles or performance of service is required by the public exigencies, the articles or service so required may be procured by open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals but under the direction of the department.

(3) The department of administration may exempt the department of institutions from the provisions of part 2 of this chapter for the purchase of suitable clothing by the department of institutions for residents of juvenile correctional facilities *and the Boulder River school and hospital.*

(4) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community."

Approved March 31, 1979.

CHAPTER NO. 419

AN ACT PROVIDING THAT GRANTS FROM AN APPROPRIATION MADE BY HOUSE BILL 708, LAWS OF 1977, FOR THE SOLID WASTE MANAGEMENT PROJECT NEED NOT BE REPAID.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Revision of repayment provisions for certain grants.** Notwithstanding subsection (3)(c)(iii) of section 1 of House Bill 708 of the 45th legislature, grant money obtained for a solid waste management project need not be repaid.

Approved March 31, 1979.

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CHAPTER NO. 420

AN ACT TO REVISE THE STATUTES PRESCRIBING QUALIFICATIONS FOR MUNICIPALITY COMMISSIONER, MAYOR, AND ALDERMAN BY DELETING FREEHOLDER REQUIREMENTS; AMENDING SECTIONS 7-3-4346, 7-4-4301, AND 7-4-4401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-3-4346, MCA, is amended to read:

"7-3-4346. Statement and petition of candidacy. (1) Any qualified elector of the municipality desiring to become a candidate for commissioner shall, at least 35 days prior to said primary election, file with the clerk of the commission a statement of such candidacy and shall at the same time file therewith the petition of at least 25 qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and residence, with street number, of each of the persons so signing the petition.

(2) The statement shall be in substantially the following form:

State of Montana)
)ss.
County of .....)

I, ..., being first duly sworn, say that I reside at .... street, (city or town) of ...., county of ...., state of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of commissioner to be voted upon at the primary election to be held on the last Tuesday of August, 19.., and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed) .....

Subscribed and sworn to (or affirmed) before me by .... on this .... day of ...., 19...

(Signed) .....

(3) The petition shall be in substantially the following form:

The undersigned, duly qualified electors of the (city, town) of .... and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed on the ballot as a candidate for nomination to the office of commissioner at the primary election to be held on the last Tuesday of August, 19... We further state that we know him/her to be a qualified elector of said (city, town), and a person of good moral character and qualified, in our judgment, for the duties of such office, and we individually certify that we have not signed similar petitions greater in number than the number of commissioners to be chosen at the next general municipal election.

Names of Qualifying Electors Number Street

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(Space for Signatures)

State of Montana)
)ss.
County of .....)

...., being duly sworn, deposes and says, that he knows the qualifications and residence of each of the persons signing the appended petition and that such signatures are genuine and the signatures of the persons whose names they purport to be.

(Signed) .....

Subscribed and sworn to before me this .... day of ...., 19...

.....(Notary Public)

This petition, if found insufficient, shall be returned to .... at No. .... Street, ..., Montana."

Section 2. Section 7-4-4301, MCA, is amended to read:

"7-4-4301. Qualifications for mayor. (1) No person shall be eligible to the office of mayor unless he shall be:

(a) at least 21 years old;

(b) a resident of the state for at least 3 years; and

(c) a resident of the city or town or an area which has been annexed by the city or town for which he may be elected mayor 2 years preceding his election to said office.

(2) A person elected mayor shall reside in the city or town for which he shall be elected mayor during his term of office."

Section 3. Section 7-4-4401, MCA, is amended to read:

"7-4-4401. Qualifications for alderman. No person shall be eligible to the office of alderman unless he *is* a resident of the ward so electing him or a resident of an area which has been annexed by the city or town and placed in a ward, for at least 60 days preceding such election."

Approved March 31, 1979.

CHAPTER NO. 421

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO MOTOR VEHICLES; REPEALING SECTION 61-8-721, MCA; AND REPEALING SECTIONS 31-186, 32-1116, 32-1119, 32-2101, 32-2124.2, 32-21-154, 53-134, 53-135, AND 53-140 THROUGH 53-144, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-101, MCA, is amended to read:

"61-1-101. Definitions. *Unless the context indicates otherwise, the* words and phrases *defined in this chapter have, as* used in this *title*, the meanings respectively ascribed to them in this chapter."

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Section 2. Section 61-1-102, MCA, is amended to read:

"61-1-102. Motor vehicle. *"Motor vehicle" means every vehicle propelled by its own power and designed primarily to transport persons or property upon the highways of the state, except that for the purpose of chapter 3 the term also includes trailers, semitrailers, and housetrailers.*"

Section 3. Section 61-1-103, MCA, is amended to read:

"61-1-103. Vehicle. "Vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public highway, *except* devices moved by human or animal power or used exclusively upon stationary rails or tracks. *However, in chapters 3 and 4 the term means "motor vehicle" as defined in this part.*"

Section 4. Section 61-1-104, MCA, is amended to read:

"61-1-104. Special mobile equipment. "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including farm tractors, road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus, and concrete mixers. The foregoing enumeration *is* partial and *does not* exclude other such vehicles which are within the general terms of this section."

Section 5. Section 61-1-105, MCA, is amended to read:

"61-1-105. Motorcycle. *"Motorcycle" means* a motor vehicle having not more than three wheels in contact with the ground and a saddle on which the operator sits or a platform on which he stands and bicycles having a motor *attached* thereto and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself. *A* motorcycle may carry one or more attachments and a seat for the conveyance of a passenger. *The term does not include a tractor.*"

Section 6. Section 61-1-107, MCA, is amended to read:

"61-1-107. Truck. "Truck" *or "motortruck"* means every motor vehicle designed, used, or maintained primarily for the transportation of property."

Section 7. Section 61-1-108, MCA, is amended to read:

"61-1-108. Truck tractor. "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn."

Section 8. Section 61-1-109, MCA, is amended to read:

"61-1-109. Farm tractor. "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry."

Section 9. Section 61-1-111, MCA, is amended to read:

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"**61-1-111. Trailer.** "Trailer" means every vehicle, with or without motive power *(*other than a pole trailer*)*, designed for carrying property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle, *except that* as used in chapters 3 and 4 *the term includes* every vehicle without motive power *designed* to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle."

Section 10. Section 61-1-112, MCA, is amended to read:

"**61-1-112. Semitrailer.** "Semitrailer" means every vehicle, with or without motive power *(*other than a pole trailer*)*, designed for carrying property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle, *except that* as used in chapters 3 and 4 *the term includes a pole trailer.*"

Section 11. Section 61-1-201, MCA, is amended to read:

"**61-1-201. Highway.** "Highway" means the entire width between the boundary lines of every publicly maintained *way* when any part thereof is open to the use of the public for purposes of vehicular travel, *except that for the purpose of chapter 8 the term also includes ways which have been or shall be dedicated to public use.*"

Section 12. Section 61-1-202, MCA, is amended to read:

"**61-1-202. Public highway.** *"Public highway"* means *"highway"* as defined in 61-1-201."

Section 13. Section 61-1-203, MCA, is amended to read:

"**61-1-203. Street.** "Street" means the entire width between the boundary lines of every publicly maintained *way* when any part thereof is open to the use of the public for purposes of vehicular travel."

Section 14. Section 61-1-305, MCA, is amended to read:

"**61-1-305. Highway patrolman.** "Highway patrolman" means every *state* officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations."

Section 15. Section 61-1-307, MCA, is amended to read:

"**61-1-307. Person.** "Person" means an individual, corporation, partnership, association, firm, or other legal entity. "Person" as used in part 1, chapter 6, means every natural person, firm, partnership, association, or corporation."

Section 16. Section 61-1-310, MCA, is amended to read:

"**61-1-310. Owner.** "Owner" means a person who holds the legal title to a vehicle. *If* a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control,

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for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner *is the* person in whom is vested right of possession or control."

Section 17. Section 61-1-311, MCA, is amended to read:

"61-1-311. Operator. "Operator" means *a* person who is in actual physical control of a motor vehicle."

Section 18. Section 61-1-314, MCA, is amended to read:

"61-1-314. Dealer. *(1) "Dealer" means* any person, firm, association, or corporation *which, for commission or profit, engages* in whole or in part in the business of buying, selling, exchanging, or acting as a broker of either new or used motor vehicles, or both, and who *qualifies* for issuance of a dealer's license under 61-4-101 through 61-4-105.

(2) The term "dealer" does not include the following:

(a) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(b) employees of such persons when engaged in the specific performance of their duties as such employees; or

(c) public officers while performing or in the operation of their duties.

(3) A dealer dealing in used *motor vehicles* only shall purchase a Montana store license."

Section 19. Section 61-1-315, MCA, is amended to read:

"61-1-315. Trailer dealer. "Trailer dealer" *means* any person, firm, or corporation engaged in whole or in part in the business of buying or selling trailers or semitrailers, with facilities for displaying one or more trailers or semitrailers."

Section 20. Section 61-1-316, MCA, is amended to read:

"61-1-316. Manufacturer. The term "manufacturer" *includes* any person, firm, corporation, or association engaged in the manufacture of motor vehicles, trailers, or semitrailers as a regular business."

Section 21. Section 61-1-403, MCA, is amended to read:

"61-1-403. Official traffic-control devices. "Official traffic-control devices" means all signs, signals, markings, and devices not inconsistent with this *title,* placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic. *For the purpose of chapter 8, part 2, of this title, the term also includes "flag person" as defined in 61-1-411."*

Section 22. Section 61-1-504, MCA, is amended to read:

"61-1-504. Revocation. "Revocation" means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and *may* not be renewed or restored. An application for a new

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license may be presented and acted upon by the division after the expiration of the period of *the* revocation."

Section 23. **Certificate of ownership.** "Certificate of ownership" means the certificate issued by the division of motor vehicles to the transferee upon a transfer of ownership of a motor vehicle.

Section 24. Section 61-2-203, MCA, is amended to read:

"61-2-203. Equipment requirements continued in force. Provisions of *chapter 9 of this title* shall continue to be *in* effect. The approval of the legislature is a condition precedent to the taking effect of any rule, regulation, or code that may be adopted by the commission."

Section 25. Section 61-2-204, MCA, is amended to read:

"61-2-204. State commissioner on vehicle equipment safety commission. *Notwithstanding section 1, chapter 272, Laws of 1971, the* commissioner of this state on the vehicle equipment safety commission *is* the highway patrol chief who shall serve during his continuance as such officer. The commissioner appointed pursuant to this section may designate an alternate from among the officers and employees of his agency to serve in his place on the vehicle equipment safety commission. Subject to the provisions of the compact and bylaws of the vehicle equipment safety commission, the authority and responsibilities of *the* alternate *are* as determined by the commissioner designating *him.*"

Section 26. Section 61-3-101, MCA, is amended to read:

"61-3-101. Duties of division of motor vehicles — records. (1) The division of motor vehicles shall keep a record as hereinafter specified of all motor vehicles, trailers, and semitrailers of every kind, and *of* certificates of registration and ownership thereof, and of all dealers in motor vehicles.

(2) In the case of motor vehicles, trailers, and semitrailers, the record shall show the following:

(a) name of owner, residence by town and county, and business address;

(b) name and address of conditional sales vendor, mortgagee, or other lienholder and amount due under contract or lien;

(c) manufacturer of car;

(d) manufacturer's designation of style of car or vehicle;

(e) identifying number;

(f) year of manufacture;

(g) character of motive power and shipping weight of car as shown by the manufacturer;

(h) the distinctive license number assigned *to the* vehicle;

(i) if a truck or trailer, the number of *tons'* capacity *or G.V.W. if imprinted on manufacturer's identification plate*;

(j) such other information as may from time to time be found desirable.

(3) The division shall file applications for registration received by it from the county treasurers of the state and register the vehicles therein described and the owners thereof in suitable books or on index cards, as follows:

(a) under *the* distinctive license number assigned to *the* vehicle by the county *treasurer*;

(b) alphabetically under *the* name of *the owner*;

(c) numerically under make and identifying number of *the* vehicle;

(d) such other index of registration as the division *considers* expedient.

(4) Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.

(5) In the case of dealers, the records shall show the information contained in the application for dealer's license as required by 61-4-101 through 61-4-105, as well as the distinctive license number assigned to the dealer.

(6) In order to prevent an accumulation of unneeded records and files, the division shall have the authority and it shall be its duty to destroy all records and files which have ceased to be of any value.

(7) The division may establish and maintain a short-wave radio station in order to report motor vehicle registration information to the highway patrol, *to* sheriffs, and to *the* chiefs of police of each incorporated city of the state who are able to communicate with such short-wave radio station.

(8) All records shall be open to inspection during all reasonable business hours, and the division shall furnish any information from *the* records upon payment by the applicant of the cost of transcribing the information requested."

Section 27. Section 61-3-105, MCA, is amended to read:

"61-3-105. Registrant as prima facie owner of vehicle. For the purpose of this *title, except as provided by 61-3-701(3)* the person appearing on the public records as *the registrant* of any motor vehicle shall prima facie be deemed the owner thereof."

Section 28. Section 61-3-106, MCA, is amended to read:

"61-3-106. Report of stolen and recovered motor vehicles. It shall be the duty of the sheriff of every county of the state and of the chief of police or commissioner of police of every city to make immediate report to the division of all motor vehicles reported to him as stolen or recovered, upon forms provided for by the division. Failure on the part of any officer shall be *considered* to be misfeasance in office and shall constitute grounds for removal. Upon receipt of such information, the division shall file *it* in an index to be known as the stolen and recovered motor vehicle index. It shall also be the duty of the division to file reports of

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stolen and recovered motor vehicles reported to it from other states. The division shall prepare once a month a list of all motor vehicles stolen or recovered during the previous month and forward a copy of *it* to every sheriff and all police departments in cities of the first, second, and third class. *The* list shall also be forwarded to the secretary of state or other proper official in each state of the United States. Before issuing a certificate of *ownership*, the *division* shall check the motor and serial number on the motor vehicle to be registered against the stolen and recovered vehicle index."

Section 29. Section 61-3-201, MCA, is amended to read:

"61-3-201. Transfer of interest. (1) Upon a transfer of any interest in a motor vehicle registered under the provisions of this chapter, the person whose interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for such vehicle in the appropriate space provided upon the reverse side of *the* certificate, and *his* signature shall be acknowledged before a notary public.

(2) Within 20 calendar days thereafter, the transferee shall forward both the *endorsed* certificate of ownership and the certificate of registration, together with the information required under 61-3-202, to the county treasurer, who shall forward *them* to the division. *No* certificate of ownership *or* certificate of registration may be issued by the division until the outstanding certificates are surrendered to that office or their loss *is* established to its reasonable satisfaction. Failure to make application within the 20-day grace period subjects the transferee to a penalty of $10. The penalty is to be collected by the county treasurer at the time of registration and is in addition to the fees otherwise provided by law.

(3) In the event of a transfer by operation of law of any interest in a motor vehicle as upon inheritance, devise, or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is transferred, the executor, administrator, receiver, trustee, sheriff, or other representative or successor in interest of the person whose interest is transferred shall forward to the division an application for *a certificate of ownership* in the form required for an original application for *a certificate of ownership*, together with a verified or certified statement of the transfer of such interest. *The* statement shall set forth the reason for *the* involuntary transfer, the interest so transferred, the name of the person to whom *the* interest is to be transferred, the process of procedure effecting such transfer, and other information requested by the division. *Evidence* and instruments otherwise required by law to effect a transfer of legal or equitable title to or an interest in chattels as may be required in such cases shall be furnished with *the* statement. *If* the division *is* satisfied that *the* transfer is regular and that all formalities required by law have been complied with, it shall *send* to the owner, conditional sales *vendor*, *lessor*, *mortgagee*, and other *lienor*, as shown by its records, notice of *the* intended transfer and thereafter, but not less than 5 days thereafter, shall issue a new certificate of ownership and certificate of registration to the person entitled thereto. The notice herein required *is* complied with by deposit in the post office

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in Deer Lodge, Montana, such notice, postage prepaid, addressed to *the* person at the respective *address* shown on its records.

(4) When the vehicle *certificate of ownership* that is involuntarily transferred is not registered in this state, the procedure set forth above must be followed in applying for a new certificate of ownership and certificate of registration but the division need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled thereto.

(5) In the event of the death of an owner of one or more motor vehicles *or trailers or semitrailers or housetrailers* registered hereunder and not exceeding the value of $4,000 without leaving other property necessitating the procuring of letters of administration or letters testamentary, then the surviving husband or wife or other heir unless such property is by will otherwise bequeathed, may secure transfer of the certificate of ownership and the certificate of registration of the deceased to such motor vehicle in the name of the surviving husband or wife or other heir, as above mentioned, upon filing with the division an affidavit setting forth the fact of survivorship and the name and address of any other heirs and such other facts as are hereby made necessary to entitle the affiant to a transfer. Thereupon the division is authorized to make *the* transfer of the certificate of ownership and certificate of registration, subject to all contracts, leases, mortgages, or other liens as shown by *its* records.

(6) Nothing in subsection (5) shall prevent any conditional sales vendor, mortgagee, or other lienor from assigning his interest in a motor vehicle registered under the provisions of this chapter to any other person without the consent of and without *affecting* the interest of the holder of the certificate of ownership and certificate of registration. Upon any conditional sales vendor, mortgagee, or other lienor assigning his interest in any motor vehicle registered under this chapter, a copy of such assignment must be filed with the division and record thereof made upon *its* records.

(7) The certificates of ownership shall remain valid until canceled by the division upon a transfer of any interest shown therein and need not be renewed annually."

Section 30. Section 61-3-202, MCA, is amended to read:

"61-3-202. Certificate of ownership — issuance — contents — joint ownership. (1) Upon completion of the application for registration, on forms furnished by the division, the county treasurer shall forward one copy of the application to the division, which shall *enter* the information contained in *the* application upon the corresponding records of its office and shall furnish the applicant a certificate of ownership subject to the provisions of 61-3-103.

(2) The certificate of ownership shall contain upon the face thereof:

(a) the date issued;

(b) the name and complete address of the owner or the names and addresses of joint owners;

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(c) the name and complete address of any conditional sales vendor and also the name and address of any other lienor as shown by *the* application;

(d) a description of the registered vehicle, including the year built and serial number, if any;

(e) any lien against such motor vehicle and the amount due at the date of registration; and

(f) such other statement of facts as may be determined by the division.

(3) When the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of ownership, joint ownership with right of survivorship, and not as tenants in common, is presumed.

(4) Upon receipt of the application, the division shall recheck the application. *If* there is any error in the application it may be returned to the county treasurer to effectively secure the correction of such error, who shall return the same to the division.

(5) The certificate of ownership shall contain a notice to the division of a transfer of interest of the owner and such other *statements* as may be determined by the division."

Section 31. Section 61-3-301, MCA, is amended to read:

"61-3-301. Registration — license plate required — display. (1) Except as otherwise provided herein, no person shall operate a motor vehicle upon the public highways of this state unless such vehicle *is* properly registered and *has* the proper number plates conspicuously displayed, one on the front and one on the rear of *the* vehicle, each securely fastened to prevent *it* from swinging and unobstructed from plain view, except that trailers, semitrailers, *and motorcycles* shall have but one number plate conspicuously displayed on the rear. No person shall display on such vehicle at the same time any number assigned to it under any motor vehicle law except as *provided* in this chapter. A junk vehicle, as defined in part 5, chapter 10, Title 75, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

(2) No person shall purchase or display on *a* vehicle any license plate bearing the number assigned to any county as provided in 61-3-332 other than the county of his permanent residence at the time of application for registration. *However,* the owner of any motor vehicle requiring a license plate on any motor vehicle used in the public transportation of persons or property may make application therefor in any county through which *the* motor vehicle passes in its *regularly* scheduled route, and the license plate so issued bearing the number assigned to said county may be displayed on *the* motor vehicle in any other county of the state.

(3) It *is* unlawful to use license plates issued to one vehicle on any other vehicle, *trailer,* or *semitrailer* unless legally transferred as provided by statute, or *to repaint* old license plates to resemble current license plates.

(4) Any person violating these provisions *is* guilty of a misdemeanor and subject to the penalty set out in *61-3-601.*"

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Section 32. Section 61-3-317, MCA, is amended to read:

"61-3-317. New registration required for transferred vehicle — grace period — penalty — display of proof of purchase. Except as otherwise provided herein, the new owner of *a* transferred motor vehicle shall have *a* grace period of 20 calendar days from the date of purchase to make application and pay the taxes, as provided by part 5 of this chapter, as if the *vehicle were* being registered for the first time in that registration year. If the motor vehicle was not purchased from a duly licensed motor vehicle dealer as provided in this chapter, it *is not* a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a certificate of registration during the 20-day period, provided that at all times during that period a bill of sale or other proof of purchase reciting the date of purchase *is* clearly displayed in the rear window of the motor vehicle. Registration and license fees collected under 61-3-321 are not required to be paid when a license plate is transferred under this section and 61-3-335. Failure to make application within the time provided herein *subjects* the purchaser to a penalty of $10. The penalty shall be collected by the county treasurer at the time of registration and shall be in addition to the fees otherwise provided by law."

Section 33. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles — public-owned vehicles exempt from license or registration fees — disposition of fees. (1) Registration or license fees shall be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under *(*other than motortrucks*)*, $5;

(b) motor vehicles weighing over 2,850 pounds *(*other than motortrucks *)*, $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles, $2;

(e) tractors and/or trucks, $10;

(f) buses shall be classed as motortrucks and licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds maximum gross loaded weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds maximum gross loaded weight *(*except housetrailers*)*, $5;

(i) trailers and semitrailers over 6,000 pounds maximum gross loaded weight, $10;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, *or* bridge *materials*, new and secondhand, shall pay a fee of $15 annually, regardless of size or capacity;

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(k) bicycles with motor attachment, $1.

(2) All rates shall be 25% higher for motor vehicles, trailers, and semitrailers not equipped with pneumatic tires.

(3) *"Tractor"*, as specified in this section, *means* any motor vehicle except passenger cars used for towing a trailer or semitrailer.

(4) If any motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of *the* year shall be one-half of the regular fee.

(5) When a new plate is issued, an additional fee of $1 per year for each registration of a vehicle shall be added to the registration fee. Revenue from this fee shall be forwarded by the respective county treasurers to the state treasurer for deposit in the motor vehicle recording account of the earmarked revenue fund.

(6) The provisions of this part with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers, or tractors owned or controlled by the United States of America or any state, county, or city.

(7) The provisions of this section relating to the payment of registration fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317(1), 61-3-332(7), *or* 61-3-335."

Section 34. **Disposition of fees — use.** All fees payable to the division shall be deposited in a motor vehicle recording account of the earmarked revenue fund, and shall be used to pay all salaries, operating expenses, and other expenses of the division, including the manufacture and delivery of license plates.

Section 35. Section 61-3-322, MCA, is amended to read:

"61-3-322. Certificates of registration — issuance. (1) Upon completion of the application for registration on forms furnished by the division, the county treasurer shall *file one copy in his office and* issue to the applicant two copies of the application marked "Owner's Certificate of Registration and Tax Receipt", one of which shall be marked "file copy".

(2) The certificate of registration shall contain upon the face thereof:

(a) the date issued;

(b) the registration number assigned to the owner and the vehicle;

(c) the name and complete address of the owner or the names and addresses of joint owners;

(d) the name and complete address of any conditional sales vendor and also the name and address of any other lienor as shown by *the* application;

(e) a description of the registered vehicle, including the year built and serial number, if any;

(f) any lien against *the* motor vehicle and the amount due at the date of registration; and

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(g) *any* other statement of facts as may be determined by the division.

(3) Every owner, upon receiving a registration receipt, shall write his signature thereon with pen and ink in the space provided. Every registration receipt or a notarized photostatic copy or a duplicate thereof furnished by the division shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of such vehicle, who shall display *it* upon demand of a police officer or any officer or employee of the division or the highway department.

(4) The county treasurer shall daily forward to the division one copy of *all applications* for registration *received that day.*

(5) It shall not be necessary for the county treasurer to segregate the amount of taxes for state, county, school district, and municipal purposes *in the receipt.*"

Section 36. Section 61-3-405, MCA, is amended to read:

"61-3-405. Application for personalized plates. An applicant for personalized license plates or renewal of such plates in subsequent years pursuant to 61-3-401 through 61-3-406 shall file an application therefor in *the* form and by *the* date the *division requires*, indicating thereon the combination of letters or numbers, or both, requested as a registration number. There shall be no duplication of registration numbers, and the division may refuse to issue any combination of letters or numbers, or both, that may carry connotations offensive to good taste and decency or which *are* misleading or a duplication of license plates provided for elsewhere in this title."

Section 37. Section 61-3-411, MCA, is amended to read:

"61-3-411. Registration of motor vehicles owned and operated solely as collectors' items. (1) *An* owner of a motor vehicle more than 30 years old, used solely as a collectors' item and not for general transportation purposes, may file with the division an application for the registration of *the* motor vehicle, stating the name and address of the owner, the name and address of the person from whom purchased, the make of the motor vehicle, the gross weight thereof, the year and number of the model, and the manufacturer's identification number and serial number and setting forth a specific statement that the vehicle is owned and operated solely as a collectors' item and not for general transportation purposes. *The* application shall be sworn to before an officer authorized to administer oaths.

(2) The registration fee for all such motor vehicles weighing 2,850 pounds or less *is* $5, and the registration fee for all such motor vehicles weighing more than 2,850 pounds *is* $10.

(3) Upon receipt of *the* application for registration and payment of the registration fee, the division shall file *the* application and register the motor vehicle therein described in the manner specified in 61-3-101 and shall deliver to the applicant:

(a) for motor vehicles manufactured in 1933 or earlier, two license plates bearing the inscription "Pioneer—Montana" and the registration number; or

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(b) for motor vehicles manufactured in 1934 or later and more than 30 years old, two license plates bearing the inscription "Vintage—Montana" and the registration number.

(4) The year of issuance shall not be shown on the plates.

(5) Annual renewal of the registration of any such motor vehicle *is not* required, and the *registration is* valid as long as the vehicle is in existence; provided, however, that upon sale of such motor vehicle, the purchaser *is* required to renew the registration thereof and pay the license fees hereinbefore specified."

Section 38. Section 61-3-502, MCA, is amended to read:

"61-3-502. Sales tax on new motor vehicles — exemptions. (1) In consideration of the right to use the highways of the state, there *is* imposed a tax upon all sales of new motor vehicles for which a license is sought and an original application for title is made. The tax shall be paid by the purchaser when he applies for his original Montana license through the county treasurer.

(2) The sales tax shall be:

(a) 1 ½% of the *f.o.b.* factory list price or *f.o.b. port-of-entry* list price, during the first quarter of the year or prorated one-twelfth for each month or part of month for a registration period other than a calendar year or calendar quarter;

(b) 1 ⅛% of the list price during the second quarter of the year;

(c) ¾ of 1% during the third quarter of the year;

(d) ⅜ of 1% during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the *f.o.b.* factory list price or *f.o.b. port-of-entry* list price, the *division* may use published price lists.

(4) The proceeds from this tax shall be remitted to the state treasurer every 30 days for credit to the state highway account of the earmarked revenue fund.

(5) The new vehicle is not subject to any other assessment or taxation during the calendar year in which the original application for title is made.

(6) (a) The applicant for original registration of any new and unused motor vehicle, or *a* new motor vehicle furnished without charge by *a* dealer to *a* school district for use as a traffic education motor vehicle by a school district operating a state-approved traffic education program within the state, whether or not previously licensed or titled to the school district *(*except a mobile home as defined in 15-1-101(1)*)*, acquired by original contract after January 1 of any year, *is* required, whenever *the* vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by this section irrespective of whether the vehicle was in the state of Montana on January 1 of the year.

(b) No motor vehicle may be registered or licensed under the provisions of this subsection unless the application for registration is accompanied by a statement of origin to be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided herein, by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(7) *(a)* Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from such limits are exempt from subsection (1).

(b) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are also exempt from subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in *61-4-103* are exempt from subsection (1) when moving to or from a dealer's place of business when *unloaded* or *loaded* with dealer's property only, and in the case of vehicles having a gross *loaded* weight of less than 24,000 pounds, while *being demonstrated* in the course of the dealer's business."

Section 39. Section 61-3-503, MCA, is amended to read:

"61-3-503. Assessment. (1) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 15-1-101(1), shall before filing such application with the county treasurer submit the *application* to the county assessor. The county assessor shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle for the year for which the application for registration is made.

(2) Except as provided in subsection (3), motor vehicles, except mobile homes as defined in 15-1-101(1), are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. In no event may any motor vehicle be subject to assessment, levy, and taxation more than once in each year.

(3) Vehicles subject to the provisions of 61-3-313 through 61-3-316 shall be assessed as of the first day of the registration period, and a lien for taxes and fees due thereon shall occur on the anniversary date of the registration and shall continue until such fees and taxes have been paid."

Section 40. Section 61-3-505, MCA, is amended to read:

"61-3-505. Payment of taxes. Upon accepting application for registration or reregistration of any motor vehicle which is subject to taxation in this state on January 1 in any year and upon payment of taxes, the county treasurer shall stamp on the application "taxes on this vehicle due January 1 of current year paid by applicant, prior applicant, or owner, and this vehicle is eligible for registration". Upon accepting application for

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registration of any motor vehicle which was not subject to taxation in this state on January 1 in any year, the county treasurer shall indicate the fact by proper entry on the application."

Section 41. Section 61-3-508, MCA, is amended to read:

"61-3-508. Junk vehicle disposal fee. A special junk vehicle disposal fee shall be assessed on each new application for a motor vehicle title and on each transfer of a motor vehicle title in the amount of $1.50 on passenger cars and trucks under 8,001 pounds GVW. An additional special junk vehicle disposal fee shall be assessed in the amount of 50 cents on each passenger car and truck under 8,001 pounds GVW registered for licensing. The fees shall be collected by the county treasurer. However, the following are exempt from payment of the fees:

(1) vehicles leased or owned by the state or by a county or municipality;

(2) vehicles used for transportation by nonresident, migratory workers temporarily employed in agricultural work in this state;

(3) vehicles displaying *dealer's* license plates, as provided in *61-4-103*, while owned by a dealer; and

(4) housetrailers or equipment which *is* not self-propelled or which *requires* towing upon a highway of this state."

Section 42. Section 61-3-601, MCA, is amended to read:

"61-3-601. Penalty for violations. *Except as otherwise provided, a* violation of any of the provisions of *this chapter is* a misdemeanor and *is* punishable by a fine not exceeding $25. Nothing *contained herein prevents* the prosecution of a person for an offense committed under any other law."

Section 43. Section 61-3-602, MCA, is amended to read:

"61-3-602. Enforcement. It is mandatory upon all police and peace officers of the state, of the counties of the state, and of towns, cities, and villages to carry out the provisions of *this chapter and* 61-4-101 through 61-4-105."

Section 44. Section 61-3-603, MCA, is amended to read:

"61-3-603. Penalty for alteration or forgery of certificate of ownership or assignment thereof. Any person who *alters* or *forges* or *causes* to be altered or forged any motor vehicle certificate of *ownership* or any assignment thereof or who *holds* or *uses* any such certificate or assignment knowing *it* to have been altered or forged *is* guilty of a felony *and* upon conviction thereof *is subject to* a fine of not more than $5,000 or to imprisonment in any penal institution within the state for a period of not more than 10 years, or both, in the discretion of the court."

Section 45. Section 61-3-604, MCA, is amended to read:

"61-3-604. Penalty for altering identification number. (1) A person who willfully removes or falsifies an identification number of a motor vehicle or motor vehicle *engine* is guilty of a misdemeanor.

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(2) Any person or persons, firm, or corporation which *sells* or *offers* for sale in this state a vehicle the original *vehicle identification* number of which has been destroyed, removed, altered, covered, or defaced, with the exception of electrically propelled vehicles, *is* guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $200 or more than $500 and by imprisonment in the county jail for a term of not less than 30 days or more than 180 days. *Upon* a second or subsequent conviction under this subsection, the punishment shall be imprisonment in the state prison for a term of not less than 1 year or more than 5 years."

Section 46. Section 61-3-701, MCA, is amended to read:

"61-3-701. Foreign vehicles used in gainful occupation to be registered — reciprocity. (1) Before any foreign licensed motor vehicle *may* be operated on the highways of this state for hire, compensation, or profit or before the owner and/or user thereof uses the vehicle if such owner and/or user is engaged in gainful occupation or business enterprise in the state, including highway work, the owner of *the* vehicle shall make application to a county treasurer for registration upon an application form furnished by the division. Upon satisfactory evidence of ownership submitted to *the* county treasurer and the payment of property taxes as required by 15-8-201 through 15-8-203 or 15-24-301, the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle.

(2) The treasurer shall thereupon issue to the applicant a copy of the application entitled "Owner's Certificate of Registration *and Tax* Receipt" and forward a duplicate copy of certificate to the division. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon *the* vehicle when operated or driven upon roads and highways of this state during the period of the life of *the* license.

(3) The registration receipt shall not constitute evidence of ownership but shall be used *only* for registration purposes. No Montana certificate of *ownership* shall be issued for this type of registration.

(4) This section *is* not applicable to any vehicle covered by a valid and existing reciprocal agreement or declaration entered into under the provisions of the laws of Montana."

Section 47. Section 61-4-101, MCA, is amended to read:

"61-4-101. Application for dealer's license. (1) Every person, firm, corporation, or association *which*, for commission or profit, engages in the business of buying, selling, exchanging, or acting as a broker of new motor vehicles, used motor vehicles, trailers (except trailers having an *unloaded* weight of less than 500 pounds), semitrailers, or special mobile equipment as defined in 61-1-104 shall *file*, by mail or otherwise, in the office of the division a verified application for *licensure* as a dealer, on a blank to be furnished by the division for that purpose and containing the information required. The application and all of the information contained *in it* shall be verified by the Montana highway patrol. Each application must be accompanied by the license fee hereinafter *specified. A dealer's*

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license must be renewed and paid for annually, and an application for *relicensure* must be filed not later than January 1 of each year.

(2) To qualify for *licensure* and the issuance and use of "D", "UD", "DTR", or "MCD" plates as hereinafter provided, the applicant must furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant must:

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name and address of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(iii) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

(iv) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

(v) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

(vi) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that he is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates or as a trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates or as a motorcycle dealer and for the use of "MCD" plates, the applicant must, in addition to the matters set forth in subsections (i) and (ii) of subsection (2)(a) above, provide:

(i) a statement that the applicant has a building or lot and a sign readable at a minimum distance of 150 feet and indicating the firm name and headquarters as the principal place of business; and

(ii) a certificate to the effect that the applicant is a bona fide dealer in used motor vehicles, trailers, semitrailers, special mobile equipment, or motorcycles.

(c) To qualify for a used motor vehicle *dealer's* license, a person must submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(b) above.

(d) The provisions of subsection (2)(c) above do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

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(3) The applicant for a dealer's license shall also file with his application a good and sufficient bond in the sum of $5,000, and the bond shall be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds shall run to the state of Montana and shall be approved by the division and filed in its office and shall be renewed annually."

Section 48. Section 61-4-104, MCA, is amended to read:

"61-4-104. Record of purchase or sale. Every dealer licensed under 61-4-101 shall keep a book or record of the *purchases, sales* or *exchanges,* or *receipts* for the purpose of sale of used *vehicles* and a description of such vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom *each* vehicle was purchased or received or to whom it was sold or delivered, as the case may be. *The* description in the case of motor vehicles shall also include the engine number, if any, maker's number, if any, chassis number, if any, and such other numbers or identification marks as *appear* thereon and shall include a statement that a number has been obliterated, defaced, or changed if such is the fact. In the case of a trailer, semitrailer, or special mobile equipment, the record shall include the manufacturer's number and such other numbers or identification marks as *appear* thereon. *The dealer* shall also have in his possession a duly assigned certificate of *ownership* from the owner of *the* motor vehicle from the time the motor vehicle is delivered to him until it has been disposed of by him."

Section 49. Section 61-4-113, MCA, is amended to read:

"61-4-113. New motor vehicles towed into state to be labeled. (1) Any firm, person, corporation, or association or any *of their employees* offering for sale or carrying on the business of selling new motor vehicles in the state of Montana shall be required to prominently label any motor vehicle which has been driven under its own power, pushed, towed, or propelled by any other means to sufficiently identify it from other new vehicles that have not been driven, pushed, or towed and shall be required to furnish the purchaser of any such motor vehicle with a certificate, on a printed form to be furnished by the *division* upon request by such dealers, showing the actual number of miles *the* motor vehicle has been driven under its own power and the number of miles *the* vehicle has been pushed, towed, or otherwise propelled upon its own wheels. Any firm, person, corporation, or association or *any of their employees* who fails to prominently label and issue *the* certificate or who knowingly issues a certificate that is untrue and calculated to mislead the purchaser *is* guilty of a misdemeanor.

(2) The provisions of this section *do* not apply to motor vehicles during the period *of* time that such motor vehicles are used for bona fide demonstrating purposes."

Section 50. Section 61-4-114, MCA, is amended to read:

"61-4-114. Demonstration of trucks and trailers authorized — dealer's plate to be used — exemptions. (1) A new or used truck

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or trailer dealer licensed under 61-4-101 through 61-4-106 may not demonstrate to a prospective purchaser a truck, truck tractor, trailer, or semitrailer owned by or consigned to the dealer or otherwise controlled by the dealer without securing a demonstration permit and paying the *fee* required in 61-4-115. The vehicle must display the dealer's registration plate or other current Montana registration and the demonstration permit.

(2) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from such limits are exempt from subsection (1). Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are also exempt from subsection (1). Vehicles lawfully displaying a licensed dealer's plate as provided in *61-4-103* are exempt from subsection (1) when moving to or from a dealer's place of business when *unloaded* or *loaded* with dealer's property only, and in the case of vehicles having a gross *loaded* weight of less than 24,000 pounds, while *being demonstrated* in the course of the dealer's business."

Section 51. Section 61-4-305, MCA, is amended to read:

"61-4-305. Driveaway or towaway fees in lieu of other fees payable — election to pay other fees. The fees provided for driveaway or towaway transporters are in consideration of the right to use the highways of the state and *except as provided in 61-4-304* are in lieu of all other fees including those which might be payable under the provisions of part 2 of chapter 10. However, any operator may elect to pay the fees payable under the provisions of that part."

Section 52. Section 61-4-403, MCA, is amended to read:

"61-4-403. Certain financing agreements prohibited. It *is* unlawful for any manufacturer or wholesale distributor of motor vehicles to sell or enter into a contract for the sale of motor vehicles to any motor vehicle dealer on the condition or under an agreement, expressed or implied, that *the* dealer *will* finance the purchase or sale of any motor vehicle or vehicles only through a designated finance company or finance agency. Any such condition, agreement, or understanding is against the public policy of the state, and such condition, agreement, or understanding *is* unlawful, void, and unenforceable, either *at* law or equity."

Section 53. Section 61-5-101, MCA, is amended to read:

"61-5-101. Drivers' examination section of division of motor vehicles. (1) There is a drivers' examination section of the division of motor vehicles. The *section* shall maintain a permanent place of business at the state capital. The division *administrator* shall select a chief examiner, deputy chief examiner, and as many assistant chief examiners and examiners as it *considers* necessary and shall provide for the necessary clerical help.

(2) The chief examiner, deputy chief examiner, assistant chief examiners, and all examiners shall have the same qualifications as are required for members of the Montana highway patrol. The chief examiner shall

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rank as a captain, the deputy chief examiner as a lieutenant, the assistant chief examiners as sergeants, and the examiners as patrolmen."

Section 54. Section 61-5-103, MCA, is amended to read:

"61-5-103. Residency requirement. Any person who has resided in this state for a period exceeding 90 days is considered to be a resident for the purpose of being licensed to *operate* a motor vehicle and must thereafter be licensed *under the laws of this state before operating a* motor *vehicle*."

Section 55. Section 61-5-111, MCA, is amended to read:

"61-5-111. Licenses issued to operators and chauffeurs — renewals and expiration — fees — disposition. (1) The division shall have authority to appoint county treasurers and other qualified officers to act as its agents for the sale of *driver's* licenses and shall make necessary rules governing such sales. The division, upon *receipt of* payment of the fees specified in this section, shall issue to every applicant qualifying therefor an operator's or chauffeur's license as applied for. Such licenses shall contain a photograph of *the* licensee in *the* size and form prescribed by the division, a distinguishing number issued to the licensee; the full name, date of birth, *residence* address, and a brief description of the licensee; and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink immediately upon receipt of the license. No license shall be valid until it has been signed by the licensee.

(2) The division shall, when any person applies for renewal of an operator's or chauffeur's license, test the applicant's eyesight and may also in the division's discretion have *the* applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle. A person shall be *considered* to have applied for renewal of a Montana operator's or chauffeur's license if *the* application is made within 3 months of the expiration of *his* license.

(3) Licenses shall expire on the anniversary of the date of birth of the licensee 4 years or less after the date of issue.

(4) Whenever the division issues an original license to a person under the age of 18 years, *the* license shall be designated and clearly marked as a "provisional license". Any license so designated and marked may be suspended by the division for a period of not more than 12 months when its *records disclose* that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal as applicable to operator's licenses, the division may, for any reasonable cause as shown by its records, designate the renewal of the license as provisional; otherwise, a license in usual form shall be issued subject to other provisions of the laws of Montana.

(5) It shall be unlawful for any person to have in his possession or under his control more than one Montana operator's or chauffeur's license at any one time. *A license is* not valid for the operation of a motorcycle until the holder thereof has completed the requirements of 61-5-110 and

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the license has been clearly marked with the words "motorcycle endorsement".

(6) Fees for *driver's* licenses shall be as follows:

(a) driver's license — $2 per year or fraction thereof;

(b) motorcycle endorsement — 50 cents per year or fraction thereof.

(7) The *county treasurer or other agent of the division collecting such fees shall retain 5% of each fee for the use of the county general fund and shall transmit the remainder to the* state treasurer, *who* shall deposit to the credit of the state general fund all *money* received by him from the collection of *the* fees."

Section 56. Section 61-5-112, MCA, is amended to read:

"61-5-112. Classification of chauffeurs — special restrictions. (1) The division upon issuing a chauffeur's license shall indicate thereon the class of license so issued and shall appropriately examine each applicant according to the class of license applied for and may impose such rules for the exercise thereof as it *considers* necessary for the safety and welfare of the traveling public.

(2) No person *may* drive any school bus transporting school children or any motor vehicle when in use for the transportation of persons for compensation until he has been licensed as a chauffeur for either such purpose and the license so indicates. The division *may* not issue a chauffeur's license for either purpose unless the applicant has had at least 1 year of driving experience prior thereto and the division is fully satisfied as to the applicant's competency and fitness to be employed."

Section 57. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation. (1) The division may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as permitted under 61-5-207, 61-5-212, *61-6-123*, and 61-11-211.

(2) Any person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked *is* not entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of such revocation or suspension, *the* person may make application for a new license as provided by law but the division may not then issue a new license unless and until it is satisfied after investigation of character, habits, and driving ability of *the* person that it *is* safe to grant the privilege of driving a motor vehicle on the public highways. *When* any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or *a* narcotic drug or knowingly or willingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle or a combination thereof, the division shall, upon receiving a report of such conviction or forfeiture of bail or collateral not vacated, suspend the license or driving privilege of *the* person

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for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the division shall revoke the license or driving privilege of *the* person for a period of 1 year.

(3) The period for all revocations made mandatory by 61-5-205 shall be 1 year except as provided in subsection (2) of this section.

(4) The period of revocation for any person convicted of any offense which makes mandatory the revocation of the operator's or chauffeur's license *commences* from date of conviction or forfeiture of bail."

Section 58. Section 61-5-302, MCA, is amended to read:

"61-5-302. Unlawful use of license. It is a misdemeanor for any person to:

(1) display or cause or permit to be displayed or have in his possession any canceled, revoked, suspended, fictitious, or altered operator's or chauffeur's license;

(2) lend his operator's or chauffeur's license to any other person or knowingly permit *its* use by another;

(3) display or represent as one's own any operator's or chauffeur's license not issued to him;

(4) fail or refuse to surrender to the division upon its lawful demand any operator's or chauffeur's license which has been suspended, revoked, or canceled;

(5) use a false or fictitious name in any application for an operator's or chauffeur's license or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application; *or*

(6) permit any unlawful use of an operator's or chauffeur's license issued to him."

Section 59. Section 61-5-303, MCA, is amended to read:

"61-5-303. Making false affidavit — penalty. Any person who makes any false affidavit or knowingly swears or affirms falsely to any matter or thing required by the terms of parts 1 through 3 of this chapter to be sworn to or affirmed is guilty of *false swearing* and upon conviction shall be punishable *as provided by 45-7-202.*"

Section 60. Section 61-6-102, MCA, is amended to read:

"61-6-102. Definitions. The following words and phrases, when used in this part, have the meanings respectively ascribed to them in this section except in those instances where the context clearly indicates a different meaning:

(1) "Judgment" means any judgment that *has* become final by expiration without appeal of the time within which an appeal might have been perfected or by final affirmation on appeal rendered by a court of competent jurisdiction of any state or of the United States upon a cause of

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action arising out of the ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(2) "License" means any license, temporary instruction permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

(3) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him of a motor vehicle or the use of a motor vehicle owned by him in this state.

(4) "Proof of financial responsibility" means proof of ability to respond in damages for liability on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance, or use of a motor vehicle.

(5) "State" means any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada."

Section 61. Section 61-6-105, MCA, is amended to read:

"61-6-105. Division to administer law and make rules. The division shall administer and enforce the provisions of this part and may make rules necessary for its administration and may provide for hearings upon request of persons aggrieved by orders or acts of the division under the provisions of this part."

Section 62. Section 61-6-124, MCA, is amended to read:

"61-6-124. Satisfaction of judgments. (1) Judgments herein referred to shall, for the purposes of this part only, be *considered* satisfied:

(a) when *$25,000* has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident;

(b) when, subject to *the* limit of *$25,000* because of bodily injury to or death of one person, the sum of *$50,000* has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury *to* or death of two or more persons as the result of any one accident; or

(c) when $5,000 has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

(2) Payments made in settlement of any claims because of bodily injury, death, or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section."

Section 63. Section 61-6-137, MCA, is amended to read:

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"61-6-137. Bond as proof of responsibility. (1) Proof of financial responsibility may be furnished by filing with the division the bond of a surety company duly authorized to transact business in the state or a bond with at least two individual sureties each owning real estate within this state and together having equities equal in value to at least twice the amount of such bond, which real estate shall be scheduled in the bond approved by a judge of a court of record. *The* bond shall be conditioned for payments in amounts and under the same circumstances as would be required in a motor vehicle liability policy and shall not be cancelable except after 10 days' written notice to the division. Upon the filing of notice to *this* effect by the division in the office of the county clerk and recorder of the county wherein such real estate *is* located, *the* bond shall constitute a lien in favor of the state upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a judgment against the person who has filed *the* bond.

(2) The person in whose favor *the* lien *exists* may, for his own use and benefit and at his sole expense, bring an action or actions in the name of the state against the company or persons executing *the* bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of any person who has executed such bond. The provisions of the *Montana Rules* of *Civil Procedure*, except insofar as *they* are inconsistent with the provisions of this part, are applicable to and constitute the rules of practice in the foreclosure actions or proceedings. The provisions of the *Montana Rules* of *Civil Procedure* relative to new trials and appeals, except insofar as *they* are inconsistent with the provisions of this part, apply to *the* actions or proceedings."

Section 64. Section 61-7-109, MCA, is amended to read:

"61-7-109. Written reports of accidents — additional information — form of report. (1) The operator of any motor vehicle which is in any manner involved in an accident within this state in which any person is killed or injured or in which damage to the property of any one person in excess of $250 is sustained shall, within 10 days after such accident, report the matter in writing to the division.

(2) The division may require any driver of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports whenever the original report is insufficient and may require witnesses of accidents to render reports.

(3) Every law enforcement officer who in the regular course of duty investigates a motor vehicle accident of which report must be made as required in this part, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses, shall within 10 days after completing *the* investigation forward a written report of *the* accident to the division.

(4) The form of *the* accident report required under this section shall contain information sufficient to enable the *division* to determine whether the requirements for the deposit of security for safety responsibility are inapplicable by reason of the existence of insurance or other exemptions specified in this part."

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Section 65. Section 61-8-101, MCA, is amended to read:

"61-8-101. Application — exceptions. (1) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(a) where a different place is specifically referred to in a given section;

(b) the provisions of 61-8-301 and 61-8-401, *with regard to operating a vehicle while under the influence of drugs,* shall apply upon highways and elsewhere throughout the state.

(2) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state provided that such crossings are adequately marked with warning signs or devices. *Such crossings* are subject to *provisions* relating to stopping before entry and to restoration of any damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved."

Section 66. Section 61-8-304, MCA, is amended to read:

"61-8-304. Declaration of speed limits — exception to the basic rule. The attorney general shall declare by proclamation filed with the secretary of state a speed limit for all motor vehicles on all public streets and highways in the state whenever the establishment of such a speed limit by the state is required by federal law as a condition to the state's continuing eligibility to receive funds authorized by the Federal Aid Highway Act of 1973 and all acts amendatory thereto or any other federal statute. *The* speed limit may not be less than that required by federal law, and the attorney general shall by further proclamation change the speed limit adopted pursuant to this section to comply with federal law. Any proclamation issued pursuant to this section becomes effective at midnight of the day upon which it is filed with the secretary of state. A speed limit imposed pursuant to this section is an exception to the requirements of 61-8-303 *and 61-8-312,* and a speed in excess of the speed limit established pursuant to this section is unlawful notwithstanding any provision of 61-8-303 *and 61-8-312.*"

Section 67. Section 61-8-322, MCA, is amended to read:

"61-8-322. Passing vehicles proceeding in opposite directions. Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction, each driver shall give to the other at least one-half of the main-traveled portion of the roadway."

Section 68. Section 61-8-339, MCA, is amended to read:

"61-8-339. Vehicle approaching or entering intersection. (1) When two vehicles enter or approach an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

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(2) The right-of-way rule declared in subsection (1) is modified at through highways and otherwise as stated in this *chapter.*"

Section 69. Section 61-8-401, MCA, is amended to read:

"61-8-401. Persons under the influence of alcohol or drugs. (1) It is unlawful and punishable as provided in 61-8-714(1) for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a motor vehicle upon the highways of this state;

(b) a narcotic drug to drive or be in actual physical control of a motor vehicle within this state; or

(c) any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive or be in actual physical control of a motor vehicle within this state.

(2) The fact that any person charged with a violation of subsection *(1)* is or has been entitled to use such a drug under the laws of this state does not constitute a defense against any charge of violating subsection *(1).*

(3) In any criminal prosecution for a violation of subsection (1) of this section relating to driving a vehicle while under the influence of alcohol, the amount of alcohol in the defendant's blood at the time alleged, as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(a) If there was at that time 0.05% or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of alcohol.

(b) If there was at that time in excess of 0.05% but less than 0.10% by weight of alcohol in the defendant's blood, *that* fact shall not give rise to any presumption that the defendant was or was not under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(c) If there was at that time 0.10% or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of alcohol.

(4) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 cubic centimeters of blood.

(5) Each municipality in this state is given authority to enact 61-8-714 and subsections (1) through *(4)* of this section with the word "state" in subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided."

Section 70. Section 61-8-711, MCA, is amended to read:

"61-8-711. Violation of chapter — penalty. (1) It is a misdemeanor for any person to violate any of the provisions of this *chapter* unless *the* violation is *declared to be a felony* by this chapter or other law of this state.

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(2) Every person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall for a first conviction thereof be punished by a fine of not less than $10 or more than $100 or by imprisonment for not more than 10 days. For a second conviction within 1 year thereafter, *the* person shall be punished by a fine of not less than $25 or more than $200 or by imprisonment for not more than 20 days or by both such fine and imprisonment. Upon a third or subsequent conviction within 1 year after the first conviction, *the* person shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not more than 6 months or by both *such* fine and imprisonment.

(3) On failure of payment of *a fine*, the offender in *case* of *a* misdemeanor shall be imprisoned in the county jail in the county in which the offense *was* committed, and *the* imprisonment shall be computed upon the basis of *one day's incarceration for each* $2 of *the* fine.

(4) Upon conviction, the court costs or any part thereof may be assessed against the defendant in the discretion of the court."

Section 71. Section 61-8-718, MCA, is amended to read:

"61-8-718. Penalty for violation of conservation speed limit. (1) A person violating the speed limit imposed pursuant to 61-8-304 is guilty of the offense of unnecessary waste of a resource currently in short supply and upon conviction shall be fined $5, and no jail sentence may be imposed. Bond for this offense shall be $5.

(2) For the purpose of this section only, the fees of the *justice's* court shall be *the balance of the fine not otherwise allocated by law and shall* be remitted as set forth in 3-10-603(3)."

Section 72. Section 61-9-315, MCA, is amended to read:

"61-9-315. Brakes on motor-driven cycles. (1) The division is authorized to require an inspection of the brake on any motor-driven cycle and to disapprove any brake which it finds will not comply with the performance ability standard set forth in *this part* or which in its opinion is not designed or constructed to insure reasonable and reliable performance in actual use.

(2) The division may refuse to register or may suspend or revoke the registration of any vehicle referred to in this section when it has been determined that the *brake* thereon *does* not comply with the provisions of this section.

(3) No person *may* operate on any highway any vehicle referred to in this section *if* the division has disapproved the brake equipment upon such vehicle or type of vehicle."

Section 73. Section 61-9-503, MCA, is amended to read:

"61-9-503. Owners and drivers to comply with inspection laws. (1) No person driving a vehicle *may* refuse to submit *the* vehicle to an inspection and test when required to do so by the division or an authorized officer or employee of the *division.*

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(2) Every owner or driver, upon receiving a notice as provided in 61-9-501, shall comply therewith and shall within 5 days have the deficiencies corrected and forward notification of *the* correction to the division. In lieu of compliance with this subsection, the vehicle *may* not be operated, except as provided in subsection (3).

(3) No person *may* operate any vehicle after receiving a notice with reference thereto as above provided except as may be necessary to return *the* vehicle to the residence or place of business of the owner or driver, if within a distance of 20 miles, or to a garage until *the* vehicle and its equipment *have* been placed in proper repair and adjustment and otherwise made to conform to the requirements of this chapter."

Section 74. Section 61-10-102, MCA, is amended to read:

"61-10-102. Width. (1) *No* vehicle, *including a bus, unloaded* or with load, may have a total outside width in excess of 102 inches. This width *for buses* is allowed only on paved highways 20 feet or more in width.

(2) This restriction does not apply to an implement of husbandry or a vehicle used for hauling hay, moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to the farming operations of the owner of the implement of husbandry or the vehicle used for hauling hay. If the implement or vehicle has a width in excess of 12 feet, it shall be preceded by *flagman* escorts for the purpose of warning other highway users. This restriction does not apply to *dual-wheel* tractors under 15 feet overall width which are used in farming operations. The rear of *the* implement of husbandry or vehicle used for hauling hay shall properly display lights which meet *the* standard requirements *of* 61-9-219. However, if the highway passes through a hazardous area, *the* implements or vehicles must be preceded and followed by *flagman* escorts."

Section 75. Section 61-10-109, MCA, is amended to read:

"61-10-109. Operation without special permits prohibited. The operation of vehicles or combinations of vehicles having weights in excess of the maximum limits specified in *61-10-105* is permitted only if authorized by special permit issued *under 61-10-107* by the department of highways or its agents or the highway patrol."

Section 76. Section 61-10-121, MCA, is amended to read:

"61-10-121. Permits for excess size and weight. (1) The department of highways and local authorities in their respective jurisdictions may in their discretion, upon application in writing and with good cause shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle, combination of vehicles, load, object, or other thing of a size or weight exceeding the maximum specified in 61-10-101 through 61-10-110 upon a highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible. However, only the department has the discretion to issue permits for movement of a vehicle or combination of vehicles carrying built-up or reducible loads in excess of 9 feet in width or exceeding the length, height, or weight

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specified in 61-10-101 through 61-10-110. This permit shall be issued in the public interest. A carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. A permit may not be issued for a period of time greater than the period *for which the GVW license is valid as* provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit. The department may issue oversize permits to dealers in implements of husbandry and self-propelled machinery, which may be transferred from unit to unit by the dealer, for the *fee* set forth in 61-10-124. These oversize permits expire on December 31 of each year, with no grace period. For the purposes of this section, a dealer in implements of husbandry or self-propelled machinery must be a resident of the state. A post-office box number is not a permanent address under this section.

(2) The applicant for a special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle, combination of vehicles, load, object, or other thing to be operated or moved and the particular state highways over which the vehicle, combination of vehicles, load, object, or other thing is to be moved and whether the permit is required for a single trip or for continuous operation."

Section 77. Section 61-10-124, MCA, is amended to read:

"61-10-124. Special permits — fee. (1) In addition to the regular *registration* and gross vehicle weight fees, a fee of $6 for each permit issued in excess of the size and weight specified in 61-10-101 through 61-10-110 shall be paid for all movements under special permits on the public highways under the jurisdiction of the department.

(2) Term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 85 feet; and an overheight vehicle, combination of vehicles, load, or other thing in excess of 13 ½ feet, or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits.

(3) *A* permit may not be issued for a period of time greater than the period *for which the GVW license is valid as* provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit."

Section 78. Section 61-10-145, MCA, is amended to read:

"61-10-145. Penalties — disposition of fines. (1) A person, firm, or corporation convicted of violating 61-10-101 through 61-10-110 shall be punished by a fine of not less than $15 or more than $50 or by imprisonment in the county or municipal jail for not less than 5 days or more than 25 days. *A* person, firm, or corporation convicted of operating a motor

vehicle upon the public highways of this state with weight upon a wheel, axle, or group of axles greater than the maximum permitted by 61-10-101 through 61-10-110 shall be fined, in addition to other penalties provided by law for the offense, the following amounts:

(a) $15 for any excess weight up to and including 2,000 pounds;

(b) $25 for any excess weight more than 2,000 pounds and less than 4,001 pounds;

(c) $35 for any excess weight more than 4,000 pounds and less than 6,001 pounds;

(d) $50 for any excess weight more than 6,000 pounds and less than 8,001 pounds;

(e) $80 for any excess weight more than 8,000 pounds and less than 10,001 pounds;

(f) $110 for any excess weight more than 10,000 pounds and less than 12,001 pounds;

(g) $150 for any excess weight more than 12,000 pounds and less than 14,001 pounds;

(h) $200 for any excess weight more than 14,000 pounds and less than 16,001 pounds;

(i) $250 for any excess weight more than 16,000 pounds and less than 18,001 pounds;

(j) $300 for any excess weight more than 18,000 pounds and less than 20,001 pounds;

(k) $500 for any excess weight more than 20,000 pounds and less than 25,001 pounds;

(l) $1,000 for any excess weight more than 25,000 pounds.

(2) A complaint filed and a summons or notice to appear issued pertaining to a violation of the gross weight regulations in 61-10-101 through 61-10-110 shall specify the amount of the overweight which the defendant is alleged to have had upon the vehicle or combination of vehicles.

(3) All fines and forfeitures shall be remitted monthly by the county treasurer to the state treasurer for deposit in the state general fund."

Section 79. Section 61-10-146, MCA, is amended to read:

"61-10-146. Special permits — misrepresentations and violations as misdemeanor. A person who knowingly and willfully misrepresents the size or weight of a vehicle, combination of vehicles, load, object, or other thing in obtaining a special permit or who does not follow the requirements and conditions of the special permit or who operates a vehicle, combination of vehicles, load, object, or other thing the *size or* weight of which *requires a special permit* without first obtaining a special permit is guilty of a misdemeanor."

Section 80. Section 61-10-148, MCA, is amended to read:

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"61-10-148. Disposition of fines. *Except as provided in 61-12-701,* fines collected *under 61-10-146 or 61-10-147* belong to the general road fund of the county and shall, immediately after their collection, be paid by the court or magistrate collecting *them* to the county treasurer for the use and benefit of that fund, except for that portion of the fines *otherwise allocated by law* which the county treasurer shall transmit to the state treasurer *who shall credit them* to the *appropriate* account in the earmarked revenue fund."

Section 81. Section 61-10-201, MCA, is amended to read:

"61-10-201. Gross weight fees on motortrucks and truck tractors. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each *truck* and truck tractor, based upon the maximum gross loaded weight thereof as set by the licensee in his application, the following fees:

Schedule I

Up to 6,000 lbs.	$ 7.50
6,001 *through* 8,000 lbs.	12.50
8,001 *through* 10,000 lbs.	17.50
10,001 *through* 12,000 lbs.	20.00
12,001 *through* 14,000 lbs.	22.50
14,001 *through* 16,000 lbs.	27.50
16,001 *through* 18,000 lbs.	37.50
18,001 *through* 20,000 lbs.	50.00
20,001 *through* 22,000 lbs.	62.50
22,001 *through* 24,000 lbs.	93.75
24,001 *through* 26,000 lbs.	125.00
26,001 *through* 28,000 lbs.	156.25
28,001 *through* 30,000 lbs.	206.25
30,001 *through* 32,000 lbs.	262.50
32,001 *through* 34,000 lbs.	318.75
34,001 *through* 36,000 lbs.	375.00
36,001 *through* 38,000 lbs.	431.25
38,001 *through* 40,000 lbs.	487.50
40,001 *through* 42,000 lbs.	543.75
Over 42,000 lbs. and within the weight limits specified in 61-10-101 through 61-10-110	62.50 per ton or fraction thereof."

Section 82. Section 61-10-202, MCA, is amended to read:

"61-10-202. Gross weight fees on trailers and semitrailers. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each trailer and semitrailer, based upon the maximum gross loaded weight thereof as set by the licensee in his application, except as otherwise provided, the following fees:

Schedule II
Trailers Other Than Housetrailers

Up to 2,500 lbs. for personal use—	Exempt
Up to 2,500 lbs. for commercial use	$ 3.75

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2,501 *through* 6,000 lbs.	5.00
6,001 *through* 8,000 lbs.	15.00
8,001 *through* 10,000 lbs.	17.50
10,001 *through* 12,000 lbs.	20.00
12,001 *through* 14,000 lbs.	22.50
14,001 *through* 16,000 lbs.	27.50
16,001 *through* 18,000 lbs.	37.50
18,001 *through* 20,000 lbs.	50.00
20,001 *through* 22,000 lbs.	62.50
22,001 *through* 24,000 lbs.	93.75
24,001 *through* 26,000 lbs.	125.00
26,001 *through* 28,000 lbs.	156.25
28,001 *through* 30,000 lbs.	206.25
30,001 *through* 32,000 lbs.	262.50
32,001 *through* 34,000 lbs.	318.75
34,001 *through* 36,000 lbs.	375.00
36,001 *through* 38,000 lbs.	431.25
38,001 *through* 40,000 lbs.	487.50
40,001 *through* 42,000 lbs.	543.75
Over 42,000 lbs. and within the weight limits specified in 61-10-101 through 61-10-110	62.50 per ton or fraction thereof."

Section 83. Section 61-10-209, MCA, is amended to read:

"61-10-209. Quarterly payment — penalty for failure to pay fee. (1) When the gross weight of a vehicle exceeds 24,000 pounds, the gross weight or special fees for *trucks*, trailers, tractors, pole trailers, or semitrailers may be *paid* for a 3-month period for one-fourth the regular fee at the beginning of any quarter of the calendar year. For each fee so paid other than at the time of payment of the *annual vehicle registration* fee, an additional fee of $1 shall be charged. The department may adopt rules relative to the issuance and display of certificates or insignia, which shall state the quarters for which the vehicle is licensed.

(2) A vehicle licensed under this section may not be operated over the public highways *after the expiration of the 3-month period* unless the owner or operator of the vehicle, within 10 calendar days or 7 business days as provided by law, whichever is greater, pays the required fee for a license for an additional 3-month period or for the remainder of the year. A person who operates a vehicle upon the public highways after the expiration of the 10 calendar days or 7 business days as provided by law, whichever is greater, is guilty of a misdemeanor. In addition he shall be required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation of the vehicle less the fees for *the* period of the year already paid.

(3) If within 5 days thereafter no license for a full year has been purchased as required, the Montana highway patrol, county sheriff, or city police may impound the vehicle in the manner which is directed for these cases by the division of motor vehicles until the requirement is met."

Section 84. Section 61-10-214, MCA, is amended to read:

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"**61-10-214. Exemptions.** (1) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from such limits are exempt from this part.

(2) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are exempt from this part.

(3) Vehicles lawfully displaying a licensed dealer's plate as provided in *61-4-103* are exempt from this part when moving to or from a dealer's place of business when *unloaded* or *loaded* with dealer's property only, and in the case of vehicles having a gross *loaded* weight of less than 24,000 pounds, while *being demonstrated* in the course of the dealer's business."

Section 85. Section 61-10-222, MCA, is amended to read:

"**61-10-222. Time for payment of fees.** *(1)* Prior to or at the time of registration of the vehicle as required under chapter 3 or chapter 4 or prior to the operation of the vehicle on the public highways, fees *provided in this part* shall be *paid in* the full amount unless otherwise provided by law. With respect to vehicles operating on the highways with a current rear windshield sticker issued under the provisions of 61-4-111 or 61-4-112, the fees provided in this part shall be due and payable at the time of registration.

(2) A person who makes application for *a GVW* license after July 1 of any year shall pay one-half of *the* fees *provided in this part.*

(3) When a person makes application for registration required under chapter 3 for a period of time other than the calendar year, the fees provided in this part shall be computed for the registration period at one-twelfth of *the* applicable fee for each month or part of month in the registration period."

Section 86. Section 61-10-223, MCA, is amended to read:

"**61-10-223. Expiration date.** Any *GVW* license issued shall be valid only for the period for which issued."

Section 87. Section 61-10-224, MCA, is amended to read:

"**61-10-224. GVW license transferable.** The *GVW* license issued hereunder is transferable by the licensee to another truck, truck tractor, trailer, semitrailer, lowboy trailer, pole trailer, housetrailer, or passenger car upon transfer of ownership of such truck, truck tractor, trailer, semitrailer, lowboy trailer, pole trailer, housetrailer, or passenger car to a replacement vehicle of the same type. If a smaller vehicle is purchased, there shall be no refund."

Section 88. Section 61-10-226, MCA, is amended to read:

"**61-10-226. Deposit of state highway money.** (1) Any reference to the state highway fund *means* the state highway account in the earmarked revenue fund.

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(2) *Money* received for the use of the department from the receipt or transfer of *GVW* license fees, as provided by law, or from other state sources shall be deposited in the earmarked revenue fund to the credit of the department.

(3) *Money* received from the counties and from the federal government or other agencies shall be deposited in the federal and private revenue fund to the credit of the department.

(4) *Money* collected for the department as authorized by law shall be credited to such fund or funds by the state treasurer."

Section 89. Section 61-10-227, MCA, is amended to read:

"61-10-227. Blank forms furnished county treasurers. The department shall furnish all county treasurers with the following:

(1) blank application forms and affidavit forms outlining and providing for the information needed in each classification of *license* required;

(2) *GVW licenses* in a form determined most suitable by the department;

(3) the other forms, stickers, certificates, or blanks the department considers necessary to carry out this part."

Section 90. Section 61-10-233, MCA, is amended to read:

"61-10-233. Excess weight — penalties. (1) The operator is subject to the penalties stated in *61-10-232* whenever the gross *loaded* weight of any *trucks*, truck tractor, trailer, or semitrailer operated upon any highway in this state exceeds the gross vehicle weight shown on:

(a) the owner's certificate of registration and tax receipt issued under 61-3-322; or

(b) the gross vehicle weight receipt issued under 61-10-227.

(2) *In addition, the* operator shall immediately pay to the nearest county treasurer or to the department the difference between the fee already paid and that applicable to the gross weight of his vehicle before unloading the excess, provided that it does not exceed the legal axle weight."

Section 91. Section 61-11-211, MCA, is amended to read:

"61-11-211. Division to revoke license of habitual offender — method of removal of points upon revocation. Upon receipt of a court order declaring an habitual offender, the *division* shall revoke the driver's license or driving privilege of the individual named in the order for a period of 3 years from the date of the order. Additionally, the department shall remove from that individual's record those habitual offender points which were certified to the county attorney in the certification required by 61-11-204."

Section 92. Section 61-12-208, MCA, is amended to read:

"61-12-208. Duty upon making an arrest — power to fix and accept bail. Such employees, upon making an arrest, shall deliver to the

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offender a form of notice to appear, describing the nature of the offense, with instructions on the notice for the offender to report to the nearest justice of the peace. The employee may accept a deposit for appearance justifiable for the offense charged. The person arrested may be detained for a reasonable time for the purpose of issuing the notice. If the employee accepts bail, he shall give a signed receipt to the offender, setting forth the amount received. The employee shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the employee for the amount of bail money delivered. After the filing of the complaint and appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further appearance bail bond."

Section 93. Section 61-12-502, MCA, is amended to read:

"61-12-502. Rules for identification cards. The division shall formulate *and adopt* reasonable rules for the application *for and* issuing *of* identification cards and cancellation thereof and *shall* require the furnishing of such information necessary for the purpose of this part."

Section 94. Section 61-12-701, MCA, is amended to read:

"61-12-701. Highway patrol — disposition of fines and forfeitures. (1) All fines and forfeitures collected in any court from persons apprehended or arrested by patrolmen for violation of the laws and regulations relating to the use of state highways and the operation of vehicles thereon must be paid to the state treasurer and by him credited to the general fund of the state, except for that portion of the fines *otherwise allocated by law* which shall be paid into the *appropriate accounts* in the earmarked revenue fund.

(2) At the time of payment of any such fine or forfeiture, there shall be filed with the state treasurer a complete statement showing the total of the fines or forfeitures received or incurred, which statement shall give the title of the court and cause and be subscribed to by the person or officer making *the* payments."

Section 95. Section 61-12-703, MCA, is amended to read:

"61-12-703. Disposition of traffic fines collected from juveniles. All fines collected by the district courts from *persons* under 18 years of age as the result of traffic summonses *for unlawful operation of motor vehicles* issued by peace officers of cities or counties or by highway patrolmen, together with *the percentage* of the fines *otherwise deductible by law*, shall be retained by the county treasurer of the county in which the offense occurred and at the end of each month distributed as follows:

(1) Fines collected as the result of summonses issued by city peace officers shall be distributed to the city in which the peace officer is employed and credited to the city general fund.

(2) Fines collected as the result of summonses issued by county peace officers shall be retained by the county treasurer and credited to the county road fund.

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(3) Fines collected as the result of summonses issued by state highway patrolmen shall be paid to the state treasurer, who shall credit them to the general fund of the state.

(4) That portion of the fines *deductible by law* shall be paid to the state treasurer, who shall credit *the money* to the *appropriate accounts* in the earmarked revenue fund."

Section 96. Section 20-7-504, MCA, is amended to read:

"20-7-504. State traffic education account — proceeds earmarked for the account. (1) There is a traffic education account in the treasury of the state of Montana. There shall be paid into this account a portion of the fines assessed and bails forfeited on all offenses involving a violation of *chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61,* or a city ordinance *and* relating to the operation or use of motor vehicles, except offenses relating to parking of vehicles, in the following amounts:

(a) *if* a fine is imposed, 20% of the fine imposed;

(b) *if* multiple offenses are involved, 20% of the total sum of all fines imposed;

(c) *if* a fine is suspended, in whole or in part, 20% of the fine actually paid; and

(d) *if* any deposit of bail is made for an offense to which this section applies and the bail is forfeited, 20% of the forfeited bail.

(2) Five percent of all *money* received by the state from the collection of the motor vehicle driver's license fee provided for under the laws of Montana shall be contributed to the traffic education account."

Section 97. Section 53-9-109, MCA, is amended to read:

"53-9-109. Crime victims compensation account. There is a crime victims compensation account in the earmarked revenue fund. There shall be paid into this account 6% of the fines assessed and bails forfeited on all offenses involving a violation of *chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61,* or a city ordinance *and* relating to the operation or use of motor vehicles, except offenses relating to parking of vehicles."

Section 98. Section 61-5-405, MCA, is amended to read:

"61-5-405. Offenses furnishing ground for suspension or revocation of license. (1) Items enumerated in Article IV(1), subsections (a), (b), (c), and (d) of 61-5-401 refer specifically to 45-5-103, *45-5-104,* 61-8-401, 45-2-101(15), and 61-7-103, respectively.

(2) In addition to convictions mentioned above the division, for the purpose of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if such conduct had occurred in this state for:

(a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (61-5-303); and

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(b) three convictions of reckless driving committed within a period of 12 months (61-8-301)."

Section 99. **Repealer.** Section 61-8-721, MCA, is repealed.

Section 100. **Repealer.** Sections 31-186, 32-1116, 32-1119, 32-2101, 32-2124.2, 32-21-154, 53-134, 53-135, and 53-140 through 53-144, R.C.M. 1947, are repealed.

Approved March 31, 1979.

CHAPTER NO. 422

AN ACT DELETING PROCEDURES PURSUANT TO AWARDING A CONTRACT FOR ARCHITECTURAL SERVICES; REPEALING SECTION 20-6-632, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 20-6-632, MCA, is repealed.

Approved March 31, 1979.

CHAPTER NO. 423

AN ACT TO AMEND THE PROVISIONS OF THE LAW RELATING TO THE DISCLOSURE OF THE PROCEEDINGS AND THE RELATED DOCUMENTS OF THE JUDICIAL NOMINATION COMMISSION; AMENDING SECTIONS 3-1-1007 AND 3-1-1010, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-1007, MCA, is amended to read:

"3-1-1007. Commission to make rules — confidentiality of proceedings. *(1)* The commission shall make rules for the conduct of its affairs.

(2) The proceedings of the commission and the related documents shall be open to the public except when the demands of individual privacy clearly exceed the merits of public exposure."

Section 2. Section 3-1-1010, MCA, is amended to read:

"3-1-1010. List submitted to governor — report on proceedings. The commission shall meet forthwith after a vacancy occurs on the supreme court or district court and submit to the governor within 30 days from the date of the vacancy a list of not less than three or more than five

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persons. *The list must be accompanied by a written report to the governor indicating the vote on each nominee, the content of the application submitted by each nominee, and the commission's reasons for recommending each nominee for appointment.*"

Approved March 31, 1979.

CHAPTER NO. 424

AN ACT TO PROVIDE A MINIMUM COMPENSATION FOR PERSONAL REPRESENTATIVES OF ESTATES; AMENDING SECTIONS 72-3-631 AND 72-15-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-3-631, MCA, is amended to read:

"**72-3-631. Compensation of personal representative.** (1) A personal representative is entitled to reasonable compensation for his services. Such compensation shall not exceed 3% of the first $40,000 of the value of the estate as reported for federal estate tax or state inheritance tax purposes, whichever is larger, and 2% of the value of the estate in excess of $40,000 as reported for federal estate tax or state inheritance tax purposes, whichever is larger. *However, a personal representative is entitled to a minimum compensation of the lesser of $100 or the value of the gross estate.*

(2) In proceedings conducted for the termination of joint tenancies, the compensation of the personal representative shall not exceed 2% of the interest passing.

(3) In proceedings conducted for the termination of a life estate, the compensation allowed the personal representative shall not exceed 2% of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the personal representative's compensation shall not exceed 2% of the value of the estate, except that it shall not be less than $100.

(4) If there is more than one personal representative, only one compensation is allowed.

(5) The court may allow additional compensation for extraordinary services. Such additional compensation shall not be greater than the amount which is allowed for the original compensation.

(6) If the will provides for the compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to compensation under the terms of this section. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court."

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Section 2. Section 72-15-301, MCA, is amended to read:

"72-15-301. Compensation of public administrator. The public administrator shall receive and collect for his own use as full compensation for his services, including attorney's fees, the amounts provided for in 72-3-631 and 72-3-633."

Approved March 31, 1979.

CHAPTER NO. 425

AN ACT TO REVISE CERTAIN LAWS RELATING TO CASUALTY INSURANCE AND SOVEREIGN IMMUNITY TO MAKE THE LAW CONSISTENT WITH LIMITS SET BY STATUTE; AMENDING SECTIONS 2-9-104, 20-3-331, AND 33-23-102, MCA; AND REPEALING SECTION 33-23-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-23-102, MCA, is amended to read:

"33-23-102. Existence of insurance not to be made evident. No attempt may be made in the trial of an action brought against *a* political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of plaintiff."

Section 2. Section 2-9-104, MCA, is amended to read:

"2-9-104. Limitation on governmental liability for damages in tort — petition for relief in excess of limits. (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for:

(a) noneconomic damages; or

(b) economic damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of $300,000 for each claimant and $1 million for each occurrence.

(2) The legislature or the governing body of a county, municipality, taxing district, or other political subdivision of the state may, in its sole discretion, authorize payments for noneconomic damages or economic damages in excess of the sum authorized in subsection (1)(b) of this section, or both, upon petition of plaintiff following a final judgment. No insurer is liable for such noneconomic damages or excess economic damages unless *such insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of the limitation stated in this section or specifically agrees to provide coverage for noneconomic damages, in which case the insurer may not claim the benefits of the limitation specifically waived.*"

Section 3. Section 20-3-331, MCA, is amended to read:

"**20-3-331. Purchase of liability insurance.** The trustees of any district may purchase insurance coverage for the district, trustees, and employees against liability for the death, injury, or disability of any person or damage to property. If such insurance is purchased, the trustees shall pay the insurance premium cost from the general fund. The provisions of 33-23-102 *and 2-9-104* shall apply to the provisions of this section."

Section 4. **Repealer.** Section 33-23-101, MCA, is repealed.

Approved March 31, 1979.

CHAPTER NO. 426

AN ACT TO PROVIDE THAT A CRIMINAL OFFENDER IS CONSIDERED NONDANGEROUS FOR PURPOSES OF PAROLE ELIGIBILITY UNLESS THE SENTENCING COURT SPECIFIES THAT THE OFFENDER IS NOT A NONDANGEROUS OFFENDER AND TO REVISE THE REQUIREMENTS FOR CLASSIFICATION AS A NONDANGEROUS OFFENDER; AMENDING SECTION 46-18-404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-404, MCA, is amended to read:

"**46-18-404. Designation as nondangerous offender for purposes of parole eligibility.** (1) The sentencing court shall designate an offender a nondangerous offender for purposes of eligibility for parole under part 2 of chapter 23 if:

(a) during the 5 years preceding the commission of the offense for which the offender is being sentenced, the offender was neither convicted of nor incarcerated for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed; *and*

(b) the court has determined, based on any presentence report and the evidence presented at the trial and the sentencing hearing, that the offender does not represent a substantial danger to other persons or society.

(2) A conviction or incarceration may not be considered under subsection (1)(a) if:

(a) the offender was less than 18 years of age at the time of the commission of the present offense; or

(b) the offender has been pardoned for the previous offense on the grounds of innocence or the conviction for such offense has been set aside in a postconviction hearing.

(3) If the court determines that an offender is not eligible to be designated as a nondangerous offender, it shall make that determination a

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part of the sentence imposed and shall state the determination in the judgment. Whenever the sentence and judgment do not contain such a determination, the offender is considered to have been designated as a nondangerous offender for purposes of eligibility for parole."

Approved March 31, 1979.

CHAPTER NO. 427

AN ACT TO REMOVE FROM THE YOUTH COURT THE JURISDICTION OVER VIOLATIONS OF TRAFFIC AND FISH AND GAME LAWS BY A YOUTH; AMENDING SECTION 41-5-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-203, MCA, is amended to read:

"41-5-203. Jurisdiction of the court. (1) *Except as provided in subsection (2), the* court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or concerning any person under 21 years of age charged with having violated any law of the state or ordinance of any city or town *other than a traffic or fish and game law* prior to having become 18 years of age.

(2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage violations alleged to have been committed by a youth."

Approved March 31, 1979.

CHAPTER NO. 428

AN ACT TO GENERALLY REVISE THE APPOINTMENT PROCEDURES AND DUTIES FOR CITY ATTORNEYS; AMENDING SECTIONS 7-4-4201, 7-4-4602, 7-4-4604, AND 7-4-4605, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-4201, MCA, is amended to read:

"7-4-4201. Salary of officers. (1) The council must by ordinance fix the salaries and compensation of the city officers, policemen, and other employees, which must not exceed the amount specified in this code.

(2) The salary and compensation of an officer must not be increased or diminished during his term of office, *except as provided in 7-4-4605.*

(3) The maximum annual salary of a mayor must be fixed by ordinance in all classes of cities.

(4) The annual salary and compensation of the treasurer must be fixed by ordinance and must be for all services rendered by such treasurer in any capacity.

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(5) The annual salary and compensation of the city attorney must be fixed by ordinance, *except as provided in 7-4-4605.*

(6) The annual salary and compensation of the city clerk must be fixed by ordinance.

(7) The compensation of the street commissioner, chief of the fire department, city surveyor, and other city officers not provided in this code may be prescribed by ordinance."

Section 2. Section 7-4-4602, MCA, is amended to read:

"7-4-4602. Appointment — term of office. *(1) The city attorney must be appointed by the mayor, subject to approval by the city council.*

(2) The city attorney shall hold his office for 2 years unless suspended or removed as provided by law."

Section 3. Section 7-4-4604, MCA, is amended to read:

"7-4-4604. Duties. It shall be the duty of the city attorney to attend before the city court and other courts of the city and the district court and prosecute on behalf of the city. He shall, when required, draw, for the use of the council, contracts and ordinances for the government of the city and, when required, give to the mayor or city council written opinions on questions pertaining to the duties and the rights, liabilities, and powers of the corporation. *He shall perform such other duties as pertain to the functions of the city council or as the city council may prescribe by resolution.*"

Section 4. Section 7-4-4605, MCA, is amended to read:

"7-4-4605. Employment of special or additional counsel. Nothing in this part shall be taken or construed as preventing the city council from employing in special cases *on a contract basis:*

(1) the city attorney to perform services not specifically provided for under 7-4-4604; or

(2) additional or other counsel."

Approved March 31, 1979.

CHAPTER NO. 429

AN ACT TO PROVIDE FOR THE REGISTRATION AND PROTECTION OF TRADEMARKS AND SERVICE MARKS; TO PROVIDE FOR RENEWAL AND ASSIGNMENT OF SUCH MARKS; AMENDING SECTIONS 2-6-103 AND 2-15-401, MCA; REPEALING SECTIONS 30-13-101 THROUGH 30-13-107; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** In [sections 1 through 17], unless the context requires otherwise, the following definitions apply:

(1) "Trademark" means any word, name, symbol, device, or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others.

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(2) "Service mark" means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others.

(3) "Mark" means any trademark or service mark entitled to registration under [sections 1 through 17] whether registered or not.

(4) "Trade name" means a word, name, symbol, device, or any combination thereof used by a person to identify his business, vocation, or occupation and distinguish it from the business, vocation, or occupation of others.

(5) "Person" means any individual, firm, partnership, corporation, association, union, or other organization.

(6) "Applicant" means the person filing an application for registration of a trademark under [sections 1 through 17] or his legal representatives, successors, or assigns.

(7) "Registrant" means the person to whom the registration of a trademark under [sections 1 through 17] is issued or his legal representatives, successors, or assigns.

Section 2. **When mark considered used in this state.** For purposes of [sections 1 through 17], a mark is considered to be used in this state:

(1) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto and such goods are sold or otherwise distributed in the state; and

(2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

Section 3. **Registrability.** (1) A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others may not be registered if it:

(a) comprises immoral, deceptive, or scandalous matter; or

(b) comprises matter which may disparage or falsely suggest a connection with persons, living or dead, or institutions, beliefs, or national symbols or bring them into contempt or disrepute; or

(c) comprises the flag or coat of arms or other insignia of the United States, of any state or municipality, or of any foreign nation or any simulation thereof; or

(d) comprises the name, signature, or portrait of any living individual, except with his written consent; or

(e) comprises a mark that:

(i) when applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;

(ii) when applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them; or

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(iii) is primarily merely a surname; or

(f) comprises a mark that so resembles a mark registered in this state or a mark or trade name previously used in this state by another and not abandoned as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

(2) However, nothing in subsection (1)(e) prevents the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods or services. The secretary of state may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state or elsewhere for the 5 years immediately preceding the date of the filing of the application for registration.

Section 4. **Application for registration.** (1) Subject to the limitations set forth in [sections 1 through 17], a person who adopts and uses a mark in this state may file in the office of secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth information including but not limited to the following:

(a) the name and business address of the person applying for such registration and, if a corporation, the state of incorporation;

(b) the essential feature of the mark to be registered;

(c) the goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall;

(d) the date when the mark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business;

(e) a statement that the mark is presently in use in this state by the applicant; and

(f) a statement that the applicant is the owner of the mark and that no other person has the right to use the mark in this state either in the identical form thereof or in a form that so nearly resembles it that it might be calculated to deceive or might be mistaken for it.

(2) The application must be signed and verified by affidavit of the applicant or a member of the firm or an officer of the corporation or association applying.

(3) The application must be accompanied by a specimen or facsimile of such mark in duplicate.

(4) The application for registration must be accompanied by a filing fee of $20, payable to the secretary of state.

Section 5. **Filing application and issuing certificate of registration.** (1) Duplicate originals of an application for registration of a mark must be delivered to the secretary of state. If the secretary of state finds that the application complies with the requirements of [sections 1 through

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17], he shall, when all fees have been paid as prescribed in [sections 1 through 17]:

(a) endorse on each such duplicate original the words "filed for record" and the month, day, and year of the filing thereof;

(b) file one such duplicate original in his office; and

(c) issue a certificate of registration to which he shall affix the other duplicate original.

(2) The certificate of registration, together with the duplicate original of the application for registration of mark affixed thereto, shall be returned to the applicant.

(3) Any certificate of registration issued by the secretary of state under the provisions of this section or a copy thereof duly certified by the secretary of state is admissible in evidence as competent and sufficient proof of the registration of such mark in any judicial proceeding in any court of this state.

Section 6. **Duration and renewal.** (1) Registration of a mark under [sections 1 through 17] is effective for a term of 10 years from the date of registration and, upon application filed within 6 months prior to the expiration of such term, the registration may be renewed for another 10 years.

(2) An application for renewal of mark registration must be delivered to the secretary of state and shall set forth information including but not limited to the following:

(a) the name and business address of the applicant;

(b) a description of the mark; and

(c) a statement that the mark is still in use by the applicant in this state.

(3) The application for renewal of mark registration must be signed and verified by affidavit of the applicant.

(4) The application for renewal of mark registration must be accompanied by a filing fee of $20, payable to the secretary of state.

Section 7. **Filing application for renewal of registration — issuing certificate of renewal.** (1) Duplicate originals of an application for renewal of mark registration must be delivered to the secretary of state. If the secretary of state finds that the application complies with the requirements of [sections 1 through 17], he shall, when all fees have been paid as prescribed in [sections 1 through 17]:

(a) endorse on each such duplicate original the words "filed for record" and the month, day, and year of the filing thereof;

(b) file one such duplicate original in his office; and

(c) issue a certificate of registration to which he shall affix the other duplicate original.

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(2) The certificate of renewal of registration, together with the duplicate original of the application for renewal of registration of the mark affixed thereto, shall be returned to the applicant.

(3) A mark registration may be renewed for successive periods of 10 years in the manner provided for in subsections (1) and (2).

(4) The secretary of state shall notify registrants of marks of the necessity of renewal within the year immediately preceding the expiration of the 10 years from the date of registration, by writing to the last-known address of the registrants.

(5) Any registration in force on July 1, 1979, expires 10 years from the date of the registration or from the date of the last renewal thereof or on July 1, 1980, whichever is later, if renewal of mark registration is not effected in the manner provided for in [sections 1 through 17].

(6) The secretary of state shall, by January 1, 1981, notify each person who registered a mark prior to July 1, 1980, of the date of expiration of such registration unless renewed in accordance with the provisions of [sections 1 through 17], by writing to the last-known address of the registrant.

Section 8. **Assignment.** (1) Any mark and its registration under [sections 1 through 17] may be assigned in conjunction with the good will of the business in which the mark is used or with that part of the good will of the business connected with the use of and symbolized by the mark for the remainder of the term of the current registration. An assignment of any registration under [sections 1 through 17] is void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary of state within 3 months after the date of the assignment or prior to such subsequent purchase.

(2) Duplicate originals of an assignment of a mark must be delivered to the secretary of state and shall set forth information including but not limited to the following:

(a) the name and address of the assignor;

(b) the name and address of the assignee;

(c) the registration number of the mark; and

(d) the date of registration.

(3) The assignment of a mark must be signed and verified by the assignor.

(4) The assignment of a mark must be accompanied by a filing fee of $20, payable to the secretary of state.

Section 9. **Filing of assignment — issuing certificate of assignment.** (1) Duplicate originals of the assignment of a mark must be delivered to the secretary of state. If the secretary of state finds that the assignment complies with the requirements of [sections 1 through 17], he shall, when all fees have been paid as prescribed in [sections 1 through 17]:

(a) endorse on each such duplicate original the words "filed for record" and month, day, and year of the filing thereof;

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(b) file one such duplicate original in his office;

(c) issue a certificate of assignment to which he shall affix the other duplicate original.

(2) The certificate of assignment, together with the duplicate original of assignment of a mark affixed thereto, shall be returned to the assignee.

Section 10. **Records.** The secretary of state shall keep for public examination a record of all marks registered or renewed under [sections 1 through 17].

Section 11. **Cancellation.** The secretary of state shall cancel from the register:

(1) after July 1, 1981, each registration made prior to July 1, 1980, that is more than 10 years old and not renewed in accordance with [sections 1 through 17];

(2) any registration concerning which the secretary of state receives a voluntary request for cancellation from the registrant or the assignee of record;

(3) each registration granted under [sections 1 through 17] and not renewed in accordance with the provisions of [sections 1 through 17];

(4) any registration concerning which a court of competent jurisdiction finds that:

(a) the registered mark has been abandoned;

(b) the registrant is not the owner of the mark;

(c) the registration was granted improperly;

(d) the registration was obtained fraudulently;

(e) the registered mark is so similar to a mark currently registered by another person in the United States patent and trademark office prior to the filing date of the application for registration under [sections 1 through 17] as to be likely to cause confusion or mistake or to deceive. However, if the registrant proves that he is the owner of a concurrent registration of his mark in the United States patent and trademark office covering an area including this state, the registration under [sections 1 through 17] may not be canceled.

(5) a registration ordered canceled by a court of competent jurisdiction on any grounds.

Section 12. **Classification.** (1) The following general classes of goods and services are established for convenience of administration of [sections 1 through 17]. This classification does not limit or extend the applicant's or registrant's rights. A single application for registration of a mark may include any or all goods or services comprised in a single class with regard to which the mark is actually being used. However, in no event may a single application include goods or services that fall within different classes of goods or services.

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(2) The classes of goods are as follows:

(a) raw or partly prepared materials;

(b) receptacles;

(c) baggage, animal equipments, portfolios, and pocketbooks;

(d) abrasive and polishing materials;

(e) adhesives;

(f) chemicals and chemical compositions;

(g) cordage;

(h) smokers' articles, not including tobacco products;

(i) explosives, firearms, equipment, and projectiles;

(j) fertilizers;

(k) inks and inking materials;

(l) construction materials;

(m) hardware and plumbing and steamfitting supplies;

(n) metals and metal casting and forgings;

(o) oils and greases;

(p) paints and painters' materials;

(q) tobacco products;

(r) medicines and pharmaceutical preparations;

(s) vehicles;

(t) linoleum and oil cloth;

(u) electrical apparatus, machines, and supplies;

(v) games, toys, and sporting goods;

(w) cutlery, machinery, and tools, and parts thereof;

(x) laundry appliances and machines;

(y) locks and safes;

(z) measuring and scientific appliances;

(aa) horological instruments;

(bb) jewelry and precious metal ware;

(cc) brooms, brushes, and dusters;

(dd) crockery, earthenware, and porcelain;

(ee) filters and refrigerators;

(ff) furniture and upholstery;

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(gg) glassware;

(hh) heating, lighting, and ventilating apparatus;

(ii) belting, hose, machinery packing, and nonmetallic tires;

(jj) musical instruments and supplies;

(kk) paper and stationery;

(ll) prints and publications;

(mm) clothing;

(nn) fancy goods, furnishings, and notions;

(oo) canes, parasols, and umbrellas;

(pp) knitted, netted, and textile fabrics, and substitutes therefor;

(qq) thread and yarn;

(rr) dental, medical, and surgical appliances;

(ss) soft drinks and carbonated waters;

(tt) foods and ingredients of foods;

(uu) wines;

(vv) malt beverages and liquors;

(ww) distilled alcoholic liquors;

(xx) merchandise not otherwise classified;

(yy) cosmetics and toilet preparations;

(zz) detergents and soaps.

(3) The classes of services are as follows:

(a) miscellaneous;

(b) advertising and business;

(c) insurance and financial;

(d) construction and repair;

(e) communications;

(f) transportation and storage;

(g) material treatment;

(h) education and entertainment.

Section 13. **Fraudulent registration.** Any person who, for himself or on behalf of any other person, procures the filing or registration of any mark in the office of the secretary of state under the provisions of [sections 1 through 17] by knowingly making any false or fraudulent representation, verbally or in writing or by any other fraudulent means, is liable

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to pay all damages sustained in consequence of such filing or registration. Such damages may be recovered by or on behalf of the injured party in any court of competent jurisdiction.

Section 14. **Infringement.** (1) Subject to the provisions of [section 17], any person is liable in a civil action brought by the lawful owner of a registered mark under [section 16] if such person:

(a) uses, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under [sections 1 through 17] in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services; or

(b) reproduces, counterfeits, copies, or colorably imitates any such mark and applies such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or other distribution in this state of such goods or services.

(2) However, the registrant is not entitled to recover under subsection (1)(b) any profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive.

Section 15. **Injury to business reputation — dilution.** Likelihood of injury to business reputation or of dilution of the distinctive quality of a mark registered under [sections 1 through 17] or a mark valid at common law or a trade name valid at common law is grounds for injunctive relief notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services.

Section 16. **Remedies.** (1) Any owner of a mark registered under [sections 1 through 17] may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitations of the mark. Any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display, or sale as is considered by the court to be just and reasonable. The court may require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display, or sale. The court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court or to the complainant to be destroyed.

(2) The enumeration in [sections 1 through 17] of any right or remedy does not affect a registrant's right to prosecute under any criminal law of this state.

Section 17. **Common-law rights.** Nothing in [sections 1 through 17] adversely affects the rights or the enforcement of rights in marks acquired at common law in good faith at any time.

Section 18. Section 2-6-103, MCA, is amended to read:

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"2-6-103. Filing and copying fees. (1) The secretary of state, for services performed in his office, must charge and collect the following fees:

(a) for each copy of any law, resolution, record, or other document or paper on file in his office, except corporate papers, 40 cents per folio or, if the copy is made by any process of reproduction by photographic, photostatic, or similar process, the fee shall be 50 cents per page or fraction thereof;

(b) for affixing certificate and seal, $2;

(c) for receiving and recording each official bond, $10;

(d) for each commission or other document signed by the governor and attested by the secretary of state (pardon, military commissions, and extraditions excepted), $5;

(e) for issuing each certificate of record, $5;

(f) for filing and recording miscellaneous papers, records, or other documents, $5;

(g) for filing and recording any other paper not otherwise herein provided for, $5;

(h) for filing and recording any paper, record, or other document or other than a standard form when recommended by the secretary of state, $5;

(i) when a copy of any law, resolution, record, or other document or paper on file in the office of the secretary of state is presented for comparison and certification, 10 cents per folio must be charged and collected for proofreading the same.

(2) No member of the legislature or state or county officer can be charged for any search relative to matters appertaining to the duties of his office or be charged any fee for a certified copy of any law or resolution passed by the legislature relative to his official duties.

(3) Fees must be collected in advance and when collected by the secretary of state must be paid to the state treasurer at the end of each quarter, as provided in the constitution."

Section 19. Section 2-15-401, MCA, is amended to read:

"2-15-401. Duties of secretary of state. In addition to the duties prescribed by the constitution, it is the duty of the secretary of state to:

(1) attend at every session of the legislature for the purpose of receiving bills and resolutions thereof and to perform such other duties as may be devolved upon him by resolution of the two houses or either of them;

(2) keep a register of and attest the official acts of the governor;

(3) affix the great seal, with his attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

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(4) record in proper books all conveyances made to the state and all articles of incorporation filed in his office;

(5) receive and record in proper books the official bonds of all the state officers and then deliver the originals to the state treasurer;

(6) take and file in his office receipts for all books distributed by him and direct the county clerk of each county to do the same;

(7) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

(8) furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in his office;

(9) notify in writing the county attorney of the proper county of the failure of any officer in his county to file in his office the sworn statement of fees received by such officer;

(10) present to the legislature, at the commencement of each session thereof, a full account of all purchases made and expenses incurred in furnishing fuel, lights, and stationery;

(11) keep a fee book in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein;

(12) file in his office descriptions of seals in use by the different state officers and furnish such officers with new seals whenever required;

(13) discharge the duties of member of the board of examiners and of the board of land commissioners and all other duties required of him by law;

(14) report to the governor, at the time prescribed in 2-7-102, a detailed account of all official actions since his previous reports, accompanying the report with a detailed statement, under oath, of the manner in which all appropriations for his office have been expended;

(15) *register marks* as provided in *[sections 1 through 17]*;

(16) distribute the bound volumes of the decisions of the supreme court in the manner provided by 3-2-604;

(17) report annually to the legislative services division of the legislative council all changes of names received pursuant to 27-31-205 for publication in the session laws;

(18) report annually to the legislative services division of the legislative council all watercourse name changes received pursuant to 85-2-134 for publication in the session laws."

Section 20. **Savings.** This act does not affect any right which matured or proceeding which was commenced prior to July 1, 1980.

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Section 21. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 22. **Repealer.** Sections 30-13-101 through 30-13-107, MCA, are repealed.

Section 23. **Effective date.** This act is effective on July 1, 1980.

Approved March 31, 1979.

CHAPTER NO. 430

AN ACT TO AMEND SECTION 69-14-311, MCA, TO REVISE AND CLARIFY THE PROCEDURES FOR REVISION OF CLASSIFICATIONS, RATES, AND RULES OF SERVICE BY RAILROADS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-14-311, MCA, is amended to read:

"69-14-311. Procedure to alter classifications, rates, and rules of service. (1) The commission shall have the power from time to time to change, alter, amend, or abolish any classification or rate established by it when deemed necessary, as hereinafter provided.

(2) No change or revision of any rate, charge, classification, or rule of service contained in any tariff, classification, or rule of a railroad shall be made by any railroad without first obtaining approval therefor from the commission. Such changes or revisions shall be made by either of the methods hereinafter set forth:

(a) The railroad shall file an application with the commission describing the nature and extent of the change, alteration, or cancellation of the rate, classification, or rule sought, and the commission shall thereafter give not less than 10 days' notice, in the manner determined by the commission as most likely to give notice to the persons to be affected, of the time and place of public hearing to be held on the application by the commission, at which time and place the public generally or any person, firm, or corporation shall have an opportunity to present such facts, information, or statistics as shall be pertinent to the hearing then being held.

(b) The railroad shall file with the commission the tariff sheet or sheets containing such changes or revisions, plainly stating the changes or revisions to be made. *Whenever increased rates or charges will result, the proposed tariff sheets shall be accompanied at the time of filing by supporting testimony and exhibits prepared by the railroad. Additional testimony and exhibits may be submitted before or during the hearing provided for in 69-14-312 and may be submitted after the hearing with the approval of the commission.* The public shall be provided with such

notice of the proposed changes or revisions as the commission shall, by rule, require. The tariff sheet or sheets containing such changes or revisions shall be *filed with the commission 45 days before the proposed effective date. The changes or revisions are effective on the stated effective date unless disallowed or suspended by the commission before that date.* The commission may, for good cause, allow any change or revision to become effective *in* less than *45* days after the filing thereof."

Approved March 31, 1979.

CHAPTER NO. 431

AN ACT TO PROVIDE THE BOARD OF VETERINARIANS TO ESTABLISH LICENSE AND EXAMINATION FEES FOR VETERINARIANS AND VETERINARY TECHNICIANS AND TO REQUIRE APPLICANTS FOR VETERINARY TECHNICIAN LICENSES TO FILE APPLICATIONS AND FEES WITH THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING; AMENDING SECTIONS 37-18-302, 37-18-303, AND 37-18-401, MCA; PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-18-302, MCA, is amended to read:

"37-18-302. Application — qualification — fee. A citizen of the United States desiring to begin the practice of veterinary medicine or veterinary surgery in this state or who desires to hold himself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in 37-18-104, shall make application to the department for a license to do so. The application shall be on a form furnished by the department and shall be accompanied by satisfactory evidence of the good moral character of the applicant and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of the applicant shall be submitted to the department for inspection and verification. The photostatic copy remains the property of the department. A person applying for a license to practice shall pay to the department a *nonrefundable* fee *commensurate with the costs of the examinations and set annually by the board.*"

Section 2. Section 37-18-303, MCA, is amended to read:

"37-18-303. Examination — temporary permit pending examination. (1) Subject to 37-1-101, the board shall by means of examination, either oral, written, or practical or a combination of oral, written, or practical as the board determines, ascertain the professional qualifications for license of applicants under this part. An investigation under reciprocity arrangements may replace examination for licensees from other states under 37-18-304. The department shall issue a license to all who are found

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to be, in the judgment of the board, competent to practice. A license may not be issued to a person who is not found by the examination or investigation to be competent.

(2) The examination shall be held in January and June of each year at a time and place specified by the board. The examination shall cover theory and practice, pharmacology and therapeutics, animal sanitation, surgery, communicable diseases, and other subjects chosen by the board which are ordinarily included in the curriculum of a school of veterinary medicine recognized and approved by the American veterinary medical association.

(3) The department shall consecutively number applications received, note on each the disposition made of it, and preserve them for reference and shall number consecutively licenses issued.

(4) Applicants must achieve a grade of 70% in all subjects in order to obtain a license. An applicant who has failed an examination may apply to be reexamined at a subsequent examination and shall pay another application fee *commensurate with the costs of the examinations and set annually by the board* and shall take another complete examination in all subjects.

(5) An applicant for examination may, in the discretion of the board, be given a temporary permit to practice veterinary medicine prior to taking the examination if the applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this part. The temporary permit is valid only until the date of the next examination. Under no circumstances may a second temporary permit be issued to the same person. A temporary permit may not be issued to a person who has failed an examination given under this section."

Section 3. Section 37-18-401, MCA, is amended to read:

"37-18-401. Application — fee — qualifications of applicants. Each candidate for examination as a veterinary technician shall file, in his full name, an application for examination with the *department* at least 30 days before the date set by the board for the commencement of the examination and at the time of making the application shall pay the *department* a fee *commensurate with the costs of the examinations and set annually by the board*. The applicant shall furnish satisfactory proof that he is of good moral character and has earned a diploma or certificate from a school of veterinary technology offering a course of study recognized and approved by the board of veterinarians, as well as such other information as may be required by the board."

Section 4. **Effective date.** This act is effective upon passage and approval.

Approved March 31, 1979.

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CHAPTER NO. 432

AN ACT TO REPEAL THE PROGRAM PLANNING AND BUDGETING SYSTEM; REPEALING SECTIONS 17-7-104 THROUGH 17-7-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 17-7-104 through 17-7-106, MCA, are repealed.

Approved March 31, 1979.

CHAPTER NO. 433

AN ACT TO REVISE SECTIONS 53-1-301 AND 53-1-302, MCA, RELATING TO INDUSTRIAL ACTIVITIES PERMITTED AT INSTITUTIONS AND TO THE DEPOSIT OF MONEY FROM SALE OF AGRICULTURAL PRODUCTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-301, MCA, is amended to read:

"53-1-301. Permitted institutional industries, powers of department, and incentive pay to inmates. The department may:

(1) establish industries in institutions which will result in the production or manufacture of goods that may be needed by institutions and other state agencies and that will assist in the rehabilitation of residents in institutions;

(2) print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

(3) fix the sale price for goods produced or manufactured at institutions. Prices shall not exceed prices existing in the open market for goods of comparable quality.

(4) require institutions to purchase needed goods from other institutions;

(5) provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(6) provide for construction projects up to the aggregate sum of $25,000 per project, by residents of institutions; provided, however, said construction work is not covered by a collective bargaining agreement;

(7) provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(8) provide for the manufacture at an institution of motor vehicle license plates and other related articles;

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(9) with the approval of the department, sell agricultural products and livestock on the open market;

(10) provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions, *except when the manufacture of the signs is in violation of a collective bargaining contract*;

(11) pay an inmate of the state prison, from receipts from the sale of goods produced or manufactured at the institution where the resident resides or from the program that the inmate was working in, an amount not exceeding $1 per day as an incentive for the performance of work, based on the following criteria:

(a) knowledge and skill;

(b) attitude toward authority;

(c) physical effort;

(d) responsibility for equipment and materials;

(e) regard for safety of others."

Section 2. Section 53-1-302, MCA, is amended to read:

"53-1-302. Disposition of receipts from sale of goods. *Receipts* from the sale of goods produced or manufactured by an institution shall be deposited in the *revolving fund account* for the use of the industries program of the institution. *At the end of each fiscal year, not less than 75% of the unobligated balance in the revolving fund account shall be transferred to the general fund.*"

Section 3. **Supervision of industries program.** The industries program shall be supervised by the director of the department of institutions or his designated representative, provided the administration of the industries program is separate from the administration of any institution where the program may be located.

Approved March 31, 1979.

CHAPTER NO. 434

AN ACT TO AMEND SECTION 7-2-4736, MCA, RELATING TO GARBAGE AND SOLID WASTE SERVICE IN THE EVENT OF ANNEXATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-4736, MCA, is amended to read:

"7-2-4736. Preservation of existing garbage or solid waste service in the event of annexation. A municipality that annexes or

incorporates additional area receiving garbage and solid waste disposal service by a motor carrier authorized by the public service commission to conduct such service may not provide competitive or similar garbage and solid waste disposal service to the area for 5 years following annexation except upon a proper showing to the public service commission that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area, *and after the expiration of 5 years, the municipality may provide such service only if a majority of the residents of the annexed or incorporated area request in writing to the municipality that such service be provided by the municipality. If a proper showing is made that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area or if a majority of the residents request service from the municipality, the municipality may assume sole jurisdiction for garbage and solid waste disposal service to the entire annexed or incorporated area.*"

Approved March 31, 1979.

CHAPTER NO. 435

AN ACT TO CHANGE THE RESIDENCY STATUS OF MILITARY PERSONNEL, THEIR SPOUSES, AND THEIR DEPENDENT CHILDREN FOR PURPOSES OF IN-STATE TUITION FOR POSTSECONDARY VOCATIONAL-TECHNICAL EDUCATION AND FOR THE UNIVERSITY SYSTEM; AMENDING SECTIONS 20-25-501 AND 20-25-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-25-501, MCA, is amended to read:

"**20-25-501. Definitions.** (1) Terms used in this part are defined as follows:

(a) "Domicile" means a person's true, fixed, and permanent home and place of habitation.

(b) "Emancipated minor" means a person under the age of 18 years who supports himself from his own earnings or is married. A person who received more than 25% of the cost of supporting himself from any person other than an agency of the government shall not be considered an emancipated minor.

(c) "Minor" means a male or female person who has not obtained the age of 18 years.

(d) "Qualified person" means a person legally qualified to determine his own domicile.

(e) "Resident student" means:

(i) a student who has been domiciled in Montana for 1 year immediately preceding registration at any unit for any term or session for which

resident classification is claimed. Attendance as a full-time student at any college, university, or other institution of higher education shall not alone be sufficient to qualify for residence in Montana.

(ii) any graduate of a Montana high school whose parents, parent, or guardian have resided in Montana at least 1 full year of the 2 years immediately preceding his graduation from high school. Such classification shall continue for not more than 4 academic years if the student remains in continuous attendance at a unit; *or*

(iii) a member of the armed forces of the United States assigned to and residing in Montana, his spouse, or his dependent children.

(2) In the event the definition of residency or any portion thereof is declared unconstitutional as it is applied to payment of nonresident fees and tuition, the regents of the Montana university system shall have authority to make rules on what constitutes adequate evidence of residency status not inconsistent with such court decisions."

Section 2. Section 20-25-503, MCA, is amended to read:

"20-25-503. Presumptions and rules as to domicile. (1) Unless the contrary appears to the unit registering authority, it is presumed the domicile of a minor is that:

(a) of the parents or, if one of them is deceased or they do not share the same domicile, of the parent having legal custody or, if neither parent has legal custody, the parent with whom the minor customarily resides; or

(b) of his guardian when the court appointing the guardian certifies that the primary purpose of the appointment is not to qualify the minor as a resident of this state.

(2) A resident student who marries a nonresident does not by that fact alone lose resident status for tuition and fee purposes for a period of 4 years after marriage.

(3) *Residence* is not lost because of relocation as a member of the armed forces of the United States.

(4) A new domicile is established by a qualified person if he is physically present in Montana with no intention to acquire a domicile outside of Montana.

(5) Domicile is not lost by absence from Montana with no intention to establish a new domicile.

(6) Montana high school graduates are resident students of the system for 4 consecutive years of attendance if:

(a) they apply for admittance to the system within 1 year after graduation; or

(b) their parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom they customarily reside has resided in Montana in one of the 2 years immediately preceding the graduation.

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(7) Upon moving to Montana, an adult employed on a full-time basis within the state of Montana may apply for in-state tuition classification for his spouse or any dependent minor child, or both. If such person meets the requirement of full-time employment within the state of Montana and files for the payment of Montana state income taxes or files estimates of those taxes or is subject to withholding of those taxes and renounces his residency in any other state and is not himself in the state primarily as a student, his spouse or any dependent minor child, or both, may at the next registration after qualifying be classified at the in-state rate so long as he continues his Montana domicile. In the administration of this subsection, neither the full-time employee or spouse shall be eligible for in-state tuition classification if the primary purpose for coming to Montana was the education of the employee or spouse."

Approved March 31, 1979.

CHAPTER NO. 436

AN ACT TO AUTHORIZE A REVOLVING FUND IN THE OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION FOR THE DIVISION OF RESOURCES AND ASSESSMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Division of resources and assessment revolving fund.** The superintendent of public instruction shall establish a revolving fund within the office of public instruction for the division of resources and assessment. Funds derived from the sale of educational materials or services provided by the division of resources and assessment shall be deposited in the resources and assessment revolving fund. In addition to other available funds, the superintendent of public instruction shall use these funds for the operation and maintenance of the division of resources and assessment as authorized by 20-3-106(25).

Approved March 31, 1979.

CHAPTER NO. 437

AN ACT TO AMEND SECTION 17-6-103, MCA, TO AUTHORIZE THE STATE BOARD OF INVESTMENTS TO ACCEPT MORTGAGES AND TRUST INDENTURES ON REAL PROPERTY AS COLLATERAL TO SECURE DEPOSITS OF PUBLIC FUNDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-103, MCA, is amended to read:

"17-6-103. Security for deposits of public funds. The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:

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(1) direct obligations of the United States;

(2) securities as to which the payment of principal and interest is guaranteed by the United States;

(3) securities issued or fully guaranteed by the following agencies of the United States, whether or not guaranteed by the United States:

(a) commodity credit corporation;

(b) federal intermediate credit banks;

(c) federal land bank;

(d) bank for cooperatives;

(e) federal home loan banks;

(f) federal national mortgage association;

(g) government national mortgage association;

(h) small business administration; and

(i) federal housing administration;

(4) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;

(5) revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faith and credit of such subdivision;

(6) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state issued in evidence of claims in an amount which, with all other claims on the same fund, do not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;

(7) obligations of housing authorities of the state secured by a pledge of annual contributions or by a loan agreement made by the United States or any agency thereof providing for contributions or a loan sufficient with other funds pledged to pay the principal of and interest on the obligations when due. Subject to rules prescribed by the department of community affairs, the bonds and other obligations made eligible for investment in 32-1-424(3) and 7-15-4505 may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required or may by law be deposited as security.

(8) general obligation bonds of other states and of municipalities and counties of other states;

(9) undertaking or guarantees issued by a surety company authorized to do business in the state; *and*

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(10) first mortgages and trust indentures on real property. The depository shall, on a quarterly basis, certify to the state treasurer that sufficient first mortgages and trust indentures on real property are available and segregated to secure deposits of public funds. The board of investments shall determine the amount of security required."

Approved March 31, 1979.

CHAPTER NO. 438

AN ACT TO AUTHORIZE ISSUANCE OF A PHYSICIAN'S CERTIFICATE UPON CERTIFICATION BY THE NATIONAL BOARD OF EXAMINERS FOR OSTEOPATHIC PHYSICIANS AND SURGEONS, INCORPORATED; AMENDING SECTION 37-3-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-306, MCA, is amended to read:

"37-3-306. Physician's certificate — examination — reciprocity and endorsement. (1) The board may authorize the department to issue to an applicant a physician's certificate, certificate by reciprocity, or certificate by endorsement only on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, *by the national board of examiners for osteopathic physicians and surgeons, incorporated,* or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school which has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by this board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were, in the judgment of the board, essentially equivalent to those of this state for granting a license to practice medicine, if under the scope of the license or certificate the applicant was authorized to practice medicine in the other state, territory, or country.

(2) No applicant who applies for a license on the basis of an examination and fails the examination may be granted a license based on credentials from another state, territory, or foreign country or on a certificate issued by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors.

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(3) The board may adopt reciprocity or endorsement requirements current with changes in standards in the practice of medicine.

(4) The board may, in the case of an applicant for admission by reciprocity or endorsement, require a written or oral examination of the applicant.

(5) The board may require that graduates of foreign medical schools pass an examination given by the education council for foreign medical graduates or successors.

(6) Holders of the degree of doctor of osteopathy granted in 1955 or before will be certified only on the basis of taking and passing the examination given by the department, subject to 37-1-101. Holders of the degree of doctor of osteopathy granted after 1955 will be certified in the same manner as provided above for physicians."

Approved March 31, 1979.

CHAPTER NO. 439

AN ACT TO REESTABLISH THE OFFICE OF THE INVESTMENT COMMISSIONER IN THE STATE AUDITOR'S OFFICE UNDER EXISTING STATUTORY AUTHORITY AND RULES; AMENDING SECTION 2-8-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, will terminate the office of the investment commissioner in the state auditor's office and require a performance evaluation of the office of the investment commissioner by the legislative audit committee; and

WHEREAS, as a result of the performance evaluation, the legislative audit committee recommends that the office of the investment commissioner be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The office of the investment commissioner in the state auditor's office is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of public accountants, department of professional and occupational licensing, created by 2-15-1641;

(c) board of architects, department of professional and occupational licensing, created by 2-15-1651;

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(d) state banking board, department of business regulation, created by 2-15-1803;

(e) state electrical board, department of professional and occupational licensing, created by 2-15-1654;

(f) board of professional engineers and land surveyors, department of professional and occupational licensing, created by 2-15-1653;

(g) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(h) board of landscape architects, department of professional and occupational licensing, created by 2-15-1652;

(i) board of county printing, department of community affairs, created by 2-15-1102;

(j) board of plumbers, department of professional and occupational licensing, created by 2-15-1655;

(k) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(l) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(m) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

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(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(n) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(t) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(u) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish and game, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631;

(j) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(k) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agency shall terminate on July 1, 1985: office of the investment commissioner, state auditor's office, created by 2-15-1901."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 31, 1979.

CHAPTER NO. 440

AN ACT TO PROVIDE FOR EXCLUSIVE INSPECTION OF SMALL MODULAR HOME FACTORIES BY THE MUNICIPALITY IN WHICH THE FACTORY IS LOCATED.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Enforcement of building construction standards for modular homes.** (1) The provisions of this chapter apply to factory-built modular or prebuilt homes or buildings.

(2) A municipality may regulate the construction of factory-built modular or prebuilt homes or buildings as provided in 50-60-106 if:

(a) the homes or buildings are constructed inside the jurisdiction of the municipality;

(b) the homes or buildings are sold primarily to persons in the county in which the factory is located;

(c) the factory does not manufacture more than 100 homes or buildings a year; and

(d) the municipality has an agency or officer assigned to inspect and enforce building construction standards.

(3) Inspection and enforcement approval given by a municipality under this section may be recognized and accepted by any other municipality of the state to which the factory-built home or building is transported for final installation. Additional inspections need not be conducted.

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Section 2. **Codification.** Section 1 is intended to be codified as an integral part of Title 50, chapter 60, and the provisions contained in Title 50, chapter 60, apply to section 1.

Approved March 31, 1979.

CHAPTER NO. 441

AN ACT REQUIRING THE DEPOSIT OF ALL REVENUE GENERATED FROM THE SALE OF STORE LICENSES INTO THE GENERAL FUND; AMENDING SECTION 15-57-109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-57-109, MCA, is amended to read:

"15-57-109. Employment of staff — disposal of license money. The department of revenue may employ such clerical and field assistance as necessary to carry out and administer the provisions of this chapter. All money collected under the provisions of this chapter shall be paid into the state treasury *and credited to the general* fund. *Administration* of Title 30, chapter 14, part 2, *is the responsibility of* the department of business regulation."

Approved March 31, 1979.

CHAPTER NO. 442

AN ACT TO AMEND SECTION 10-2-504, MCA, TO INCREASE THE COUNTY CONTRIBUTION FOR A VETERAN'S GRAVESTONE FROM $20 TO $30.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-2-504, MCA, is amended to read:

"10-2-504. Duty of clerk. It shall be the duty of the clerk of the board of county commissioners, upon receiving the report and statement of expenses, to transcribe in a book to be kept for that purpose all the facts contained in such report concerning such serviceman or servicewoman. It shall also be the duty of the clerk, upon receiving the report of the burial of such deceased person, to make application to the proper authorities under the government of the United States for a suitable headstone as provided by act of congress and to cause the same to be placed at the head of the grave of such serviceman or servicewoman, the expense of which shall not exceed the sum of *$30* for cartage of and properly setting up each stone. The expense thus incurred shall be audited and paid as provided in 10-2-502 for the burial expenses."

Approved March 31, 1979.

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CHAPTER NO. 443

AN ACT TO GENERALLY REVISE AND CLARIFY THE LOCAL GOVERNMENT LAWS RELATING TO LOCAL GOVERNMENT OFFICERS; REPEALING SECTIONS 16-2616, 16-3105, AND 25-603, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2203, MCA, is amended to read:

"7-4-2203. County officers. (1) There may be elected or appointed the following county officers, who shall possess the qualifications for suffrage prescribed by the Montana constitution and such other qualifications as may be prescribed by law:

(a) one county attorney;

(b) one clerk of the district court;

(c) one county clerk;

(d) one sheriff;

(e) one treasurer;

(f) one auditor if authorized by 7-6-2401;

(g) one county superintendent of schools;

(h) one county surveyor;

(i) one assessor;

(j) one coroner;

(k) one public administrator; and

(l) at least one justice of the peace.

(2) The commissioners may appoint at their discretion constables. Not more than one constable may be appointed for each *justice's* court.

(3) *All* elective township officers may be elected at each general election as now provided by law."

Section 2. Section 7-4-2209, MCA, is amended to read:

"7-4-2209. Authority to administer oaths. Every officer mentioned in *7-4-2203(1)* may administer and certify oaths."

Section 3. Section 7-4-2213, MCA, is amended to read:

"7-4-2213. Inspection of official bonds. (1) At *a* regular *meeting of the board* of county commissioners in March and September of each year, *the* board of county commissioners shall carefully examine all official bonds of all county and township officials then in force and effect and investigate the qualifications and financial condition and liability of all sureties thereon and their sufficiency.

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(2) If it appears to the satisfaction of *the* board or a majority of the members thereof that any surety upon any such bond has, since the approval and acceptance of such bond, died or withdrawn therefrom; *left* the state; disposed of all of his property in this state; or become *mentally ill*, insolvent, financially embarrassed, or not good and responsible for the amount of his liability thereon, *the* board shall immediately cause the clerk of *the* board to notify in writing the judge of the district court of that district of its action and conclusion and all facts in connection therewith and the reasons thereof.

(3) *The* judge shall take cognizance thereof and investigate such matter and take steps, by order to show cause or other order, citation, step, or action, as may be necessary to make such bond good and sufficient according to the requirements of law and ample security for the amount thereof."

Section 4. Section 7-4-2301, MCA, is amended to read:

"7-4-2301. Authorization to consolidate county offices. (1) Except as provided in subsection (2), the board of county commissioners of any county may in its discretion consolidate any two or more of the offices named in 7-4-2203 and combine the powers and the duties of the consolidated offices.

(2) The office of the justice of the peace may not be combined or consolidated with any other office other than another justice of the peace office."

Section 5. Section 7-4-2306, MCA, is amended to read:

"7-4-2306. Processing of petition — resolution of intent and hearing. (1) Upon the filing of *a* petition *for consolidation*, the board or boards of county commissioners shall cause the county clerk or clerks to examine the *petition* and the registration records of the county *or counties*.

(2) If after such examination *the* county clerk or clerks report to *the* board or boards of county commissioners that *the* petition *has* been signed by not less than 15% of the qualified electors of the county whose names appear on *the* registration records, *the* board or boards shall set a date for a hearing *and pass a resolution of intent* to consider *the* consolidation. Upon passage of the resolution of intent by the board or boards, proper notice shall be *given* for *the* hearing. The date for the hearing *may* not *be* more than 20 days after the filing of *the* petition or the passage of the resolution of intent."

Section 6. Section 7-4-2310, MCA, is amended to read:

"7-4-2310. Order for consolidation of offices. (1) In consolidating county offices, the board of county commissioners shall, 6 months prior to the general election held for the purpose of *filling the offices to be consolidated* or 6 months prior to the appointment *to the offices to be consolidated*, make and enter an order combining any two or more of the within-named offices.

(2) Whenever an order consolidating two or more offices *is made, the* order shall be entered in full on *the board's* minutes of proceedings.

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(3) *The* order shall be published in a newspaper of general circulation, printed and published in the county or counties affected, for a period of 2 successive weeks following the date of the making and *entering* of *the* order."

Section 7. Section 7-4-2313, MCA, is amended to read:

"7-4-2313. Deputies and personnel for consolidated offices. (1) *Whenever* county offices are consolidated, the *officer* of the consolidated *office* may appoint *as many deputies as are* approved by the board or boards of county commissioners.

(2) The board or boards shall determine the number of deputies, stenographers, and clerks the officers may appoint."

Section 8. Section 7-4-2501, MCA, is amended to read:

"7-4-2501. Compensation of county officers. (1) The county surveyor *(if not receiving a salary under 7-4-2812), the county* coroner *(if not receiving a salary under 7-4-2922), and the* public administrator may collect and receive for their own use, respectively, for official services, the fees and emoluments prescribed *by law.*

(2) All other county officers receive salaries."

Section 9. Section 7-4-2502, MCA, is amended to read:

"7-4-2502. Payment of salaries of county officials and assistants. (1) Except as provided in subsection (2), the salaries of the county officers and their assistants must be paid monthly out of the general fund of the county and upon the order of the board of county commissioners.

(2) (a) The salary of the county attorney is payable monthly, with one-half from the general fund of the county and the other one-half from the state treasury upon the warrant of the state auditor.

(b) The county commissioners of each county shall, within 30 days after the election or appointment to fill a vacancy for any cause *in the office* of county attorney, certify *the* election or appointment to the state auditor, who shall thereafter draw warrants for such salary in the same manner as for state officers. In case of a vacancy, the county commissioners shall immediately notify the state auditor, and the auditor shall compute the salary due on the basis of *the* notification.

(3) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to fix the compensation of all county officers not otherwise fixed by law and to provide for the payment of the same."

Section 10. Section 7-4-2504, MCA, is amended to read:

"7-4-2504. Salaries to be fixed by resolution. The county commissioners shall by resolution, on or before July 1 of each year, fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, and county attorney; the clerk of the district court; *the county auditor (if there is one); the county surveyor (if he receives a salary); and the county coroner (if he receives a salary)* for

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the following fiscal year in conformity with the appropriate statutory salary schedule pertaining to each office. The salary schedule used for each office shall be the statutory schedule in effect on the first day of the following fiscal year."

Section 11. Section 7-4-2511, MCA, is amended to read:

7-4-2511. Collection and disposal of fees. (1) *Each* salaried *county officer* must charge and collect for the use of *his county* and pay into the county treasury on the first Monday in each month all fees now or hereafter allowed by law, paid or chargeable in all cases, except as provided in 25-10-403. Nothing in this subsection *applies* to the compensation received by the sheriff as mileage while in the performance of official duties or for the board of prisoners or other persons while in his custody.

(2) No *salaried* county officer *may* receive for his own use any fees, penalties, or emoluments of any kind, except the salary as provided by law, for any official service rendered by him. *Unless otherwise provided,* all fees, penalties, and emoluments of every kind collected by *a salaried county officer are* for the sole use of the county and must be accounted for and paid to the county treasurer as provided by subsection (1) and credited to the general fund of the county."

Section 12. Section 7-4-2512, MCA, is amended to read:

"7-4-2512. Statement and affidavit of fees collected. (1) The fees and compensation collected and chargeable for the use of the county in each month must be paid to the county treasurer on the first Monday of the following month and must be accompanied by a statement and copy of the fee book for the preceding month, duly verified by the officer making *the* payment.

(2) The affidavit must be in the following form:

State of Montana

County of ....

I, ..., of the county of ...., do swear that the fee book in my office contains a true statement in detail of all fees and compensations of every kind and nature for official services rendered by me, paid or chargeable, or by my deputies or assistants for the month of ...., 19.., and that *this* fee book shows the full amount received or chargeable in said month and since my last monthly payment; and neither myself nor, to my knowledge or belief, any of my deputies or assistants have rendered any official service, except for the county or state, which is not fully set out in *this* fee book; and that the foregoing statement is a full, true, and correct copy thereof.

..... *(Signature)*

Subscribed and sworn to before me this ... day of ...., 19...

Seal ..... *(Person authorized to take oaths)*
..... *(Title or notarial information)"*

Section 13. Section 7-4-2519, MCA, is amended to read:

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"**7-4-2519. Prohibition upon receiving other fees.** The officers named above *may* receive no other fees for any services performed by them in any action or proceeding or for the performance of any service for which fees are allowed, *and* the party demanding or receiving any fees not herein allowed is liable to refund the same to the party aggrieved, with treble the *amount* as damages, *in addition to the cost* of suit."

Section 14. Section 7-4-2613, MCA, is amended to read:

"**7-4-2613. Documents subject to recording.** The county clerk must, upon payment of his fees for the same, record, photograph, or correctly copy, separately, in large and well-bound or to be bound separate books, either in a fair hand or by printing, typewriting, or photographic process or by the use of prepared blank forms:

(1) deeds, grants, transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property any part of which is situated in the county, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, leases which have been acknowledged or proved, and abstracts of such instruments which have been acknowledged or proved;

(2) certificates of births and deaths;

(3) wills devising real estate admitted to probate;

(4) official bonds;

(5) transcripts of judgments which by law are made liens upon real estate;

(6) instruments describing or relating to the individual property of married persons;

(7) all orders and decrees made by the district court in probate matters affecting real estate and which are required to be recorded;

(8) notice of preemption claims;

(9) notice and declaration of water rights;

(10) assignments for the benefit of creditors;

(11) affidavits of annual work done on mining claims;

(12) notices of mining locations and declaratory statements;

(13) estrays and lost property;

(14) a book containing appraisement of state lands;

(15) such other writings as are required or permitted by law to be recorded."

Section 15. Section 7-4-2615, MCA, is amended to read:

"**7-4-2615. Records of water users' associations.** In each county where water users' associations organized in conformity with the

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federal reclamation laws of the United States *exist*, the county commissioners are required to furnish the county recorder *with books* for the proper recording of stock subscriptions, contracts, articles of incorporation, and stock certificates of such *associations*, containing printed blank forms of *the* stock subscriptions, contracts, articles of incorporation, and stock certificates. *The* forms *are* to be prepared by the attorney general and used by the county recorder for the recording of all such stock subscriptions, contracts, articles of incorporation, and stock certificates."

Section 16. Section 7-4-2619, MCA, is amended to read:

"7-4-2619. Indexes to recorded documents. Every county clerk, as ex officio recorder, must keep:

(1) an index of deeds, grants, and transfers and contracts to sell or convey real estate labeled "Grantors", with each page divided into four columns headed, respectively: "Names of grantors", "Names of grantees", "Date of deeds, grants, transfers, or contracts", and "Where recorded";

(2) an index of deeds labeled "Grantees", with each page divided into four columns headed, respectively: "Names of grantees", "Names of grantors", "Date of deeds, grants, transfers, or contracts", and "Where recorded";

(3) an index of mortgages labeled "Mortgages of real property", with *each page* divided into six columns headed, respectively: "Names of mortgagors", "Names of mortgagees", "Dates of mortgages", "Where recorded", "When filed", and "When canceled";

(4) an index of mortgages labeled "Mortgages of real property", with *each page* divided into six columns headed, respectively: "Names of mortgagees", "Names of mortgagors", "Date of mortgage", "Where recorded", "When filed", and "When canceled";

(5) an index of mortgages labeled "Releases of mortgages of real property—Mortgagees", with *each page* divided into six columns headed, respectively: "Parties whose mortgages are released", "Parties releasing", "Date of release", "Where recorded", "Dates of mortgages released", and "Where mortgages released are recorded";

(6) an index of powers of attorney labeled "Powers of attorney", with each page divided into five columns headed, respectively: "Names of parties executing powers", "To whom powers are executed", "Date of powers", "Date of recording", and "To whom powers are executed";

(7) an index of leases labeled "Leases", with each page divided into four columns headed, respectively: "Names of lessors", "Names of lessees", "Date of leases", and "When and where recorded";

(8) an index of leases labeled "Lessees", with each page divided into four columns headed, respectively: "Names of lessees", "Names of lessors", "Date of leases", and "When and where recorded";

(9) an index of marriage certificates labeled "Marriage certificate—Men", with each page divided into six columns headed, respectively:

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"Men married", "To whom married", "When married", "By whom married", "Where married", and "Where certificates are recorded";

(10) an index of marriage certificates labeled "Marriage certificates—Women", with each page divided into six columns headed, respectively: "Women married" (and under this head placing the family names of the women), "To whom married", "When married", "By whom married", "Where married", and "Where certificates are recorded";

(11) an index of assignments of mortgages and leases labeled "Assignments of mortgages and leases—Assignors", with each page divided into five columns headed, respectively: "Assignors", "Assignees", "Instruments assigned", "Date of assignment", and "When and where recorded";

(12) an index of assignments of mortgages and leases labeled "Assignments of mortgages and leases—Assignees", with each page divided into five columns headed, respectively: "Assignees", "Assignors", "Instruments", "Date of assignment", and "When and where recorded";

(13) an index of wills labeled "Wills", with each page divided into four columns headed, respectively: "Names of testators", "Date of will", "Date of probate", and "When and where recorded";

(14) an index of official bonds labeled "Official bonds", with each page divided into five columns headed, respectively: "Names of officers", "Names of offices", "Date of bond", "Amount of bond", and "When and where recorded";

(15) an index of notices of mechanics' liens labeled "Mechanics' liens", with each page divided into three columns headed, respectively: "Parties claiming liens", "Against whom claimed", and "Notices, when filed";

(16) an index to transcripts of judgments labeled "Transcripts of judgments", with each page divided into seven columns headed, respectively: "Judgment debtors", "Judgment creditors", "Amount of judgment", "Where recovered", "When recovered", "When transcript filed", and "When judgment satisfied";

(17) an index of attachments labeled "Attachments", with each page divided into six columns headed, respectively: "Parties against whom attachments are issued", "Parties issuing attachments", "Notices of attachments", "When filed", and "When attachments discharged";

(18) an index of notices of the pendency of actions labeled "Notices of actions", with each page divided into three columns headed, respectively: "Parties to actions", "Notices, when recorded", and "When filed";

(19) an index of certificates of sale of real estate sold under execution or under orders made in any judicial proceedings labeled "Certificates of sale", with each page divided into four columns headed, respectively: "Plaintiff", "Defendant", "Purchaser at sale", and "Date of sale";

(20) an index of the individual property of married persons labeled "Individual property of married persons", with each page divided into five columns headed, respectively: "Names of married persons", "Names of

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their spouses", "Nature of instruments recorded", "When recorded", and "Where recorded";

(21) an index to affidavits for annual work done on mining claims labeled "Annual work on mining claims", *with each page divided into four columns headed, respectively: "Name* of the affiant", *"Name* of the claim", *"Where* situated", and *"Year* when the work was done";

(22) an index of mining claims and declaratory statements labeled "Notices of location of mining claims and declaratory statements", with each page divided into four columns headed, respectively: "Locators", "Name of claim", "Notice, when filed", and "Where recorded";

(23) an index to the register of births and deaths;

(24) an index to notices and declarations of water rights;

(25) an index to the "estray and lost property book";

(26) an index to the record of assignments for the benefit of creditors, containing names of assignor and assignee, date and where recorded, and inventory, when filed;

(27) an index to financing statements as provided in Part 4 of the Uniform Commercial Code—Secured Transactions;

(28) an index to filed subdivision plats, containing number of lots, number of acres, filing date, and the location of the quarter section of each subdivision;

(29) an index to the book of maps and plats, which must contain the name of the proprietor of the town, village, or addition platted and a general description of the same;

(30) a miscellaneous index, in which must be indexed papers not hereinbefore stated."

Section 17. Section 7-4-2703, MCA, is amended to read:

"7-4-2703. Limitation on number of deputies. *In counties of the first and second class, the county attorney may appoint one chief deputy and one deputy. In all other counties, the county attorney may appoint a chief deputy or a deputy only with the approval of the board of county commissioners.*"

Section 18. Section 7-4-2714, MCA, is amended to read:

"7-4-2714. Recovery of illegally paid money. *Whenever* the board of county commissioners, without authority of law, orders any money paid as a salary or fee or for any other purpose and such money has been actually paid or *whenever* any other county officer has drawn *a* warrant in his own favor or in favor of any other person without being authorized by the board or by law and the same has been paid, the county attorney is empowered and it is his duty to institute an action in the name of the county against such person to recover the money and 25% damages for the use thereof. No order of the board therefor is necessary to maintain *this* suit. *Whenever* the money has not been paid on *the* order or warrant,

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it is the duty of the county attorney, upon receiving notice thereof, to commence an action in the name of the county for restraining the payment of the same, and no order of the board is necessary to maintain *the* action."

Section 19. Section 7-4-2803, MCA, is amended to read:

"7-4-2803. Situations involving use of other surveyors. (1) *Whenever* the county surveyor is interested in any land the title to which is in dispute and a survey thereof is necessary, the court must direct the survey to be made by some disinterested person. The person so appointed is, for the purpose, authorized to administer and certify oaths. He *shall* return *the* survey, verified by his affidavit annexed thereto, and receive for his services the same fees as the county surveyor would be entitled to for similar services.

(2) *Whenever* the county surveyor neglects, refuses, or is incompetent to perform the duties prescribed in *this part*, it *is* the duty of the board of county commissioners to employ another competent civil engineer, who shall be subject to the *laws* governing the county surveyor."

Section 20. Section 7-4-2911, MCA, is amended to read:

"7-4-2911. Duties of county coroner. (1) The coroner must hold inquests as provided in Title 46, chapter 4, parts 1 and 2.

(2) In the cases specified in 25-3-205, the coroner must discharge the duties of sheriff. If acting as sheriff, the coroner is allowed the same fees as sheriff or constable for like services."

Section 21. Section 7-4-2912, MCA, is amended to read:

"7-4-2912. Coroner's register. *The county* coroner *shall* keep an official register, to be labeled "coroner's register", *as provided in 46-4-207.*"

Section 22. Section 7-4-2913, MCA, is amended to read:

"7-4-2913. Payment of costs of inquest. Whenever an inquest is held *because of the death of an individual confined in the state prison*, the county clerk of the county where *the* inquest is *held* shall make out a statement of all the costs incurred by the county in *the* inquest, properly certified by the coroner of *the* county. This statement shall be sent to the department of institutions for approval, and after approval, the department *shall pay the* costs out of the money appropriated for the support of the state prison to the county treasurer of the county where *the* inquest was *held.*"

Section 23. Section 7-4-3006, MCA, is amended to read:

"7-4-3006. Limitation on number of deputy district court clerks. The whole number of deputies allowed the clerk of the district court *may* not exceed one chief deputy and *up to*:

(1) six *deputies* in counties of the first *or* second *class*;

(2) four *deputies* in counties of the third *or* fourth *class* having more than one district judge;

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(3) two *deputies* in counties of the third *or* fourth *class* having one district judge;

(4) one *deputy* in counties of the fifth, sixth, *or* seventh *class.*"

Section 24. Section 7-4-4105, MCA, is amended to read:

"**7-4-4105. Authority to abolish appointive municipal offices.** The city or town council *may* abolish, by a majority vote of the council, any office the appointment to which is made by the mayor with the advice and consent of the council and *may* discharge any officer so appointed."

Section 25. Section 7-4-4114, MCA, is amended to read:

"**7-4-4114. Municipal executive officers.** (1) The executive officers of a city or town are the mayor, the marshal *(if there is one)*, and such officers as the council may provide for assessment*; collecting*, auditing, safekeeping, and disbursing the revenue*;* and keeping the records and journals of the city or town.

(2) The mayor is the chief executive officer of the city or town."

Section 26. Section 7-4-4201, MCA, is amended to read:

"**7-4-4201. Salary of officers.** (1) The council must by ordinance fix the salaries and compensation of the city officers, policemen, and other employees, which *may* not exceed the *amounts* specified in this code.

(2) The salary and compensation of an officer *may* not be increased or diminished during his term of office."

Section 27. Section 7-4-4301, MCA, is amended to read:

"**7-4-4301. Qualifications for mayor.** (1) No person *is* eligible *for* the office of mayor unless he:

(a) at least 21 years old;

(b) a resident of the state for at least 3 years; and

(c) a resident *for at least 2 years preceding the election to office* of the city or town or an area which has been annexed by the city or town.

(2) *The office of mayor of a city or town is considered vacant if the individual elected as mayor ceases to be a resident of the city or town.*"

Section 28. Section 7-4-4401, MCA, is amended to read:

"**7-4-4401. Qualifications for alderman.** No person *is* eligible *for* the office of alderman unless he *is* a resident *for at least 60 days preceding the election to office* of the ward electing him or of an area which has been annexed by the city or town and placed in *the* ward."

Section 29. Section 7-4-4402, MCA, is amended to read:

"**7-4-4402. Term of office.** (1) Except as provided in subsection (2), *an* alderman shall hold office for a term of 4 years and until the qualification of his successor.

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(2) At the first annual election held after the organization of a city or town under this title, the electors of *the* city or town must elect two aldermen from each ward, who must, at the first meeting of the council, decide by lot their terms of office, with one from each ward to hold for a term of *4* years and one, for *a* term of *2 years* and until the qualification of their successors. In the succeeding election and thereafter, one alderman from each ward will be elected for a 4-year term."

Section 30. **Repealer.** Sections 16-2616, 16-3105, and 25-603, R.C.M. 1947, are repealed.

Approved March 31, 1979.

CHAPTER NO. 444

AN ACT TO REQUIRE IRRIGATION DISTRICTS AND OTHER USERS OF STORED WATER TO SHARE THE EXPENSES AND COSTS OF A WATER COMMISSIONER APPOINTED TO ADMEASURE AND DISTRIBUTE WATER STORED IN A RESERVOIR; AMENDING SECTION 85-5-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-5-101, MCA, is amended to read:

"85-5-101. Appointment of water commissioners. (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, it shall be the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected by the decree, in the exercise of his discretion, to appoint one or more commissioners. The commissioners shall have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates and permits issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may, in his discretion, appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a final decree issued under chapter 2 of this title, the judge of the district court which issued the final decree shall upon application by the department of natural resources and conservation appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any

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other owner of stored waters may petition the court to have such stored waters distributed by the water commissioners appointed by said court. The court may thereupon make an order requiring the commissioner or commissioners appointed by the court to distribute such stored water when and as released to water users entitled to the use thereof.

(4) At the time of the appointment of such water commissioner or commissioners, the district court shall fix their compensation, and the owners and users of the distributed waters shall pay their proportionate share of such fees and compensation.

(5) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir which is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district wherein the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute such stored water to said irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. His compensation is set by the appointing judge and paid by *each district and other users of stored water affected by the admeasurement and distribution of such stored water.* In all other matters the provisions of this chapter apply so long as they are consistent with this subsection."

Approved March 31, 1979.

CHAPTER NO. 445

AN ACT TO PROVIDE FOR THE REMOVAL AND DISPOSAL OF ABANDONED MOTOR VEHICLES ON PRIVATE PROPERTY; AMENDING SECTION 61-12-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-12-401, MCA, is amended to read:

"61-12-401. Taking vehicle into custody. (1) The following law enforcement agencies may take into custody any motor vehicle found abandoned for a period of 48 hours or more on any public highway, or for a period of 5 days or more on any city street, public property, *or private property*:

(a) the Montana highway patrol if the vehicle is upon the right-of-way of any public highway other than a county road;

(b) the sheriff of the county if the vehicle is upon the right-of-way of any county road within the county;

(c) the city police if the vehicle is upon a city street within the city.

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(2) The Montana highway patrol, sheriff of the county, or the city police may use its or his personnel, equipment, and facilities for the removal and preservation of the vehicle, or may hire other personnel, equipment, and facilities for those purposes.

(3) At the request of the owner or person in lawful possession or control of the private property, the sheriff of the county in which the vehicle is located or the city police of the city in which the vehicle is located may remove and hold it in the manner and upon the conditions provided in subsections (1) and (2)."

Approved March 31, 1979.

CHAPTER NO. 446

AN ACT TO AUTHORIZE THE ATTORNEY GENERAL TO AUDIT AND ALLOW THE PAYMENT OF EXPENSES TO SHERIFFS WHO TRANSPORT CERTAIN PRISONERS AND MENTALLY ILL PERSONS; AMENDING SECTIONS 7-32-2128, 7-32-2144, AND 46-30-411, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-2128, MCA, is amended to read:

"**7-32-2128. False claims by sheriff.** (1) Every sheriff who falsely represents to the board of county commissioners the actual expenses of boarding prisoners, for furnishing food and supplies therefor, or for any service rendered in connection therewith or presents to said board false items in a claim or false vouchers or makes any profit whatever out of the board or keeping of prisoners in his custody and every person who gives a false item or false voucher to be used by such sheriff in any claim against the county before such board is guilty of a misdemeanor.

(2) Every sheriff who falsely represents to the board of county commissioners or *attorney general* his actual traveling expenses in the performance of any official duty or causes to be paid to him from the state or any county treasury a sum exceeding his actual expenses in the performance of such duty is guilty of a misdemeanor."

Section 2. Section 7-32-2144, MCA, is amended to read:

"**7-32-2144. Mileage and expenses of sheriff for delivery of prisoners and mentally ill persons.** (1) Sheriffs delivering prisoners at the state prison or reform school or mentally ill persons at the state hospital shall receive actual expenses necessarily incurred in their transportation. The expenses shall include the expenses of the sheriff in going to and returning from such institution. They shall take vouchers for every item of expenses incurred by them in such transportation. The amount of these expenses, as shown by the vouchers when served by said sheriff, shall be audited and allowed by the *attorney general* or by the board of county commissioners, as the case may be, and paid out of the same money and

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in the same manner as are other expense claims against the state or counties. In determining the actual expense if travel is by a privately owned vehicle, the mileage rate shall be allowed as provided in subsection (2). No other or further compensation shall be received by sheriffs for such expenses.

(2) While in the discharge of his duties, both civil and criminal, the sheriff shall receive a mileage allowance as provided in 2-18-503. The sheriff shall also be reimbursed for actual and necessarily incurred expenses for transporting, lodging, and meals of persons ordered by the court as provided in 2-18-501 through 2-18-503. The county shall not be liable for and the board of county commissioners shall not pay for any claim of the sheriff or other officer for any other expenses incurred in travel or for subsistence in cases where mileage is allowed under this section, the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work."

Section 3. Section 46-30-411, MCA, is amended to read:

"46-30-411. Expenses of bringing fugitives back to this state. (1) When the governor of this state, in the exercise of the authority conferred by section 2, Article IV, of the constitution of the United States or by the laws of this state, demands from the executive authority of any state of the United States or of any foreign government the surrender to the authorities of this state of a fugitive from justice who has been found and arrested in such state or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the *attorney general* and paid out of the state treasury.

(2) An agent of this state authorized to return a fugitive from justice to this state may utilize commercial transportation, aircraft, or motor vehicle to return the fugitive. The agent shall be paid travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in returning the fugitive to this state."

Approved March 31, 1979.

CHAPTER NO. 447

AN ACT PROVIDING THAT IN CITIES OF THE FIRST, SECOND, AND THIRD CLASSES THE CITY TREASURER SHALL BE APPOINTED; PROVIDING THAT THE CITY ENGINEER SHALL BE OMITTED AS AN OFFICER THAT MAY BE APPOINTED BY THE CITY COUNCIL; AND AMENDING SECTIONS 7-4-4101 AND 7-4-4102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-4101, MCA, is amended to read:

"7-4-4101. Officers of city of first class. (1) The officers of a city of the first class consist of:

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(a) one mayor;

(b) two aldermen from each ward;

(c) one city judge.

(2) The officers listed in subsection (1) must be elected by the qualified electors of the city, as hereinafter provided.

(3) There may also be appointed by the mayor, with the advice and consent of the council:

(a) one city attorney;

(b) one city clerk;

(c) one city treasurer or finance officer or one city clerk-treasurer;

(d) one chief of police;

(e) one assessor;

(f) one street commissioner;

(g) one city jailer;

(h) one city surveyor; *and*

(i) any other officers necessary to carry out the provisions of this title.

(4) The city council may by ordinance prescribe the duties of all city officers and fix their compensation."

Section 2. Section 7-4-4102, MCA, is amended to read:

"7-4-4102. Officers of city of second or third class. (1) The officers of a city of the second or third class consist of:

(a) one mayor;

(b) two aldermen from each ward;

(c) one city judge.

(2) The officers listed in subsection (1) must be elected by the qualified electors of the city as hereinafter provided.

(3) There may also be appointed by the mayor, with the advice and consent of the council:

(a) one city attorney;

(b) one city clerk, who is ex officio city assessor;

(c) one city treasurer or one city clerk-treasurer;

(d) one chief of police; and

(e) any other officers necessary to carry out the provisions of this title.

(4) The city council may prescribe the duties of all city officers and fix their compensation."

Approved March 31, 1979.

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CHAPTER NO. 448

AN ACT TO PROTECT PRIVATE MOTOR CARRIERS AUTHORIZED BY THE PUBLIC SERVICE COMMISSION TO PROVIDE GARBAGE AND SOLID WASTE SERVICES TO A MUNICIPALITY FROM COMPETITION FROM OR REPLACEMENT BY PUBLIC SERVICES WITHOUT FAIR COMPENSATION FOR EQUIPMENT OR WITHOUT A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Protection of private waste disposal service in municipality.** A municipality, as of January 1, 1979, that receives garbage and solid waste disposal services from a private motor carrier authorized by the public service commission to provide such service may not, by ordinance or otherwise, elect to provide exclusive garbage and solid waste service unless the municipality pays the private motor carrier fair market value for his equipment or unless the municipality delays commencing the public service for a period of 5 years from the date of the decision by the municipality to provide the garbage and solid waste services. The private motor carrier shall be given notice of the decision by the municipality to provide exclusive garbage and solid waste services no later than 10 days after the decision has been made by the municipality.

Approved March 31, 1979.

CHAPTER NO. 449

AN ACT TO AMEND SECTION 37-11-201, MCA, BY REMOVING THE MANDATORY REQUIREMENT OF AN ANNUAL MAILING OF A LIST OF PHYSICAL THERAPIST LICENSEES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-11-201, MCA, is amended to read:

"37-11-201. Rulemaking power — records. (1) The board may adopt rules to carry this chapter into effect.

(2) The department shall keep a record of the board's proceedings under this chapter and a register of persons licensed under it. The register shall show the name of every living licensed physical therapist, his last-known place of business, last-known place of residence, and the date and number of his license and certificate as a licensed physical therapist.

(3) The department shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized to practice physical therapy in the state and shall mail a copy of that list, *upon request,* to the superintendent of every known hospital and every person licensed to practice medicine and surgery

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in the state. An interested person in the state is entitled to obtain a copy of the list on application to the department and payment of an amount not in excess of the cost of the list so furnished."

Approved March 31, 1979.

CHAPTER NO. 450

AN ACT TO REMOVE THE REQUIREMENT THAT THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES PAY THE COUNTY SHARE OF PUBLIC ASSISTANCE FOR 1 YEAR AND TO REMOVE THE 1-YEAR RESIDENCY REQUIREMENT FOR LIABILITY WHEN A RECIPIENT OF PUBLIC ASSISTANCE MOVES TO ANOTHER COUNTY; AMENDING SECTIONS 53-2-610, 53-3-306, 53-4-231, AND 53-4-247, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-610, MCA, is amended to read:

"53-2-610. County to reimburse department. (1) On or before the 20th of each month, the department of social and rehabilitation services shall present a claim for reimbursement to each county department for its proportionate share of public assistance granted in the county to recipients during the month and for vendor medical payments made on behalf of recipients in the previous month. The county department shall make the reimbursement to the department of social and rehabilitation services within 20 days after the claim is presented.

(2) The counties shall not be required to reimburse the department of social and rehabilitation services for any portion of old-age assistance, medical assistance, aid to needy dependent children, aid to needy blind, or aid to the totally disabled paid to ward Indians or for any payment on behalf of any person in a state-operated medical institution. The federal government may reimburse the state of Montana in behalf of counties providing general relief to ward Indians a sum in lieu of taxes which the counties would collect if the lands of such ward Indians were not in trust status.

(3) (a) *From the original date of entrustment or the original date of state residency, whichever is earlier, recipients* of public assistance who become wards or patients in a licensed nursing home or hospital, foster home, or private charitable institution shall *be the financial responsibility of the appropriate county as provided in subsections (3)(b), (3)(c), and (3)(d) of this section.*

(b) The county in which commitment of an adult is initiated is considered the county of financial responsibility except where court decree declares the residency to be otherwise. When an adult is transferred from a facility or institution to one of the above-enumerated facilities, the county which initiated the original commitment is considered the county of financial responsibility except in the case of an adult transfer from an

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out-of-state institution, in which case the county in which the facility is located is considered the county of financial responsibility.

(c) In all cases where a minor patient or ward is involved, the county of financial responsibility is the county in which the parent or guardian resides. If the custody of a minor is entrusted to a state agency, the agency may make a reasonable declaration of the county residency of its ward using applicable guidelines enumerated in this section.

(d) If a person is or becomes an adult while in an institution, he may determine his own county of residence when he is restored to competency and released. Such a person becomes the financial responsibility of the new county of residence."

Section 2. Section 53-3-306, MCA, is amended to read:

"**53-3-306. County liability for general relief.** *(1) General relief assistance shall be paid from the poor fund of the county where the eligible person resides.*

(2) A person who leaves Montana with the intent to reside in another state and later returns to reside in Montana is considered a new resident for the purposes of this chapter and 53-2-610(3).

(3) When a person who receives general relief assistance moves to reside in another county, he becomes the financial responsibility of the new county from the date he begins to reside in that new county."

Section 3. Section 53-4-231, MCA, is amended to read:

"**53-4-231. Eligibility.** Assistance shall be granted under this part to any dependent child, as defined in 53-4-201, who is in need of such assistance."

Section 4. Section 53-4-247, MCA, is amended to read:

"**53-4-247. County liability when recipient moves to another county.** A recipient of aid to dependent children who moves to another county in the state shall continue to receive assistance. The county *that the recipient moves to* shall be charged by the department for *the* county share of assistance. The county *that* a recipient moves *from* shall notify the county *that* the recipient moves *to.*"

Approved March 31, 1979.

CHAPTER NO. 451

AN ACT TO AMEND SECTION 61-5-101, MCA, TO REVISE THE POWERS AND RESPONSIBILITIES OF THE DIVISION OF MOTOR VEHICLES REGARDING THE LICENSING OF DRIVERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-101, MCA, is amended to read:

"**61-5-101. Driver licensing responsibilities of the division of motor vehicles.** The division shall maintain a permanent place of business at the state capital and shall *provide the necessary staff, facilities, and equipment for the purpose of providing driver license services as required by this part.*"

Approved March 31, 1979.

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CHAPTER NO. 452

AN ACT TO RESTRICT THE ACCEPTANCE BY THE STATE OF LAND OBTAINED THROUGH CONDEMNATION PROCEDURES BY THE UNITED STATES UNLESS APPROVED BY THE MONTANA LEGISLATURE; AMENDING SECTION 77-1-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-211, MCA, is amended to read:

"77-1-211. Acceptance of federal land grants. *(1)* The board may accept any grant of lands from the United States to the state made in carrying out the provisions of The Enabling Act and also any other grant for any special purpose that may be made by the United States to the state, *except as provided in subsection (2).*

(2) Legislative approval is required for any acceptance of land by the state of Montana from the United States if the land was acquired by the United States through condemnation procedures."

Approved March 31, 1979.

CHAPTER NO. 453

AN ACT AMENDING SECTION 7-32-4152, MCA, TO PROVIDE THAT THE MEMBERS ON A POLICE COMMISSION HEARING CHARGES BROUGHT AGAINST A POLICEMAN CONTINUE TO SIT ON THE COMMISSION FOR THAT BUSINESS UNTIL A DECISION HAS BEEN MADE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-4152, MCA, is amended to read:

"7-32-4152. Term and compensation of members of police commission. (1) The appointees to the police commission shall hold office for 3 years, and one such member must be appointed annually at the first regular meeting of the city council or commission in May of each year. *However, a member serving on the commission during the hearing or deciding of a case under 7-32-4155 shall continue to serve on the commission for that case until a decision has been made; a new member may not sit on the commission for such business.*

(2) The compensation of the members of such board shall be fixed by the city council or commission, not to exceed $10 per day or more than $50 per month for any month for each member in cities of the first and second class."

Approved March 31, 1979.

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CHAPTER NO. 454

AN ACT TO AUTHORIZE THE MANUFACTURE, SALE, POSSESSION, AND DISTRIBUTION OF LAETRILE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Laetrile defined.** As used in [this act], "laetrile", also known as B-17, means a cyanogenetic glycoside, which is processed from the seeds of certain fruits, including apricots, peaches, and plums.

Section 2. **Laetrile authorized.** The manufacture, sale, possession, and distribution of laetrile is lawful within this state.

Section 3. **Hospital may not interfere.** A hospital or health care facility may not interfere with the physician-patient relationship by restricting or forbidding the use of laetrile when prescribed or administered by a physician and requested by a patient.

Section 4. **Health care facility liability.** No hospital, health care facility, or employee thereof shall be held liable for the administration of laetrile to any person at the direction of a licensed physician.

Section 5. **Physician not subject to disciplinary action.** A physician may not be subjected to disciplinary action by the board of medical examiners for prescribing or administering laetrile to a patient under his care as an adjunct to recognized, customary, or accepted modes of therapy in the treatment of any malignancy, disease, illness, or physical condition.

Section 6. **Laetrile not endorsed — permitted as a dietary supplement.** [Sections 1 through 6]:

(1) are not an endorsement of laetrile for the treatment of any malignancy, disease, illness, or physical condition;

(2) do not prevent a physician from prescribing laetrile as a dietary supplement to a patient not suffering from any known malignancy, disease, illness, or physical condition.

Section 7. **Laetrile optional.** [Sections 1 through 6] do not require:

(1) a physician, pharmacist, pharmacy, manufacturer, or distributor to manufacture, sell, or distribute laetrile;

(2) a physician to prescribe laetrile for any patient.

Section 8. **Effective date.** This act is effective on passage and approval.

Approved March 31, 1979.

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CHAPTER NO. 455

AN ACT TO ESTABLISH GENERAL PROVISIONS AND DEFINITIONS COMMON TO ALL FORMS OF MUNICIPAL GOVERNMENT WITH GENERAL POWERS; TO OUTLINE GENERAL POWERS; AND TO ESTABLISH BASIC REQUIREMENTS FOR PUBLIC MEETINGS, RECORDS, AND REPORTS; REPEALING SECTIONS 7-1-4103 AND 7-1-4104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **General definitions.** As used in [sections 1 through 29], unless otherwise provided, the following definitions apply:

(1) "Charter" means a written document defining the powers, structure, privileges, rights, and duties of the government and limitations thereon.

(2) "Chief executive" means the elected executive in a government adopting the commission-executive form, the manager in a government adopting the commission-manager form, the chairman in a government adopting the commission-chairman form, the town chairman in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers so designated in the charter in a government adopting a charter.

(3) "Elector" means a resident of the municipality qualified and registered to vote under state law.

(4) "Employee" means a person other than an officer who is employed by a municipality.

(5) "Executive branch" means that part of the municipality, including departments, offices, and boards, charged with implementing actions approved and administering policies adopted by the governing body of the local government or performing the duties required by law.

(6) "Governing body" means the commission or town meeting legislative body established in the alternative form of local government.

(7) "Guideline" means a suggested or recommended standard or procedure to serve as an index of comparison and is not enforceable as a regulation.

(8) "Law" means a statute enacted by the legislature of Montana and approved and signed by the governor or a statute adopted by the people of Montana through statutory initiative procedures.

(9) "Municipality" means an entity which incorporates as a city or town.

(10) "Office of the municipality" means the permanent location of the seat of government from which the records administrator, or the office of the clerk of the governing body where one is appointed, carries out his duties.

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(11) "Officer" means a person holding a position with a municipality which is ordinarily filled by election or, in those municipalities with a manager, the manager.

(12) "Ordinance" means an act adopted and approved by a municipality, having effect only within the jurisdiction of the local government.

(13) "Person" means any individual, firm, partnership, company, corporation, trust, trustee, assignee or other representative, association, or other organized group.

(14) "Plan of government" means a certificate submitted by a governing body that documents the basic form of government selected, including all applicable suboptions. The plan must establish the terms of all officers and the number of commissioners, if any, to be elected.

(15) "Political subdivision" refers to a local government, authority, school district, or multicounty agency.

(16) "Population" means the number of inhabitants as determined by an official federal, state, or local census or official population estimate approved by the department of community affairs.

(17) "Printed" means the act of reproducing a design on a surface by any process as defined by 1-1-203(3).

(18) "Public agency" means a political subdivision, Indian tribal council, state or federal department or office, or the Dominion of Canada or any provincial department or office or political subdivision thereof.

(19) "Public property" means any and all property owned by a municipality or held in the name of a municipality by any of the departments, boards, or authorities of the local government.

(20) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term "real property", including not only fee simple absolute but also all lesser interests such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

(21) "Reproduced" means the act of reproducing a design on any surface by any process.

(22) "Resolution" means a statement of policy by the governing body or an order by the governing body that a specific action be taken.

(23) "Service" means an authorized function or activity performed by local government.

(24) "Structure" means the entire governmental organization through which a local government carries out its duties, functions, and responsibilities.

Section 2. **Administrative rules.** The governing body may by ordinance authorize the chief executive to adopt administrative rules. All

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administrative rules shall be entered in an administrative code that shall be available in the office of the municipality.

Section 3. **Publish notice.** (1) When a municipality is required to publish notice, publications shall be in a newspaper, except that in a municipality with a population of 500 or less or in which no newspaper is published, publication may be made by posting in three public places in the municipality, which have been designated by ordinance.

(2) The newspaper shall be:

(a) of general paid circulation with a second-class mailing permit;

(b) published at least once a week;

(c) published in the county where the municipality is located;

(d) published continuously in the county for the 12 months preceding the awarding of the contract.

(3) In a county where no newspaper meets these qualifications, publication shall be made in a qualified newspaper in an adjacent county.

(4) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

Section 4. **Notice.** When notice of a hearing or other official act is required, the following shall apply:

(1) The notice shall be published two times with at least 6 days separating each publication. The first publication shall be no more than 21 days prior to the action and the last no less than 3 days prior to the action.

(2) The published notice shall contain:

(a) the date, time, and place at which the hearing or other action will occur;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who can be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice.

(3) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

Section 5. **Mail notice.** (1) Unless otherwise specifically provided, when a municipality is required to give notice of a hearing or other official act by mail, the requirement may be met by:

(a) deposit of the notice properly addressed in the United States mail with postage paid at the first-class rate;

(b) sending the notice by registered or certified mail rather than first class; or

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(c) mailing the notice at the bulk rate instead of first class when notice is to be given by mail to all electors or residents of a municipality.

(2) The notice shall contain:

(a) the date, time, and place at which the hearing or other action will be taken;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who can be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring mail notice.

(3) When notice by mail is required, the requirement shall apply only to persons whose addresses are known.

Section 6. **Petition.** (1) Whenever a petition is authorized, unless the section authorizing the petition establishes different criteria, it shall be valid if it is signed by 15% of the electors of the municipality and meets the following requirements:

(a) contains a statement of the purpose for which it is circulated, sufficient to meet the specific criteria set out in the section authorizing the petition;

(b) each signature is followed by the printed name of the signer, the address of the signer's place of residence, and the date of the signing; and

(c) the petition contains the date it was first circulated and a statement that all signatures must be collected within 90 days of that date.

(2) Unless otherwise provided, all petitions shall be filed with the county election administrator, who shall determine the sufficiency of the signatures. No petition filed after the deadline for filing the petition, if any, shall be considered.

(3) Within 10 working days of the date the petition was filed, the county election administrator shall determine the adequacy of the petition.

(4) Inadequate petitions shall be returned but may be amended or supplementary signatures may be obtained, and the petition may be refiled prior to the deadline for filing the petition.

(5) Within 10 days of its second filing, the county election administrator shall again determine the adequacy of the petition. If it is still determined inadequate, it shall be rejected without prejudice to the filing of a new petition to the same effect.

(6) If a petition is determined adequate, the county election administrator shall:

(a) certify its adequacy and submit it to the governing body without delay;

(b) submit a copy of the petition to the attorney of the municipality.

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(7) A person may in writing withdraw his signature from a previously filed petition at any time prior to final action of the governing body.

(8) The attorney for the municipality shall prepare and transmit to the governing body without delay a concise statement not exceeding 100 words. This statement shall express a true and impartial explanation of the purpose of the proposed ballot issue in plain, easily understood language. The statement may not intentionally be an argument and may not intentionally be written so as to create prejudice for or against the measure.

(a) At the same time the statement of purpose is prepared, the attorney shall prepare statements of the implications of a vote for or against a ballot issue. The statements of implication may be no more than 25 words each and shall be in simple, impartial language clearly explaining the meaning of a vote for and a vote against the issue.

(b) Prior to an election or an official action involving a petition issue, the governing body shall publish copies of the statement of purpose and statement of implications to the procedure established in [section 4].

(9) The department of community affairs, in cooperation with the secretary of state, shall prepare and provide each municipality with:

(a) a standard petition form;

(b) sample petition forms for initiatives, referendums, and recall elections; and

(c) sample petition forms for creation of districts.

(10) Each municipality shall make available to the public on request sample petition forms.

Section 7. **Public hearing.** (1) When required, the governing body shall conduct public hearings for the purpose of providing reasonable opportunity for citizen participation prior to final decisions.

(2) At a minimum, a public hearing shall provide for submission of both oral and written testimony for and against the action or matter at issue. If the hearing is not held before the ultimate decision makers, provision shall be made for the transmittal of a summary or transcript of the testimony received to the ultimate decision makers prior to their determination.

(3) Public hearings may be held at regular or special meetings of the governing body.

(4) Petitions and letters received by the governing body or executive prior to the hearing shall be entered by reference into the minutes of the governing body and considered as other testimony received at the hearing.

(5) Hearings may be adjourned from day to day or to a date certain.

(6) Except for budget hearings, the governing body may designate a subcommittee or hearing examiner to conduct public hearings.

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Section 8. **Protest.** (1) Whenever a protest is authorized, it is sufficient if it is in writing, signed, and contains the following:

(a) a description of the action protested sufficient to identify the action against which the protest is lodged;

(b) a statement of the protestor's qualifications to protest the action against which the protest is lodged, including ownership of property affected by the action; and

(c) the address of the person protesting.

(2) Protests shall be submitted as provided by law and ordinance. The person receiving protests for a municipality shall note on each protest the date it was received.

(3) A protest which contains the required information may be signed by more than one person. A protest signed by more than one person is a valid protest by each signer.

(4) A person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.

(5) Signers are encouraged to print their names after their signatures.

Section 9. **Signatures.** (1) The signatures and addresses on petitions shall be the same as the signatures and addresses on voter registration cards and, if not registered or if not required by law to be an elector, their common signature. If the elector has signed using an initial letter only in place of a name written on the registry card or using a name or the initial letter of a name that is not on the registry card, the signature may nevertheless be counted so long as the signature, taken as a whole, bears sufficient similarity to the signature on the registry card as to provide reasonable certainty of its authenticity.

(2) The signatures on protests and waivers shall be the accepted common signatures.

Section 10. **Rights on behalf of government or corporation.** The chief executive of a municipality or political subdivision of the state, the responsible agent of a federal or state agency, or the chief executive officer of a corporation may exercise the right of petition, protest, or voting on behalf of property owned by the government or corporation.

Section 11. **Posting.** (1) The governing body shall specify by resolution a public location for posting information and shall order erected a suitable posting board.

(2) When posting is required, a copy of the document shall be placed on the posting board, and a copy shall be available at the municipal office.

Section 12. **Oaths.** The chief executive and all elected municipal officers may administer oaths.

Section 13. **Oath of office.** Every elected municipal officer shall take the oath of office prescribed in Article III, section 4, of the Montana constitution. The oath of office, certified by the official before whom the same

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was taken, shall be filed with the county election administrator before the officer exercises any official duties.

Section 14. **Public servants.** All municipal officers and employees are public servants for the purpose of determining the offense of obstructing a public servant as provided in 45-7-302.

Section 15. **Waiver of mail notice or protest.** (1) If all persons entitled to mail notice waive in writing the mail notice requirement, the governing body may proceed without the required mail notice.

(2) If all persons entitled to protest an action waive in writing their right to protest, the governing body may proceed without publishing notice or meeting other requirements designed to permit protests to be filed.

(3) A waiver is sufficient if it is in writing, signed, and contains the following:

(a) a description of the mailed notice or protest right waived;

(b) a statement of the protestor's qualifications to waive the mailed notice or protest right;

(c) the address of the person;

(d) a statement that the waiver of notice is voluntarily and knowingly given, with knowledge of the signer's constitutional rights to notice.

(4) Waivers shall be submitted as provided by law and ordinance. The person receiving waivers for a local government shall note on each waiver the date it was received.

(5) A waiver which contains the required information may be signed by more than one person. A waiver signed by more than one person is a valid waiver by each signer.

(6) Signers are encouraged to print their names after their signatures.

Section 16. **Facsimile signature.** Any officer or employee may use a facsimile signature or seal as provided in Title 2, chapter 16.

Section 17. **Public meeting required.** (1) All meetings of municipal governing bodies, boards, authorities, committees, or other entities created by a municipality shall be open to the public except as provided in 2-3-203.

(2) Appropriate minutes shall be kept of all public meetings and shall be made available upon request to the public for inspection and copying.

Section 18. **Public participation.** Each municipal governing body, committee, board, authority, or entity, in accordance with Article II, section 8, of the Montana constitution and Title 2, chapter 3, shall develop procedures for permitting and encouraging the public to participate in decisions that are of significant interest to the public.

Section 19. **Participation.** In any meeting required to be open to the public, the governing body, committee, board, authority, or entity shall

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adopt rules for conducting the meeting, affording citizens a reasonable opportunity to participate prior to the final decision.

Section 20. **Public records.** (1) Except as provided in subsection (2), all records and other written materials in the possession of a municipality shall be available for inspection and reproduction by any person during normal office hours. The governing body may impose reasonable fees for providing copies of public records.

(2) Personal records, medical records, and other records which relate to matters in which the right to individual privacy exceeds the merits of public disclosure shall not be available to the public unless the person they concern requests they be made public.

(3) Except as provided by law and as determined by the chief law enforcement administrator, law enforcement records which relate to matters in which the right to individual privacy or law enforcement security exceeds the merits of public disclosure shall not be available to the public.

Section 21. **State reports.** (1) Municipal governing bodies, chief executives, officers, employees, departments, boards, and authorities shall file with state agencies in a timely fashion all reports and information required by state law.

(2) The department of community affairs shall coordinate to the greatest extent possible the collection of data by state and federal agencies in order to minimize the requests of municipalities and to maximize access to information collected on municipalities.

(3) Prior to requesting reports from a municipality, all state agencies shall notify the department of community affairs of the intended request.

Section 22. **Reports of departments, boards, and authorities.** (1) All departments, boards, and authorities shall file an annual report with the chief executive, who shall compile the reports and present them to the governing body.

(2) The chief executive may specify the form, content, and deadline for filing reports.

Section 23. **Distribution of powers.** (1) A municipality has legislative, executive, and judicial powers.

(2) All legislative powers are vested in the governing body of the municipality.

(3) Executive powers are vested as provided in the form of government adopted by the municipality.

(4) The judicial powers of a municipality are vested in the municipal court.

Section 24. **Legislative powers.** A municipality with general powers has the legislative power, subject to the provisions of state law, to adopt, amend, and repeal ordinances and resolutions required to:

(1) preserve peace and order and secure freedom from dangerous or noxious activities;

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(2) secure and promote the general public health and welfare;

(3) provide any service or perform any function authorized or required by state law;

(4) exercise any power granted by state law;

(5) levy any tax authorized by state law;

(6) appropriate public funds;

(7) impose a special assessment reasonably related to the cost of any special service or special benefit provided by the municipality or impose a fee for the provision of a service;

(8) grant franchises; and

(9) provide for its own organization and the management of its affairs.

Section 25. **Powers.** A municipality with general powers has the power, subject to the provisions of state law, to:

(1) enact ordinances and resolutions;

(2) sue and be sued;

(3) buy, sell, mortgage, rent, lease, hold, manage, or dispose of any interest in real or personal property;

(4) contract with persons, corporations, or any other governmental entity;

(5) pay debts and expenses;

(6) borrow money;

(7) solicit and accept bequests, donations, or grants of money, property, services, or other advantages and comply with any condition that is not contrary to the public interest;

(8) execute documents necessary to receive money, property, services, or other advantages from the state government, the federal government, or any other source;

(9) make grants and loans of money, property, and services for public purposes;

(10) require the attendance of witnesses and production of documents relevant to matters being considered by the governing body;

(11) hire, direct, and discharge employees and appoint and remove members of boards;

(12) ratify any action of the municipality or its officers or employees which could have been approved in advance;

(13) have a corporate seal and flag;

(14) acquire by eminent domain as provided in Title 70, chapter 30, any interest in property to provide any service or facility authorized by law;

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(15) initiate a civil action to restrain or enjoin violation of an ordinance;

(16) enter private property, obtaining warrants when necessary, for the purpose of enforcing ordinances that affect the general welfare and public safety;

(17) conduct a census;

(18) conduct inventories of public property and preparatory studies;

(19) condemn and demolish hazardous structures;

(20) purchase insurance and establish self-insurance plans;

(21) impound animals and other private property creating a nuisance or obstructing a street or highway;

(22) establish quarantines; and

(23) exercise powers not inconsistent with law necessary for effective administration of authorized services and functions.

Section 26. **Limit on liability.** (1) As provided in Article II, section 18, of the Montana constitution, a municipality has no immunity from suit for injury to a person or property, except as may be specifically provided by law by a two-thirds vote of each house of the legislature.

(2) A local government has the right but not the duty to purchase insurance to protect against claims for injury to a person or property.

(3) Local governments are subject to the provisions of Title 2, chapter 9.

Section 27. **State technical advice and assistance.** (1) All state agencies are authorized and encouraged to provide technical assistance to municipalities.

(2) The technical assistance services shall not include those that can be as reasonably and expeditiously obtained through business channels.

(3) State agencies are encouraged to develop the capacity to provide technical advice and assistance without charge to municipalities, but they are also encouraged to establish service charges for special or extraordinary technical advice.

(4) The department of community affairs shall coordinate technical advice and assistance provided to municipalities by state agencies.

(5) State agencies may lend personnel, equipment, and machinery to municipalities.

Section 28. **Penalty.** Where a municipality is required by state law to provide information to a state agency and fails to provide the required information, the department of community affairs may issue an order stopping payment of any state financial aid to the municipality. Upon provision of the information, all financial aid which was stopped because of failure to provide the information shall be paid to the municipality.

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Section 29. **Applicability.** (1) Except as provided in subsection (2), a provision of [sections 1 through 28] applies only in the absence of other laws governing the same subject matter.

(2) The governing body may by ordinance adopt the procedures and provisions contained in [sections 1 through 28] and make them applicable to all proceedings before the body.

Section 30. **Repealer.** Sections 7-1-4103 and 7-1-4104 are repealed.

Section 31. **Codification.** Sections 1 through 29 are intended to be codified as an integral part of Title 7, chapter 1, part 41, and the provisions contained in Title 7, chapter 1, part 41, apply to sections 1 through 29.

Approved March 31, 1979.

CHAPTER NO. 456

AN ACT TO REQUIRE FOOD SERVICE ESTABLISHMENTS TO DISTINGUISH BETWEEN HAMBURGER AND IMITATION HAMBURGER IN ADVERTISEMENT OF PRODUCTS FOR SALE AND TO ADVERTISE THE LIST OF INGREDIENTS IN IMITATION HAMBURGER; AND AMENDING SECTIONS 50-31-103, 50-31-312, 50-31-506, AND 50-31-508, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-31-103, MCA, is amended to read:

"50-31-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Color" includes black, white, and intermediate grays.

(3) (a) "Color additive" means a material which:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with other substance) of imparting color thereto.

(b) This term does not include material which has been or hereafter is exempted under the federal act.

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(4) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant thereto. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the virus-serum toxin act;

(c) a drug subject to [section 17(a)(B) or 16(k) of this act] or section 503(b)(1) or 506 of the federal act;

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(5) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(6) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(7) "Counterfeit drug" means a drug which, or the container or labeling of which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and which falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(8) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(9) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(b) to affect the structure or function of the body of man or other animals.

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(10) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary or a supplement to any of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of man or other animals;

(d) articles intended for use as components of any article specified in subsections (a), (b), or (c), but does not include devices or their components, parts, or accessories.

(11) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301 et seq.).

(12) "Food" means:

(a) articles used for food or drink for man or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(13) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) This term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) color additive;

(iv) substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.).

(14) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that

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serves food to the public for consumption either at or away from the point of service, and any facility operated by a governmental entity where food is served.

(15) "Hamburger" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, and with or without the addition of seasoning, if no fat other than suet is incorporated in the hamburger, the total fat content does not exceed 20%, and no water, binders, or extenders are added.

(16) "Honey" means the nectar and saccharine exudations of plants gathered, modified, and stored in the comb by honey bees; is levorotatory, contains not more than 25% of water, not more than .25% of ash, and not more than 8% sucrose.

(17) "Imitation hamburger" means "hamburger", as defined in subsection (15), to which has been added binders or extenders or both binders and extenders as those terms are understood by general custom and usage in the food industry.

(18) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. ("Immediate container" does not include package liners.)

(19) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(20) "Menu" means any list presented to the patron which states the food items for sale in a food service establishment.

(21) "New drug" means a drug the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(22) "Official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or a supplement to any of these.

(23) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers but does not include:

(a) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

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(b) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(24) "Person" includes an individual, partnership, corporation, and association.

(25) "Pesticide chemical" means a substance which, alone, in chemical combination, or in formulation with one or more other substances, is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(26) "Placard" means any nonpermanent sign used to display or describe food items for sale in a food service establishment.

(27) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(28) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(29) "State board" or "board" means the board of health and environmental sciences, provided for in 2-15-2104.

(30) "Wallboard" means any permanent sign used to display or describe food items for sale in a food service establishment."

Section 2. Section 50-31-312, MCA, is amended to read:

"50-31-312. Exemptions from new drug application requirement. (1) Section 50-31-311 shall not apply to:

(a) a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the department or pursuant to section 505(i) or 507(d) of the federal act;

(b) a drug sold in this state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act;

(c) any drug which is licensed under the Virus, Serum, and Toxin Act of July 1, 1902 (U.S.C. 1958 ed. Title 42, chapter 6A, sec. 262); or

(d) any drug which is subject to 50-31-306(1)(n).

(2) The provisions of 50-31-103*(21)* shall not apply to any drug, when such drug is intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to such drug, which on October 9, 1962, or on the date immediately preceding July 1, 1967:

(a) was commercially sold or used in this state or in the United States;

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(b) was not a new drug as defined by 50-31-103*(21)* as then in force; and

(c) was not covered by an effective application under 50-31-311 or under section 505 of the federal act."

Section 3. Section 50-31-506, MCA, is amended to read:

"50-31-506. Penalties. (1) Any person who violates any of the provisions of 50-31-204, 50-31-501, 50-31-502, *or [section 5 of this act]* shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than 3 months, a fine of not more than $250, or both such imprisonment and fine.

(2) If the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than 6 months, a fine of not more than $500, or both such imprisonment and fine."

Section 4. Section 50-31-508, MCA, is amended to read:

"50-31-508. Injunction to restrain prohibited acts. In addition to the remedies hereinafter provided, the department is hereby authorized to apply to district court for and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of 50-31-204, 50-31-501, 50-31-502, *or [section 5 of this act]* irrespective of whether or not there exists an adequate remedy at law."

Section 5. **Sale of hamburger and imitation hamburger.** (1) No food service establishment may use the terms "hamburger", "burger", or other similar term in any advertisement or menu to refer to any imitation hamburger. A food service establishment selling or serving imitation hamburger may refer to the product as "imitation hamburger" or by any other term which accurately informs the customer of the nature of the food product which he is sold or served.

(2) If imitation hamburger is sold or served in a food service establishment, a list of ingredients must appear on the menu, or, if there is no menu, on a wallboard or placard as follows:

(a) The term "imitation hamburger" or any other term which accurately informs the customer of the nature of the food product and its ingredients must be included.

(b) The ingredients must be listed in descending order of predominance by weight.

(c) If there is no menu, the lettering on the wallboard or placard must be at least 1 inch in height (72-point letters) in boldface and in colors that contrast with the wallboard or placard.

(d) The wallboard or placard must be posted in a permanent place, conspicuous to the customer, in each room or area where food is served.

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Section 6. **Codification.** It is intended that section 5 be enacted as an integral part of chapter 31, Title 50, MCA, and that the provisions of chapter 31, Title 50, MCA, apply to section 5.

Approved March 31, 1979.

CHAPTER NO. 457

AN ACT TO REQUIRE REPAYMENT TO THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM OF FUNDS ADVANCED TO IMPLEMENT SECTION 19-9-1007, MCA, AND TO PROVIDE CHANGES IN CALCULATING AND REPORTING PROCEDURES UNDER THAT SECTION; AMENDING SECTIONS 19-9-104 AND 19-9-1007, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-9-104, MCA, is amended to read:

"19-9-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Administrator" means the public employees' retirement division of the department of administration.

(2) "Base salary" means the sum of the monthly compensations for each month in a given calendar year.

(3) "Board" means the retirement board described in 2-15-1009.

(4) "Credited service" means the aggregate of a member's prior service and membership service.

(5) "Employer" means any city which participated in a prior plan or which elects to join this plan under 19-9-107.

(6) "Employer annuity" means monthly payments for life derived from employer and state contributions.

(7) "Final average salary" means the monthly compensation of a member, averaged over the last 36 months of his active service or, in the event he has not been a member that long, over the period of his membership.

(8) "Fund" means the agency account in the treasury system designated for the use of the plan.

(9) "Mandatory retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member attains age 65.

(10) "Member" means a person who is employed by an employer as a police officer or who is entitled to a retirement allowance by virtue of his service to an employer as a police officer.

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(11) "Member contributions" means the total of the deductions from the compensation of a member, either made during a period of active membership hereunder or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon.

(12) "Member's annuity" means monthly payments for life derived from member contributions.

(13) "Membership service" means a period of employment with an employer occurring after June 30, 1977, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year.

(14) "Minimum retirement date" or "normal retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 20 or more years of credited service.

(15) "Monthly compensation" means the wage, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, a member receives as an active police officer.

(16) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(17) "Plan" means the municipal police officers' retirement system created by this chapter.

(18) "Police officer" means a law enforcement officer employed by an employer.

(19) "Prior plan" means the local police reserve or retirement fund of a city which elects to join the plan under 19-9-107 or the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974.

(20) "Prior service" means a period of employment as a police officer for which credit was granted to a member under a prior plan and has been transferred to this plan.

(21) "Retirement allowance" means the employer annuity plus the member's annuity.

(22) "Retirement date" means the date on which the first payment of the retirement, disability, or survivor benefits of a member or a beneficiary is payable.

(23) "Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a police officer."

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Section 2. Section 19-9-1007, MCA, is amended to read:

"19-9-1007. Supplement to certain pensions. (1) The payment for each fiscal year, commencing with the fiscal year beginning July 1, 1977, to the police officers, spouses, or minor children described in subsections (2)(a) through (2)(c) may be not less than one-half of the *base* salary paid in *the previous calendar* year in the appropriate city or town to newly confirmed police officers, *except that for the fiscal year beginning July 1, 1979, all retirees and their beneficiaries who received a supplement to their retirement allowance on July 1, 1978, and are receiving an allowance on July 1, 1979, shall receive a 3% increase in their retirement allowance in lieu of any other increase.*

(2) On or before April 1 of each year, the department of administration shall make a report to the state auditor including the following information:

(a) the names of all police officers who are receiving payments from the *plan* as of the date of the report and were receiving payments *from a* prior *plan before* July 1, 1975;

(b) the names of all spouses or minor children who are receiving payments from the *plan* because of the death of a police officer who was receiving payments *from a* prior *plan before* July 1, 1975;

(c) the names of all spouses or minor children who are receiving payments from the *plan* and who were receiving payments *from a* prior *plan before* July 1, 1975, or in the case of minor children, whose parent, the spouse of a police officer, was receiving payments *from a* prior *plan before* July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection *(3)*, the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

(ii) the amount of the payments made in the base fiscal year to each spouse or minor child (or children) described in subsection (2)(b) or (2)(c);

(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from *a* prior *plan before* July 1, 1975, and who is survived by a spouse or minor children entitled to receive payments *from the plan*, the amount which would have been paid to an eligible spouse of such police officer had that spouse been receiving payments in the base fiscal year;

(e) the base salary for the previous calendar year of a newly confirmed police officer of each city or town participating in the plan.

(3) The state auditor shall, upon receipt of the *report* referred to in *subsection* (2), compute the difference between each amount reported under subsections (2)(d)(i) through (2)(d)(iii) and one-half the *base* salary for the *previous calendar* year of a newly confirmed police officer of the appropriate city or town. The difference shall be paid by the state auditor

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out of the premium tax collected on insurance *sold in this state to insure against risks enumerated in 19-11-512(5)* to the *administrator no later than May 31 of each year. This payment is* in addition to the payment to be made by the state auditor under 19-9-702. The *administrator* shall use the funds to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(4) In addition to the payments made by the auditor as provided in subsection (3), the auditor shall make annual payments of $100,000 on or before June 30 of each year until the sum of $500,000 has been paid to the administrator for deposit in the retirement account. These payments are to be made to reimburse the retirement account for funds advanced to implement this section.

(5) If more than one minor child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to such minor children under this section shall be determined as if there were one such minor child and the supplementary payment shall be made to the minor children collectively."

Approved March 31, 1979.

CHAPTER NO. 458

AN ACT TO AMEND SECTION 20-4-213, MCA, TO MAKE THE LAW REQUIRING THAT CERTAIN TEACHERS OBTAIN INSTRUCTION IN AMERICAN INDIAN STUDIES PERMISSIVE RATHER THAN MANDATORY; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-213, MCA, is amended to read:

"20-4-213. Qualification in Indian studies — trustees and noncertified personnel. (1) *Any board* of trustees for *an* elementary *or* secondary public school *district* on or *for a* public *school* located in the vicinity of *an Indian reservation* where the enrollment of Indian children qualifies the school for federal funds for Indian education programs *may require that all of its* certified personnel *satisfy* the requirements for instruction in American Indian studies as defined in 20-4-211. *This requirement must be a local district requirement with enforcement and administration solely the responsibility of the local board of trustees.*

(2) Members of boards of trustees and all noncertified personnel in public school districts on or in the vicinity of Indian reservations are encouraged to satisfy the requirements for instruction in American Indian studies as defined in 20-4-211."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 2, 1979.

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CHAPTER NO. 459

AN ACT TO RAISE THE SALARY FOR ELECTED COUNTY OFFICIALS AT LEAST 7% IN 1979 AND 7% IN 1980 AND TO ADD AN ADDITIONAL SALARY CATEGORY BASED ON TAXABLE VALUATION; AMENDING SECTIONS 7-4-2503 AND 7-4-2504, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2503, MCA, is amended to read:

"7-4-2503. Salary schedule for certain county officers. (1) *The* salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county attorney, county assessor, county superintendent of schools, and county sheriff; the county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812; and the county auditor in all counties wherein such office is authorized *is computed by adding* the sum of the salary shown in column A, based on population as of January 1, *1979*, to the salary shown in column B, based on taxable valuation as of January 1, *1979*, as follows:

(a) Population of County	Column A
Below 3,000	$4,494
3,000 to 3,999	$4,729
4,000 to 4,999	$4,833
5,000 to 5,999	$4,938
6,000 to 6,999	$5,058
7,000 to 7,999	$5,394
8,000 to 8,999	$5,487
9,000 to 9,999	$5,617
10,000 to 12,499	$5,708
12,500 to 14,999	$5,826
15,000 to 17,499	$5,943
17,500 to 19,999	$6,048
20,000 to 24,999	$6,165
25,000 to 29,999	$6,270
30,000 to 39,999	$6,387
40,000 to 49,999	$6,544
50,000 to 59,999	$6,779
60,000 to 69,999	$7,014
70,000 to 79,999	$7,275
80,000 to 89,999	$7,432
90,000 to 99,999	$7,676
100,000 and over	$7,902

(b) Taxable Valuation of County	Column B
Below $2,000,000	$4,598
2,000,000 to 2,999,999	$4,729
3,000,000 to 3,999,999	$4,833
4,000,000 to 4,999,999	$4,938
5,000,000 to 5,999,999	$5,069

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6,000,000 to	6,999,999	$5,394
7,000,000 to	7,999,999	$5,487
8,000,000 to	9,999,999	$5,617
10,000,000 to	11,999,999	$5,708
12,000,000 to	13,999,999	$5,826
14,000,000 to	15,999,999	$5,942
16,000,000 to	17,999,999	$6,047
18,000,000 to	19,999,999	$6,165
20,000,000 to	22,499,999	$6,270
22,500,000 to	24,999,999	$6,387
25,000,000 to	29,999,999	$6,544
30,000,000 to	34,999,999	$6,779
35,000,000 to	39,999,999	$7,014
40,000,000 to	44,999,999	$7,275
45,000,000 to	49,999,999	$7,432
50,000,000 to	54,999,999	$7,667
55,000,000 to	59,999,999	$7,902
60,000,000 to	64,999,999	$8,138
65,000,000 to	69,999,999	$8,372
70,000,000 to	74,999,999	$8,607
75,000,000 to	79,999,999	$8,843
80,000,000 to	84,999,999	$9,078
85,000,000 to	89,999,999	$9,313
90,000,000 to	94,999,999	$9,548
95,000,000 to	99,999,999	$9,783
100,000,000 to	109,999,999	$10,019
110,000,000 to	119,999,999	$10,195
120,000,000 to	129,999,999	$10,398
130,000,000 to	139,999,999	$10,606
140,000,000 to	149,999,999	$10,817
150,000,000 *to*	*159,999,999*	$11,035
160,000,000 and	*over*	*$11,265*

(2) (a) The county superintendent of schools shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of $400 per year.

(b) The county sheriff shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of *$2,000* per year.

(c) Except in counties of population greater than 30,000, the county attorney shall receive, in addition to the salary based upon the totals of column A and B above, the sum of $1,200. In each county with a population in excess of 30,000, the salary of the county attorney shall be $30,000 per year."

Section 2. Section 7-4-2504, MCA, is amended to read:

"7-4-2504. Salaries to be fixed by resolution. *(1)* The county *governing body* shall by resolution, on or before July 1, *1979,* fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, county attorney, and the clerk of the district court*; however, the salary of the elected county official for fiscal year 1980 must be the greater of the amount computed by increasing the*

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salary authorized for that official on June 30, 1979, by 7% or by using the salary schedule in 7-4-2503.

(2) The county governing body shall by resolution on or before July 1, 1980, fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, county attorney, and the clerk of the district court for the following fiscal year by increasing the salary authorized for that official on June 30, 1980, by 7%."

Approved April 5, 1979.

CHAPTER NO. 460

AN ACT TO ALLOW THE BOARD OF COSMETOLOGISTS TO GRANT A TEMPORARY LICENSE PENDING EXAMINATION TO AN APPLICANT WHO HAS GRADUATED FROM A SCHOOL THAT IS REGISTERED IN ANOTHER STATE; AMENDING SECTION 37-31-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-31-307, MCA, is amended to read:

"37-31-307. Temporary license pending examination. The board may authorize the department to grant to a graduate of a registered school of *any* state, on the payment of the fee prescribed by law, a temporary license authorizing the graduate to practice as an operator under the supervision of a licensed cosmetologist in the practice of hairdressing and beauty culture for a period of not to exceed 90 days or until the next examination is held by the department and the results are announced. No temporary license may be issued except on the presentation by the applicant of a certificate of graduation from *such* a registered school. The temporary licenses are not renewable."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 5, 1979.

CHAPTER NO. 461

AN ACT CREATING A PUBLIC AIRPORT ALL-BEVERAGES LICENSE, AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Airport all-beverages license.** (1) The department of revenue shall issue one all-beverages license, to be known as a public airport all-beverages license, for use at each publicly owned airport served by

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scheduled airlines and enplaning and deplaning a minimum total of 20,000 passengers annually when:

(a) application is made;

(b) upon finding that this license is justified by public convenience and necessity, including the convenience and necessity of the public traveling by scheduled airlines; and

(c) following a hearing as provided in 16-4-207.

(2) Application shall be made by the agency owning and operating the airport. The agency owning and operating the airport may lease the airport all-beverages license to an individual or entity approved by the department.

(3) A public airport all-beverages license and all retail liquor sales thereunder shall be subject to all statutes and rules governing all-beverages licenses.

(4) The department of revenue shall issue a public airport all-beverages license to a qualified applicant regardless of the number of all-beverages licenses already issued within the all-beverages license quota area in which the airport is situated.

Section 2. **Fee.** The fee for one all-beverages license to a public airport shall be $800. This license is nontransferable.

Section 3. **Codification.** It is intended that sections 1 and 2 of this act be codified as an integral part of Title 16, chapter 4, and the provisions of Title 16, chapters 1 through 6, apply to sections 1 and 2.

Section 4. **Effective date.** This act is effective upon passage and approval.

Approved April 5, 1979.

CHAPTER NO. 462

AN ACT TO ACCELERATE THE PERIODIC AGENCY EVALUATION OF THE BOARD OF SANITARIANS, DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING; AMENDING SECTION 2-8-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of public accountants, department of professional and occupational licensing, created by 2-15-1641;

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(c) board of architects, department of professional and occupational licensing, created by 2-15-1651;

(d) state banking board, department of business regulation, created by 2-15-1803;

(e) state electrical board, department of professional and occupational licensing, created by 2-15-1654;

(f) board of professional engineers and land surveyors, department of professional and occupational licensing, created by 2-15-1653;

(g) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(h) office of the investment commissioner, state auditor's office, created by 2-15-1901;

(i) board of landscape architects, department of professional and occupational licensing, created by 2-15-1652;

(j) board of county printing, department of community affairs, created by 2-15-1102;

(k) board of plumbers, department of professional and occupational licensing, created by 2-15-1655;

(l) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(m) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(n) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

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(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(n) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(t) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(u) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202;

(v) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horse racing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish and game, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632."

Approved April 5, 1979.

CHAPTER NO. 463

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII, SECTION 11, OF THE MONTANA CONSITITUTION TO ALLOW STATUTORY EXCEPTIONS TO THE CONFIDENTIALITY OF THE DOCUMENTS OF THE JUDICIAL STANDARDS COMMISSION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VII, section 11 of the Montana consititution is amended to read:

"**Section 11. Removal and discipline.** (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints *and* make rules implementing this section. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.

(4) The proceedings of the commission are confidential except as provided by statute."

Section 2. **Effective date.** If approved by the electorate, this amendment is effective January 1, 1981.

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Section 3. **Submission to electors.** This amendment shall be submitted to the electors of the state of Montana at the general election to be held in November, 1980, by printing on the ballot the full title of this act and the following:

☐ FOR allowing statutory exceptions to the confidentiality of the documents of the judicial standards commission.

☐ AGAINST allowing statutory exceptions to the confidentiality of the documents of the judicial standards commission.

Constitutional Amendment.

CHAPTER NO. 464

AN ACT TO CLARIFY THAT A DIVORCE DECREE MAY BE MODIFIED TO ALLOW MAINTENANCE OR SUPPORT EVEN THOUGH IT WAS NOT ALLOWED IN THE ORIGINAL DECREE; AMENDING SECTION 40-4-208, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-208, MCA, is amended to read:

"40-4-208. Modification and termination of provisions for maintenance, support, and property disposition. (1) Except as otherwise provided in 40-4-201(6), *a* decree may be modified by a court *as to maintenance or support* only as to installments accruing subsequent to the motion for modification.

(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or

(ii) upon written consent of the parties.

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances."

Approved April 9, 1979.

CHAPTER NO. 465

AN ACT TO CLARIFY THE NOTICE REQUIREMENTS FOR DENIAL, SUSPENSION, OR REVOCATION OF A LICENSE; AMENDING SECTION 2-4-631, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-631, MCA, is amended to read:

"2-4-631. Licenses. (1) When the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license is required by law to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning contested cases apply.

(2) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(3) *Whenever notice is required, no* revocation, suspension, annulment, withdrawal, or amendment of any license is lawful unless the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action. If the agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined."

Approved April 9, 1979.

CHAPTER NO. 466

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO COURTS OF LIMITED JURISDICTION; AMENDING SECTIONS 3-1-101, 3-1-523, 3-5-303, 3-10-203, 3-11-204, 3-15-701, 3-15-704, AND 25-10-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-203, MCA, is amended to read:

"3-10-203. Orientation course — annual training. (1) The university of Montana law school, *under the supervision of the supreme*

court, shall present a course of study as soon as is practical following each general election. Mileage and per diem *and the costs of registration and books and other materials* shall be paid *to* the elected or appointed justice of the peace for attending the course *by the county in which he holds or will hold court* and shall be *charged* against *that* county.

(2) There shall be *two mandatory* annual training *sessions supervised by the supreme court* for all elected and appointed justices of the peace. *One of the* training *sessions* may be held in conjunction with the Montana magistrates' association convention. Mileage and per diem *and the costs of registration and books and other materials* shall be paid *to* the elected or appointed justice of the peace for attending the *sessions by the county in which he holds or will hold court* and shall be *charged* against *that* county.

(3) Each justice of the peace shall attend the training sessions provided for in subsection (2). Failure to attend disqualifies him from office and creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance because of illness, a death in the family, or any other good cause."

Section 2. Section 3-11-204, MCA, is amended to read:

"3-11-204. Training sessions for judges. *(1)* There shall be *two mandatory* annual training *sessions supervised by the supreme court* for all elected and appointed *city* judges. *One of the* training *sessions* may be held in conjunction with the Montana magistrates' association convention. Mileage and per diem *and the costs of registration and books and other materials* shall be paid *to* the elected or appointed judge for attending the *sessions. Whenever the office of city judge is held by a justice of the peace, the costs imposed by this subsection are the joint responsibility of the county and the municipality, with the costs to be allocated and charged in proportion to the work done for each governmental entity. In all other cases, the costs shall be paid by the city or town in which he holds or will hold court* and shall be *charged* against *that* city *or town.*

(2) Each city judge shall attend the training sessions. Failure to attend disqualifies him from office and creates a vacancy in the office. However, the supreme court may excuse a city judge from attendance because of illness, a death in the family, or any other good cause."

Section 3. **Contempts a city judge may punish for.** A city judge may punish for contempt persons guilty of the following acts and no other:

(1) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(2) a breach of the peace, boisterous conduct, or violent disturbance in the presence of the judge or in the immediate vicinity of the court held by him tending to interrupt the due course of a trial or other judicial proceeding;

(3) disobedience or resistance to the execution of a lawful order or process made or issued by the judge;

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(4) disobedience to a subpoena duly served or refusal to be sworn or to answer as a witness;

(5) rescuing any person or property in the custody of an officer by virtue of an order or process of the court.

Section 4. **City to provide facilities.** The governing body of the city in which the judge has been elected or appointed shall provide for the judge:

(1) the office space, courtroom, and clerical assistance necessary to enable him to perform his duties in dignified surroundings;

(2) the books, records, forms, papers, stationery, postage, office equipment, and supplies necessary for the proper keeping of the records and files of the judicial office and the transaction of business;

(3) one copy of the latest edition of the Montana Code Annotated and all official supplements thereto or immediate access to the code and supplements.

Section 5. Section 3-1-101, MCA, is amended to read:

"3-1-101. The several courts of this state. The following are courts of justice of this state:

(1) the court of impeachment, which is the senate;

(2) the supreme court;

(3) the district courts;

(4) the justices' courts;

(5) the city courts and such other courts *of limited jurisdiction* as the legislature may establish in any incorporated city or town."

Section 6. Section 3-1-523, MCA, is amended to read:

"3-1-523. Judgment and orders in contempt cases final. The judgment and orders of the court or judge made in cases of contempt are final and conclusive. There is no appeal, but the action of a district court or judge can be reviewed on a writ of certiorari by the supreme court or a judge thereof and the action of a justice of the peace or other court *of limited jurisdiction* by the district court or judge of the county in which such justice or judge of such court *of limited jurisdiction* resides."

Section 7. Section 3-5-303, MCA, is amended to read:

"3-5-303. Appellate jurisdiction. The district court has appellate jurisdiction in such cases arising in justices' *courts* and other courts *of limited jurisdiction* in their respective districts as may be prescribed by law and consistent with the constitution."

Section 8. Section 3-15-701, MCA, is amended to read:

"3-15-701. When and by whom jurors summoned. When jurors are required in any *justice's* or city *court* or *any* other court *of limited jurisdiction*, they must, upon the order of the justice or of the judge

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thereof, be summoned by the sheriff, constable, marshal, or policeman of the jurisdiction."

Section 9. Section 3-15-704, MCA, is amended to read:

"3-15-704. Forming jury. At the time appointed for a jury trial in *a justice's or* city *court* or *any* other *court of limited jurisdiction*, the list of jurors summoned, which shall be 12 or double the number agreed upon before the trial by the parties, must be called. The names of those attending and not excused must be written upon separate slips of paper, folded so as to conceal the names, and placed in a box from which the trial jury must be drawn."

Section 10. Section 25-10-105, MCA, is amended to read:

"25-10-105. Costs of review other than by appeal. When the decision of a court of *limited* jurisdiction in a special proceeding is brought before a court of higher jurisdiction for a review in any other way than by appeal, the same costs must be allowed as in cases on appeal and may be collected by execution or in such manner as the court may direct, according to the nature of the case."

Section 11. **Codification.** Sections 3 and 4 are intended to be codified as an integral part of Title 3, chapter 11, and the provisions contained in Title 3, chapter 11, apply to sections 3 and 4.

Approved April 9, 1979.

CHAPTER NO. 467

AN ACT PERMITTING AN AGENCY TO ELECT TO USE HEARING EXAMINERS FROM THE LEGAL SERVICES UNIT WITHIN THE ATTORNEY GENERAL'S OFFICE OR FROM ANOTHER AGENCY; DEFINING THE TIMELY FILING OF AN AFFIDAVIT OF BIAS; PROVIDING THAT THE DECISION OF THE HEARING EXAMINER IS FINAL IN CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 2-4-611 AND 20-3-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-611, MCA, is amended to read:

"2-4-611. Hearing examiners — legal services unit — conduct of hearings — disqualification of hearing examiners and agency members. (1) An agency *may* appoint hearing examiners for the conduct of hearings in contested cases. *A hearing examiner must be assigned with due regard to the expertise required for the particular matter.*

(2) An agency may elect to request a hearing examiner from the legal assistance program within the attorney general's office or from another agency. If the request is honored, the time, date, and place of the hearing must be set by the agency, with the concurrence of the legal assistance program or the other agency.

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(3) Agency members or hearing examiners presiding over hearings *may* administer oaths or affirmations; issue subpoenas pursuant to 2-4-104; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer to consider simplification of the issues by consent of the parties.

(4) On the filing *by a party, hearing examiner, or agency member* in good faith of a timely and sufficient affidavit of personal bias, *lack of independence, disqualification by law,* or other disqualification of a hearing examiner or agency member, the agency shall determine the matter as a part of the record and decision in the case. *The agency may disqualify the hearing examiner or agency member and request another hearing examiner pursuant to subsection (2) or assign another hearing examiner from within the agency. The affidavit must state the facts and the reasons for the belief that the hearing examiner should be disqualified and must be filed not less than 10 days before the original date set for the hearing.*"

Section 2. Section 20-3-107, MCA, is amended to read:

"**20-3-107. Controversy appeal.** (1) The superintendent of public instruction shall decide matters of controversy when they are appealed from:

(a) a decision of a county superintendent rendered under the provisions of 20-3-210; or

(b) a decision of a county transportation committee rendered under the provisions of 20-10-132.

(2) The superintendent of public instruction shall make his decision on the basis of the transcript of the fact-finding hearing conducted by the county superintendent or county transportation committee and documents presented at the hearing. The superintendent of public instruction may require, if he deems necessary, affidavits, verified statements, or sworn testimony as to the facts in issue. The decision of the superintendent of public instruction shall be final, subject to the proper legal remedies in the state courts. Such proceedings shall be commenced no later than 60 days after the date of the decision of the superintendent of public instruction.

(3) In order to establish a uniform method of hearing and determining matters of controversy arising under this title, the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state.

(4) Whenever in a contested case the superintendent of public instruction is disqualified from rendering a final decision, he shall appoint a hearing examiner as provided in 2-4-611 and the decision of the hearing examiner constitutes the superintendent's final order except as provided in this subsection. Such final order is subject to all the provisions of Title 2, chapter 4, relating to final agency decisions or orders, including judicial review under Title 2, chapter 4, part 7."

Approved April 9, 1979.

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CHAPTER NO. 468

AN ACT TO TRANSFER THE AUTHORIZATION FOR CHANGE IN CLASSES OF POSITIONS AND INCREASE IN SALARY OR WAGE OF CLASS UNDER THE STATE CLASSIFICATION AND PAY PLAN FROM THE BUDGET DIRECTOR TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 2-18-205 AND 2-18-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-205, MCA, is amended to read:

"2-18-205. Department authorization for change in classes of positions. An agency may not *change* the *classes* of positions under its authority without the authorization of the *department*."

Section 2. Section 2-18-207, MCA, is amended to read:

"2-18-207. Department authorization for increase of salary or wage of class. An agency may not increase the salary or wage of any class of positions without authorization of the *department*."

Approved April 9, 1979.

CHAPTER NO. 469

AN ACT TO EXEMPT EDUCATION SPONSORED BY TRADE, BUSINESS, PROFESSIONAL, OR FRATERNAL ORGANIZATIONS, REGARDLESS OF ATTENDANCE AND FEES FOR SUCH EDUCATION, FROM THE PROVISIONS OF TITLE 20, CHAPTER 30; AMENDING SECTION 20-30-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-30-102, MCA, is amended to read:

"20-30-102. Exemptions. The following are exempt from the provisions of this chapter:

(1) institutions accredited by a national or regional accrediting agency recognized by either the board of public education or the board of regents of higher education and notification of such recognition having been given to the department by either board;

(2) education sponsored by a trade, business, professional, or fraternal organization *principally* for the membership of the organization or offered without the payment of fees, *unless such education is offered as leading toward educational credentials*;

(3) avocational or recreational education and institutions offering such education exclusively;

(4) education offered by charitable or religious institutions, organizations, or agencies unless such education is offered as leading toward educational credentials;

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(5) institutions possessing a valid certificate issued by the federal aviation agency;

(6) schools of cosmetology possessing a valid certificate of registration issued under the provisions of Title 37, chapter 31."

Approved April 9, 1979.

CHAPTER NO. 470

AN ACT TO CLARIFY RESIDENCY REQUIREMENTS CONCERNING SPECIAL EDUCATION AND TO CLEARLY FIX THE FINANCIAL RESPONSIBILITY FOR SPECIAL EDUCATION COSTS; AMENDING SECTION 20-7-421, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Residency requirements for financial responsibility for special education.** (1) In accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the residence of his parents or of his guardian unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last known district of residence is the child's district of residence.

(2) The district of residence is financially responsible for tuition as established under 20-5-305 and 20-5-312 for special education students.

Section 2. Section 20-7-421, MCA, is amended to read:

"20-7-421. Arranging attendance in another district in lieu of a special education program. With the approval of the superintendent of public instruction, the trustees may arrange for the attendance of a child in need of special education in a special education program in another district within the state of Montana. *Tuition* as required under *20-5-305 and 20-5-312* may be charged *as provided in [section 1]*."

Approved April 9, 1979.

CHAPTER NO. 471

AN ACT AUTHORIZING SPECIAL EDUCATION COOPERATIVE CONTRACTS; DETAILING THE CONTENTS AND REQUIREMENTS OF THE CONTRACTS; AUTHORIZING SCHOOL DISTRICTS TO APPROPRIATE FUNDS TO COOPERATIVES; PROVIDING FOR TEACHER TENURE FOR SPECIAL EDUCATION COOPERATIVES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Authorization to create full service special education cooperatives — special funding provisions.** (1) A school district may contract with one or more other school districts to establish a

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cooperative to perform all special education administrative services, activities, and undertakings that the school district entering into the contract is authorized by law to perform. The cooperative contract must be authorized by the boards of trustees of the districts entering into the contract.

(2) A cooperative contract may allow money allocated to a cooperative to be expended for:

(a) recruitment of professionals or employees for the cooperative; and

(b) facility rental and supportive services including but not limited to janitorial and communication services.

(3) The superintendent of public instruction may transfer directly to a cooperative the state and federal portion of a district's budgeted costs for contracted special education services.

Section 2. **Detailed contents of full service special education cooperative contracts.** The contract authorized in [section 1] may include all necessary and proper matters but must specify the following:

(1) its duration;

(2) the precise organization, composition, and nature of the cooperative;

(3) the purpose of the cooperative;

(4) the manner of financing the cooperative and establishing and maintaining a budget therefor;

(5) the permissible method to be employed in accomplishing the partial or complete termination of the cooperative agreement and for disposing of property upon partial or complete termination;

(6) provision for an administrator or a joint board responsible for administering the cooperative, including representation of the contracting districts on the joint board;

(7) the manner of acquiring, holding, and disposing of real and personal property used by the cooperative;

(8) any other necessary and proper matters.

Section 3. **Submission of agreement to attorney general.** (1) Every contract made under the provisions of [sections 1 through 6] must, as a condition precedent to its performance, be submitted to the attorney general who must determine whether the contract is in proper form and compatible with the laws of Montana.

(2) The attorney general must approve any contract submitted to him pursuant to [section 1] unless he finds that it does not meet the conditions set forth in [sections 1 and 2], in which case he must detail, in writing addressed to the school districts concerned, the specific respects in which the proposed contract fails to meet the requirements of law. Failure to disapprove a contract within 30 days of its submission constitutes approval of the contract by the attorney general.

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Section 4. **Final approval and filing of special education cooperative contract.** Within 10 days after approval by the attorney general and prior to commencement of its performance, a full service special education cooperative contract made pursuant to [sections 1 through 6] must be:

(1) submitted to the superintendent of public instruction who has final approval authority pursuant to the policies of the board of public education;

(2) filed with the county clerk and recorder of the county or counties in which the school districts involved are located; and

(3) filed with the secretary of state.

Section 5. **Authorization to appropriate funds for purpose of full service special education cooperative contract.** A school district entering into a full service special education cooperative contract pursuant to [sections 1 through 6] may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative officer or joint board created for the purpose of performance of the cooperative contract such material, personnel, or services as may be within its legal power to furnish.

Section 6. **Tenure of teachers employed by cooperatives.** (1) Teachers who have tenure rights with a district and are employed by a cooperative of which their district is a member do not lose their tenure with the district.

(2) Nontenured teachers employed by a cooperative acquire tenure with a cooperative in the same manner as prescribed in 20-4-203, and the provisions of sections 20-4-204 through 20-4-207 are applicable to teachers employed by a cooperative.

(3) Tenure for a teacher employed by a cooperative is acquired only with the cooperative and not with a member school district of a cooperative.

(4) For the purposes of tenure of a teacher employed by a cooperative, special education cooperative contract renewals may not be used to limit the teacher's progress toward tenure status.

Section 7. **Codification.** Sections 1 through 6 are intended to be codified as an integral part of Title 20, chapter 7, part 4, and the provisions contained in Title 20, chapter 7, part 4, apply to sections 1 through 6.

Section 8. **Effective date.** This act is effective upon passage and approval.

Approved April 9, 1979.

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CHAPTER NO. 472

AN ACT TO PROVIDE ARBITRATION BETWEEN A PUBLIC EMPLOYER AND A FIREFIGHTERS' ORGANIZATION OR ITS EXCLUSIVE REPRESENTATIVE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Arbitration between firefighters and public employers.** (1) This section applies only to firefighters and their public employers.

(2) If an impasse is reached in the course of collective bargaining between a public employer and a firefighters' organization or its exclusive representative and if the procedures for mediation and factfinding in sections 39-31-307 through 39-31-310 have been exhausted, either party or both jointly may petition the board for final and binding arbitration.

Section 2. **Designation of arbitrator.** Within 3 days of the receipt of a petition for final and binding arbitration, the board shall submit to the parties a list of five qualified and disinterested arbitrators. From the list submitted by the board, the parties shall alternately strike two names. The remaining person shall be designated as the arbitrator. The parties shall notify the board of the designated arbitrator within 5 days of the receipt of the list.

Section 3. **Powers and duties of arbitrator for firefighters and public employers.** (1) The arbitrator shall establish dates and a place for hearings and may subpoena witnesses and require the submission of evidence necessary to resolve the impasse.

(2) Prior to making a determination on any issue relating to the impasse, the arbitrator may refer the issues back to the parties for further negotiation.

(3) At the conclusion of the hearings, the arbitrator shall require the parties to submit their respective final position on matters in dispute.

(4) The arbitrator shall make a just and reasonable determination of which final position on matters in dispute will be adopted within 30 days of the commencement of the arbitration proceedings. The arbitrator shall notify the board and the parties, in writing, of his determination.

(5) In arriving at a determination, the arbitrator shall consider any relevant circumstances including:

(a) comparison of hours, wages, and conditions of employment of the employees involved with employees performing similar services and with other services generally;

(b) the interests and welfare of the public and the financial ability of the public employer to pay;

(c) appropriate cost-of-living indices;

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(d) any other factors traditionally considered in the determination of hours, wages, and conditions of employment.

(6) The determination of the arbitrator is final and binding and is not subject to the approval of any governing body.

Section 4. **Collective bargaining permitted during arbitration.** Nothing prohibits the parties to the impasse from reaching an agreement prior to the rendering of a determination by the arbitrator.

Section 5. **Strikes limited.** Strikes are prohibited during the term of any contract and the negotiations or arbitration of that contract.

Section 6. **Cost of arbitration.** The cost of arbitration shall be shared equally by the public employer and the firefighters' organization or its exclusive representative.

Approved April 9, 1979.

CHAPTER NO. 473

AN ACT TO REESTABLISH THE PROVISIONS OF CHAPTER 577, LAWS OF MONTANA, 1977, CONCERNING THE ENERGY SUPPLY ALERT AND VESTING ENERGY EMERGENCY POWERS IN THE GOVERNOR; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Legislative findings and intent.** (1) The legislature finds that energy in various forms is increasingly subject to possible shortages and supply disruptions, to the point that there may be foreseen an emergency situation, and that without the ability to gather information, formulate plans, and institute appropriate emergency measures to reduce or allocate the usage of energy through a program of mandatory usage curtailment or allocation, a severe impact on the health, safety, and general welfare of our state's citizens may occur. The prevention or mitigation of the effects of such energy shortages or disruptions is necessary for preservation of the public health and welfare of the citizens of this state.

(2) It is the intent of [this act] to:

(a) establish necessary planning, information gathering, and energy emergency powers for the governor and define the conditions under which such powers are to be exercised;

(b) provide penalties for violations of [this act].

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Energy facility" means a facility which produces, extracts, converts, transports, or stores energy.

(2) "Energy" means petroleum or other liquid fuels, natural or synthetic fuel gas, or electricity.

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(3) "Person" means an individual, partnership, joint venture, private or public corporation, cooperative, association, firm, public utility, political subdivision, municipal corporation, government agency, joint operating agency, or any other entity, public or private, however organized.

(4) "Committee" means the energy policy committee established in [section 3].

(5) "Distributor" means any person, private corporation, partnership, producer, individual proprietorship, public utility, joint operating agency or cooperative which engages in or is authorized to engage in the activity of generating, producing, transmitting, or distributing energy in this state.

(6) "Energy emergency" means an existing or imminent domestic, regional, or national shortage of energy which will result in curtailment of essential services or production of essential goods or the disruption of significant sectors of the economy unless action is taken to conserve or limit the use of the energy form involved and the allocation of available energy supplies among users.

(7) "Energy supply alert" means a condition of energy supply on a national, regional, state, or local basis which foreseeably will affect significantly the availability of essential energy supplies within the ensuing 90-day period unless action is taken under [section 9] to reduce energy usage by state agencies and political subdivisions.

Section 3. **Energy policy committee.** There is established a legislative energy policy committee which consists of eight members. The members shall consist of the president of the senate and the floor leader of the opposite party in the senate and the speaker and minority leader of the house of representatives. Each leadership member shall designate one additional member within 15 days following the close of each session.

Section 4. **Supply of vital public services during an energy supply alert and energy emergency.** The governor shall, with the advice of the committee, in developing provisions for the allocation, conservation, and consumption of energy, give due consideration to supplying vital public services such as essential governmental operations, health and safety functions, emergency services, public mass transportation systems, food production and processing facilities, and energy supply facilities during conditions of an energy supply alert or energy emergency. In developing any energy allocation programs, provisions shall be made for the equitable distribution of energy among the geographic areas of the state which are experiencing an energy shortage.

Section 5. **Information obtainable by governor.** (1) The governor may obtain information from energy resource producers, suppliers, public agencies, and consumers and from political subdivisions in this state necessary for him, with advice of the committee, to determine the need for energy supply alert and emergency declarations. Such information may include but is not limited to:

(a) sales volumes by customer classifications;

(b) forecasts of energy resource requirements for the particular type of energy involved for a period not to exceed 2 years; and

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(c) inventory of energy resources and reserves available for use in meeting a shortage in a particular energy source.

(2) In obtaining information under subsection (1) of this section during a state of energy emergency, the governor may subpoena witnesses, material, and relevant books, papers, accounts, records, and memoranda; administer oaths; and cause the depositions of persons residing within or without Montana to be taken in the manner prescribed for depositions in civil actions in district courts, to obtain information relevant to energy resources that are the subject of the proclaimed emergency or associated disaster.

(3) In obtaining information under this section, the governor shall:

(a) seek to avoid eliciting information already furnished by a person or political subdivision in this state to a federal, state, or local regulatory authority that is available for his study; and

(b) cause reporting procedures, including forms, to conform to existing requirements of federal, state, and local regulatory authorities.

(4) Nothing in the act requires the disclosure by a distributor of confidential information, trade secrets, or other facts of a proprietary nature.

(5) The governor shall forward to the committee such information collected under this section as the committee may request and shall advise the committee of the progress of the information gathering process.

Section 6. **Advice of distributors and consumers.** The governor shall actively solicit the advice of consumers, through the legislative consumer committee established in 5-15-101, and of distributors throughout the information gathering, planning, and implementation process described in [this act].

Section 7. **Submission and approval of curtailment plans.** (1) The governor may at any time require a distributor of an energy resource to prepare for his approval a plan for the curtailment of the distribution of that resource in the event of a state of energy emergency. Plans shall be submitted in such form and within such limits as the governor shall specify and shall recognize the obligations and duties which may be placed upon distributors subject to [this act] by other jurisdictions, both state and federal.

(2) Approval of plans for curtailment shall be based on the following factors:

(a) the consistency of the plan with the public health, safety, and welfare;

(b) the technical feasibility of implementation of the plan;

(c) the effectiveness with which the plan minimizes the impact of any curtailment;

(d) the needs of commercial, agricultural, retail, professional, and service establishments whose normal function is to supply goods or services,

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or both, of an essential nature, including but not limited to food, lodging, fuel, and medical care facilities;

(e) the regional agreements or contracts of the distributors; and

(f) the advice of the committee.

Section 8. **Governor's considerations.** In determining whether to declare an energy supply alert or energy emergency, the governor shall consider:

(1) availability of regional and national energy resources;

(2) local, state, regional, and national energy needs and shortages;

(3) availability of short-term alternative supplies on a local, state, regional, and national basis;

(4) the economic effect of such declaration and the implementation of any curtailment or conservation plans;

(5) the advice of the committee; and

(6) any other relevant factors.

Section 9. **Energy supply alert.** (1) The governor may upon finding that an energy alert condition exists, declare the same for a period of not longer than 90 days, setting forth the reasons therefor. Such declaration may be renewed for 90-day periods thereafter upon a finding that the energy alert condition will continue for such further period.

(2) Whenever the governor has declared an energy supply alert, he may by executive order direct actions:

(a) reducing energy resource usage by state agencies and political subdivisions;

(b) promoting conservation, prevention of waste and salvage of energy resources and the materials, services, and facilities derived therefrom or dependent thereon, by state agencies and political subdivisions.

Section 10. **Emergency energy — powers of governor.** In addition to his existing powers and duties, the governor shall have the following duties and special energy emergency powers subject to the definitions and limitations in [this act]:

(1) The governor with the advice of the committee may, upon finding that a situation exists which threatens to seriously disrupt or diminish energy supplies to the extent that life, health, or property may be jeopardized, declare a condition or state of energy emergency, at which time all of the general and specific emergency powers further enumerated in this section shall become effective.

(2) The condition of energy emergency terminates after 14 consecutive days unless extended by a declaration of the legislature by joint resolution of a continuing condition of energy emergency of a duration to be established by the legislature.

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(3) The conditions of an energy emergency alternatively cease to exist upon a declaration to that effect by either of the following:

(a) the governor; or

(b) the legislature, by joint resolution if in regular or special session.

(4) In a declared state of energy emergency, the governor may, with the advice of the committee:

(a) implement such programs, controls, standards, priorities, and quotas for the production, allocation, conservation, and consumption of energy, including plans for the curtailment of energy; provided that in so doing, the governor shall impose controls, quotas, or curtailments according to the nature of the end use to be made of the energy consistent with existing transmission and distribution systems serving the geographic area affected by the energy emergency;

(b) suspend and modify existing pollution control standards and requirements or any other standards or requirements affecting or affected by the use of energy, including those relating to air or water quality control; and

(c) establish and implement regional programs and agreements for the purposes of coordinating the energy programs and actions of the state with those of the federal government and of other states, localities, and other persons.

(5) Nothing in [this act] means that any program, control, standard, priority quota, or other policy created under the authority of the emergency powers authorized by [this act] has any continuing legal effect after the cessation of a declared state of energy emergency.

(6) Because of the emergency nature of [this act], all actions authorized or required hereunder or taken pursuant to any order issued by the governor are exempted from all requirements and provisions of the Montana Environmental Policy Act of 1971, including but not limited to the requirement for environmental impact statements.

(7) Except as provided in this section, nothing in [this act] exempts a person from compliance with the provisions of any other law, rule, or directive unless specifically ordered by the governor, or unless impossibility of compliance is a direct result of an order of the governor.

Section 11. **Obligations of state and local executives.** To protect the public welfare during conditions of energy alerts or emergencies, the chief executive of each political subdivision of the state, including local governments with self-government power, and each state agency shall carry out in its jurisdiction such energy supply alert or energy emergency measures as may be ordered by the governor.

Section 12. **Coordination with federal provisions.** In order to attain uniformity, as far as is practicable throughout the country in measures taken to aid in energy crisis management, all action taken under [this act] and all orders and rules made pursuant to it shall be taken or

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made with due consideration for and consistent when practicable with the orders, rules, actions, recommendations, and requests of federal authorities.

Section 13. **Compliance.** Notwithstanding any provision of law or contract to the contrary, all persons who are specifically ordered by the governor with the advice of committee to comply with an order issued or action taken pursuant to [this act] shall comply.

Section 14. **Orders to distributors.** The governor may order any distributor to take such action on his behalf as may be required to implement orders issued pursuant to [section 10] and no distributor or person is liable for actions taken in accordance with such order.

Section 15. **Liability.** No distributor or person is liable for damages to persons or property resulting from action taken in accordance with orders or rules issued pursuant to [this act] or actions taken pursuant to orders, rules, actions, recommendations, and requests of federal authorities.

Section 16. **Rules and executive orders.** Notwithstanding the exemption from the provisions of the Montana Administrative Procedure Act granted to the governor in Title 2, chapter 4, MCA, the governor may adopt rules necessary to implement [this act] and cause their adoption and publication to be completed in the same manner as the adoption and publication of agency rules. In addition, executive orders of the governor implementing provisions of [this act] shall be published in the Montana Administrative Register upon request of the governor.

Section 17. **Civil defense laws supplemented.** The powers vested in the governor under [this act] are in addition to and not in lieu of emergency powers vested in him under Title 10, chapter 3, or any other law of Montana.

Section 18. **Governor may authorize expenditure.** The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an energy emergency is declared by the governor and justifies the expenditure as set forth in 10-3-311 for other emergency or disaster expenditures.

Section 19. **Penalties.** A person convicted of violating [this act] is guilty of a misdemeanor. Each day of violation, after notice of violation, constitutes a separate offense.

Section 20. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. **Period of effectiveness.** This act is effective on passage and approval and remains in effect until July 1, 1985.

Approved April 9, 1979.

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CHAPTER NO. 474

AN ACT TO PLACE THE LAW RELATING TO PREFERENTIAL GRANTING OF CONCESSIONS IN PUBLIC BUILDINGS TO BLIND AND DISABLED PERSONS UNDER THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES; PROVIDING FOR RULEMAKING AUTHORITY; AMENDING SECTION 49-4-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-4-401, MCA, is amended to read:

"**49-4-401. Definition.** For *purposes* of this part *the following definitions apply:*

(1) "Blind person" *means* one who has no vision or whose vision with correcting glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential.

(2) "Department" means the department of social and rehabilitation services."

Section 2. **Department to ensure compliance.** The department shall monitor and ensure compliance with this part.

Section 3. **Rulemaking.** (1) The department may adopt rules setting forth criteria and procedures to be followed by state agencies and political subdivisions in granting concessions under this part.

(2) The department may adopt such other rules as are reasonably necessary to effectuate the purposes of this part.

(3) All such rules must be adopted in accordance with the Montana Administrative Procedure Act.

Section 4. **Enforcement.** The department may seek an injunction or writ of mandate in Lewis and Clark County or the county in which the public building involved is located to enforce this part or rules adopted under it.

Section 5. **Codification.** Sections 2 through 4 are intended to be codified in Title 49, chapter 4, part 4, and the provisions of Title 49, chapter 4, part 4, apply to sections 2 through 4. All references in the MCA to Title 49, chapter 4, part 4, include those sections.

Approved April 9, 1979.

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CHAPTER NO. 475

AN ACT TO ADOPT A CODE OF FAIR CAMPAIGN PRACTICES AND TO PROVIDE AN OPPORTUNITY FOR ALL CANDIDATES TO SUBSCRIBE TO THAT CODE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Adoption of code of fair campaign practices.** The following code of fair campaign practices is adopted by Montana:

There are basic principles of decency, honesty, and fair play that every candidate for public office in the United States has a moral obligation to observe and uphold, in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional right to a free and untrammeled choice and the will of the people may be fully and clearly expressed on the issues before the country. Therefore:

I will conduct my campaign in the best American tradition, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponent and his party which merit such criticism.

I will defend and uphold the right of every qualified American voter to full and equal participation in the electoral process.

I will conduct my campaign without the use of personal vilification, character defamation, whispering campaigns, libel, slander, or scurrilous attacks on my opposition or his personal or family life.

I will not use campaign material of any sort which misrepresents, distorts, or otherwise falsifies the facts, nor will I use malicious or unfounded accusations which aim at creating or exploiting doubts, without justification, as to the loyalty and patriotism of my opposition.

I will not make any appeal to prejudice based on race, sex, creed, or national origin.

I will not undertake or condone any dishonest or unethical practice which tends to corrupt or undermine our American system of free elections or which hampers or prevents the full and free expression of the will of the voters.

Insofar as is possible, I will immediately and publicly repudiate support deriving from any individual or group which resorts, on behalf of my candidacy or in opposition to that of my opponent, to the methods and tactics that I have pledged not to use or condone.

Section 2. **Candidates to be given opportunity to subscribe to campaign practices code — publicity.** (1) The commissioner of campaign practices shall prepare a form which contains the code of fair campaign practices provided for in [section 1] and a place for a candidate to sign the form and to indicate that the candidate endorses, subscribes to, and pledges to abide by the code.

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(2) Each candidate required to file statements or reports with the commissioner shall be sent a copy of this form. Signing the form is voluntary, and a failure or refusal to sign is not a violation of the election laws. A form shall be sent for each election as soon as feasible. The signed form shall be returned to the commissioner.

(3) The commissioner shall supply the secretary of state, the county registrars, and the city and town clerks with forms. Any candidate not required to file with the commissioner but wishing to subscribe to the code may obtain the form from the commissioner, the secretary of state, a county registrar, or a city or town clerk and may sign the form and deliver it to the commissioner.

Approved April 9, 1979.

CHAPTER NO. 476

AN ACT TO AMEND SECTION 15-30-101, MCA, PROVIDING A DEFINITION OF GROSS INCOME FOR THE PURPOSES OF THE INDIVIDUAL INCOME TAX.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends as herein defined. "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(3) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(4) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories and possessions.

(5) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

(6) "Information agents" include all individuals, corporations, associations, and partnerships, in whatever capacity acting, including lessees or

mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(7) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(8) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(9) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(10) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and has not established a residence elsewhere.

(11) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(12) "Taxable year" means the taxpayer's taxable year for federal income tax purposes.

(13) "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations."

Approved April 9, 1979.

CHAPTER NO. 477

AN ACT AMENDING SECTION 15-8-707, MCA, TO ALLOW COUNTY TREASURERS TO REMOVE DUPLICATE AND ERRONEOUS TAX ASSESSMENTS FROM THE COUNTY TAX ROLL UPON DISCOVERY AND VERIFICATION BY THE DEPARTMENT OF REVENUE; AND PROVIDING THAT THE CONSENT OF THE COUNTY ATTORNEY IS NEEDED ONLY IF LITIGATION IS INVOLVED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-8-707, MCA, is amended to read:

"15-8-707. Defects in form of assessment book may be corrected. *(1) At any time after the original assessment is made and prior*

to a sale for delinquent taxes, omissions, errors, or defects in form in any original or duplicate assessment book may *be* corrected by the:

(a) department of revenue *or its agent; or*

(b) county assessor or county treasurer with verification from the department.

(2) If the correction involves an assessment of property that is the subject of pending litigation, the consent of the county attorney must be obtained before any correction may be made."

Approved April 9, 1979.

CHAPTER NO. 478

AN ACT TO REVISE THE STATUTES RELATED TO HUNTING AND TRAPPING LICENSES TO MODIFY CERTAIN DEFINITIONS, MAKE PERMISSIVE THE INFORMATION INCLUDED ON BIG GAME LICENSES, MAKE CONSISTENT WORDING OF AUTHORITY UNDER A LICENSE, DELETE CERTAIN LICENSES, PROVIDE INDIVIDUAL GAME SPECIES LICENSES FOR NONRESIDENTS, MAKE RESTRICTIONS NOW APPLICABLE TO NONRESIDENT GAME ANIMAL LICENSES APPLICABLE TO ALL HUNTING LICENSES, PERMIT THE DEPARTMENT TO DETERMINE GAME ANIMAL SEASONS FOR WHICH THE BOW AND ARROW LICENSE IS APPLICABLE, INCREASE FEES FOR CERTAIN NONRESIDENT HUNTING LICENSES, DECREASE THE FEE FOR RESIDENT B-TAG DEER LICENSE, AND MAKE SUCH OTHER MODIFICATIONS TO THE STATUTES NECESSARY TO CARRY OUT THIS REVISION; AMENDING SECTIONS 87-2-101, 87-2-102, 87-2-401 THROUGH 87-2-403, 87-2-501, 87-2-504 THROUGH 87-2-508, 87-2-601, 87-2-602, 87-2-701 THROUGH 87-2-703, 87-2-708, AND 87-2-805, MCA; REPEALING SECTIONS 87-2-108, 87-2-502, 87-2-503, 87-2-707, AND 87-2-712, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-101, MCA, is amended to read:

"87-2-101. Definitions. For the purpose of this [act], the following shall be construed, respectively to mean:

(1) angling or fishing—the taking of or attempting to take fish by hook and single line or single rod, in hand or within immediate control;

(2) closed season—the time during which game birds, fish, game and fur-bearing animals may not be lawfully taken;

(3) commission—the state fish and game commission;

(4) fur-bearing animals—marten or sable, otter, muskrat, fisher, mink, bobcat, *Canada lynx, wolverine,* and beaver;

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(5) game animals—deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, and bear;

(6) game fish—all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); and the species ictalurus punctatus (channel catfish);

(7) migratory game birds—waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown *and* sandhill; rails, including coots; wilson's snipes or jacksnipes;

(8) nongame wildlife—any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other wild animal not otherwise legally classified by statute or regulation of this state;

(9) open season—the time during which game birds, fish, game and fur-bearing animals may be lawfully taken;

(10) person—the plural or singular, male or female, as the case demands, including individuals, associations, partnerships, and corporations, unless the context requires otherwise;

(11) predatory animals—coyote, weasel, skunk, and civet cat;

(12) upland game birds—sharptailed grouse, blue grouse, *spruce (Franklin) grouse,* prairie chicken, sage hen or sage grouse, ruffed grouse, quail, pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge;

(13) wild buffalo—buffalo or bison which have not been reduced to captivity."

Section 2. Section 87-2-102, MCA, is amended to read:

"87-2-102. Resident defined. In determining a resident for the purpose of issuing resident fishing, hunting, *and trapping* licenses, the following provisions shall apply:

(1) Members of the armed forces of the United States or members of the armed forces of foreign governments attached to the armed forces of the United States who are assigned to duty in Montana and members of their immediate families after a period of 30 days within Montana, upon presenting assignment orders emanating from the proper unit commander, shall be considered residents for the purpose of this chapter. The 30-day residence requirement is waived in time of war.

(2) Any person who has been a resident of the state of Montana, as defined in 1-1-215, for a period of 6 months immediately prior to making application for said license shall be eligible to receive a resident hunting, fishing, *or trapping* license.

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(3) Any enrollee of a job corps camp located within the state of Montana shall, after a period of 30 days within Montana, be considered a resident for the purpose of making application for a fishing license as long as he remains an enrollee in a Montana camp."

Section 3. Section 87-2-401, MCA, is amended to read:

"**87-2-401. Class A-1—resident game bird license.** Except as *otherwise* provided, *a* resident, as defined by 87-2-102, who is 12 years of age or older may, upon payment of a fee of $4, receive a Class A-1 license which will entitle the holder to pursue, hunt, shoot, and kill game birds and possess the *carcasses* of game birds *as* authorized by *department rules*."

Section 4. Section 87-2-402, MCA, is amended to read:

"**87-2-402. Class B-1—nonresident game bird license.** Except as *otherwise* provided *in this chapter, a* person not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of *a fee* of $30 *may receive a* Class B-1 license which shall entitle the holder thereof to pursue, hunt, shoot, *and* kill game birds *and possess the carcasses of game birds* as authorized by *department* rules."

Section 5. Section 87-2-403, MCA, is amended to read:

"**87-2-403. Wild turkey tags and fee.** (1) The department may issue wild turkey tags to the holder of a valid Class A-1 *or* Class B-1 license. Each tag shall *entitle* the holder to *pursue,* hunt, shoot, *and* kill one wild turkey *and possess the carcass thereof,* during such times and such places as the department shall authorize an open season on wild turkey.

(2) The fee for a wild turkey tag shall be $2. Turkey tags shall be issued either by a drawing system or in unlimited number *as authorized by department rules.*"

Section 6. Section 87-2-501, MCA, is amended to read:

"**87-2-501. Class A-3, A-4, A-5, A-6—resident deer, elk, and bear licenses.** *Except as otherwise provided in this chapter, a* resident, as defined by 87-2-102, who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the proper fee or fees, be entitled to purchase one each of the following licenses which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the *carcasses* of *those* game animals *as authorized by department rules*:

(1) Class A-3, deer A tag, $7;

(2) Class A-4, deer B tag, *$5*;

(3) Class A-5, elk tag, $8;

(4) Class A-6, black or brown bear tag, $6."

Section 7. Section 87-2-504, MCA, is amended to read:

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"87-2-504. Class B-7 and B-8—nonresident deer licenses. *Except as otherwise provided in this chapter, a* person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is a holder of a nonresident *conservation* license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase one each of the following licenses: Class B-7, deer A tag, *$100*; Class B-8, deer B tag, $50; and will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the *carcasses* of *those* animals *as authorized by department rules. Unless purchased as part of a B-10 license, a Class B-7 license must be assigned for use in a specific administrative region or portion thereof.*"

Section 8. Section 87-2-505, MCA, is amended to read:

"87-2-505. Class B-10—nonresident big game combination license. *Except as otherwise provided in this chapter, a* person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the fee *of $225* and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license which shall entitle the holder to all the privileges of *Class B, Class B-1, Class B-7, and black bear licenses, and* an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. *Not more than 17,000 Class B-10 licenses may be sold in any one license year.*"

Section 9. Section 87-2-506, MCA, is amended to read:

"87-2-506. Restrictions on hunting licenses. *(1)* The department may prescribe by rule the number of *hunting* licenses to be issued. Any license sold may be restricted to a specific *administrative region,* hunting *district, or other designated* area and may specify the species, age, and sex to be taken *and the time period for which the license is valid.*

(2) When the number of valid resident applications for licenses or permits of a single class or type exceeds the number of licenses or permits the department desires to issue in an administrative region, hunting district, or other designated area, then the number of licenses or permits issued to nonresident license or permit holders in the region, district, or area may not exceed 10% of the total issued."

Section 10. Section 87-2-507, MCA, is amended to read:

"87-2-507. Class D-1—nonresident mountain lion license. *Except as otherwise provided in this chapter, a* person not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of *a fee* of *$100 may receive* a Class D-1 license which shall entitle the holder thereof to pursue, hunt, shoot, *and* kill *mountain lion* and possess *the carcass thereof* as authorized by *department* rules."

Section 11. Section 87-2-508, MCA, is amended to read:

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"87-2-508. Class D-2—resident mountain lion license. *Except as otherwise provided in this chapter, a* person who is a resident, as defined in 87-2-102, and who is 12 years of age or older, upon payment of *a fee* of $5 *may receive* a Class D-2 license which shall entitle the holder thereof to pursue, hunt, shoot, *and* kill *mountain lion* and possess *the carcass thereof* as authorized by *department* rules."

Section 12. Section 87-2-601, MCA, is amended to read:

"87-2-601. Class C—trapper's license. *Except as otherwise provided in this chapter, a* resident, as defined in 87-2-102, upon making application and *payment* of *a fee of* $10 to the department, *may receive* a *Class C* license which shall authorize the holder thereof to trap fur-bearing animals and hunt bobcat, *wolverine, and Canada lynx* within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the department and at such places as may be designated in said license."

Section 13. Section 87-2-602, MCA, is amended to read:

"87-2-602. Class C-1—landowner's trapping license. *Except as otherwise provided in this chapter, any individual who owns land in this state* or *any* tenant or member of the immediate family of said owner or tenant, upon making application to the department and payment of *the fee* of $1, *may receive a Class C-1 license* which shall entitle the holder thereof to trap any fur-bearing animal *and to hunt bobcat, wolverine, and lynx* on land owned or leased by him or his immediate family at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the department and at such places as may be designated in said license."

Section 14. Section 87-2-701, MCA, is amended to read:

"87-2-701. Special licenses. (1) Any applicant who is 12 years of age or older and is the holder of a *resident wildlife conservation license or a* nonresident *wildlife conservation* license may apply for a special license which, in the judgment of the department, is to be issued and shall pay the following fees therefor:

(a) moose—resident, $25; nonresident, *$150*;

(b) mountain goat—resident, $15; nonresident, *$150*;

(c) mountain sheep—resident, $25; nonresident, *$150*;

(d) antelope—resident, $5; *nonresident, $100;*

(e) grizzly bear—resident, $25; nonresident, *$150*;

(f) black or brown bear—nonresident, *$100.*

(2) In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of $25 within 10 days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

(3) *Special licenses shall be issued in a manner prescribed by the department.*"

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Section 15. Section 87-2-702, MCA, is amended to read:

"87-2-702. Restrictions on special licenses. *(1)* A person who has obtained a grizzly bear, moose, mountain goat, or mountain sheep license is not eligible to apply for another such license for the next succeeding 7 years if such person has killed or taken an animal of the species for which the special license was issued. A person who has obtained a grizzly bear, moose, mountain goat, or mountain sheep license but did not kill or take an animal of the species for which the special license was issued is eligible to apply for another such license in any succeeding year if he returns his unused special license to the department before or at the time application is made.

(2) A person who has received a special *permit* for elk is not eligible to receive a second special *permit* for this species of game animal during any license year. However, in the event the number of applications received is not equal to the number of game *animals* desired to be killed by the department, reapplication may be made by those valid license holders of the current year who may fall within these limitations.

(3) A person who has killed or taken *any* game animal, except a deer *or an antelope*, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species."

Section 16. Section 87-2-703, MCA, is amended to read:

"87-2-703. Special elk or deer permits. (1) Any person who is the holder of a valid resident elk license or a Class B-10 nonresident big game combination license may apply for a special elk *permit* upon payment of a fee of $1.

(2) Any person who is the holder of a valid resident deer license or any nonresident who holds a *valid nonresident deer* license and a valid deer tag may apply for a special deer *permit* upon payment of a fee of $1.

(3) The department shall have the authority to promulgate such rules and regulations as are necessary to implement this section."

Section 17. Section 87-2-708, MCA, is amended to read:

"87-2-708. Class A-2—special bow and arrow license. A holder of *a valid hunting license for which a special archery season is set by the department* may *receive*, upon payment of an additional *fee* of $6, a Class A-2 license which shall authorize the holder thereof to pursue, hunt, shoot, and kill *with bow and arrow* the game animals *so* authorized by the licenses held and to possess *the carcass thereof* during seasons and in areas, as designated by the department."

Section 18. Section 87-2-805, MCA, is amended to read:

"87-2-805. Persons under fifteen years of age. (1) Minors under 15 years of age may fish for and take fish during the open season without a license. However, no nonresident person under the age of 15 years may fish in or on any Montana waters without first having obtained a Class B, B-3, *or B-4* fishing license unless the nonresident person under

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the age of 15 years is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) Residents, as defined by 87-2-102, under the age of 15 years may purchase Class A-1, A-3, and A-5 licenses at $2 per license."

Section 19. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. **Repealer.** Sections 87-2-108, 87-2-502, 87-2-503, 87-2-707, and 87-2-712, MCA, are repealed.

Section 21. **Effective date.** This act is effective on May 1, 1980.

Approved April 9, 1979.

CHAPTER NO. 479

AN ACT TO REVISE THE TELEVISION DISTRICT LAWS; PERMITTING THE CREATION, ALTERATION, OR DISSOLUTION OF A DISTRICT BY THE RESIDENTS, CHANGING THE INTEREST LIMITS ON WARRANTS AND BONDS, ELIMINATING REQUIREMENTS RELATED TO OWNERSHIP OF TELEVISION SETS, AND AUTHORIZING A DISTRICT TO PROVIDE AND FINANCE FM TRANSLATOR SERVICES UPON PETITION; AMENDING SECTIONS 7-13-2503, 7-13-2510, 7-13-2522, 7-13-2523, 7-13-2527, 7-13-2528, 7-13-2529, 7-13-2541, AND 7-13-2542, MCA; AND REPEALING CHAPTER 13, LAWS of 1979.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-2503, MCA, is amended to read:

"7-13-2503. Petition to create district. (1) A petition to form a district shall be presented to the county clerk and recorder of each of the counties in which any portion of the area is situated. Petitions shall be signed by *at least* 51% of the registered electors who are *residents of* the proposed district.

(2) The petition shall state the objects of the district and designate the boundaries thereof by section and the approximate number of people to be benefited thereby and shall contain a brief description of the proposed system, including type of construction, location, and approximate cost of the installation. It shall also state that the proposed district will be conducive to the public interest, convenience, and necessity. It shall request that it be organized as a television district."

Section 2. Section 7-13-2510, MCA, is amended to read:

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"**7-13-2510. Powers of district.** A television district organized under this part, acting through its board of trustees herein provided for, may:

(1) perform all the acts and take all the necessary or proper steps to assure that there will be a fair, efficient, and equitable distribution of television services within the area in order that all persons within such service area shall be supplied by means of an appropriate electrical or electronic system for television program distribution, such authorized system to provide such flexibility as to permit radical improvements in technical quality without rendering inoperative receivers therein, but discontinuance of service by the district for improvements or repairs for a temporary period shall not be construed as rendering inoperative;

(2) if necessary or proper in the furtherance of the objects of this part, acquire, build, construct, repair, own, maintain, and operate any necessary stations transmitting simultaneous visual and aural signals intended to be received by the general public, relay stations, pickup stations, or any other necessary electrical or electronic system;

(3) make contracts to compensate any owner of land or other property for the use of such property for the purposes of this part;

(4) make contracts with the United States, any state or municipality, or any department or agency of those entities for carrying out the general purposes for which the district is formed;

(5) acquire, by gift, devise, bequest, lease, or purchase, real and personal property, tangible or intangible, including lands, rights-of-way, and easements, necessary or convenient for its purposes;

(6) to make contracts of any lawful nature (including labor contracts or those for employees' benefits) and employ engineers, laboratory personnel, attorneys, other technical or professional assistants, and any other assistants or employees necessary to carry out the provisions of this part;

(7) issue warrants, payable at the time stated therein, to evidence the obligation to repay money borrowed or any other obligation incurred by the district, warrants so issued to draw interest at a rate fixed by the board, payable annually or semiannually as the board may prescribe;

(8) contract indebtedness or borrow money for corporate purposes and issue revenue bonds therefor to be repaid from rates and charges, bearing interest at a rate not exceeding 7% per annum payable semiannually, the bonds not to be sold for less than par and accrued interest;

(9) prescribe tax rates for the providing of services throughout the area in accordance with the provisions of this part;

(10) prescribe such installation or ready-to-serve charges to be used for any costs connected with preparation, acquisition, or construction of the system;

(11) apply for, accept, and be the holder of any permit or license issued by or required under federal or state law; *and*

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(12) provide FM translator services if authorized as provided in [section 10]."

Section 3. Section 7-13-2522, MCA, is amended to read:

"**7-13-2522. Qualifications for trustee.** Each of said trustees shall be a resident of the district."

Section 4. Section 7-13-2523, MCA, is amended to read:

"**7-13-2523. Term of office.** (1) The trustees so appointed upon creation of such district shall be appointed for staggered terms of 1, 2, and 3 years. If more than one county is involved, one of said trustees shall be appointed from the county *containing that portion of the district with the fewest residents*, and such trustee shall be given the 3-year term. Said trustees so appointed shall hold office for the term of their respective appointment or until their successors are appointed and qualified.

(2) At the end of the respective terms of said trustees, the board of county commissioners shall appoint a new trustee for a 3-year term."

Section 5. Section 7-13-2527, MCA, is amended to read:

"**7-13-2527. List of owners of residences.** (1) A copy of the order creating the district shall be delivered to the county assessor of each county within the district. *If a district is authorized to provide FM translator services, a copy of the resolution authorizing the services shall be delivered to the county assessor of each county within the district.*

(2) The assessor shall, on or before August 1 of any given year, prepare and certify a list of all *owners of residences* within *the* district and deliver a copy of such list to the board of trustees of said district."

Section 6. Section 7-13-2528, MCA, is amended to read:

"**7-13-2528. Financial administration of district.** (1) The board of trustees shall, from *any* list prepared by the county assessor *as required by 7-13-2527*, remove the names of any persons who have claimed exemption under this part and shall prepare a budget for the expenses for the next year.

(2) The budget, together with the list of such persons residing in the district and subject to the special tax after all exemptions have been allowed as provided in this part, shall be presented by September 1 to the board of county commissioners, who shall levy the tax requested by said trustees. The board shall levy such tax in accordance with the request herein mentioned. *In preparing the budget, the board of trustees shall maintain separate budgets for television services and for FM translator services and shall specify the tax to be levied on property owners for these services.* The tax shall be certified to the county clerk and recorder and entered on the assessment books as against such persons and collected by the county treasurer as all other taxes are collected.

(3) The county treasurer shall be the treasurer for said district and hold said taxes, as collected, in a separate fund to be disbursed by him upon warrants drawn by the trustees, at least two of whom shall sign any warrant for the disbursement of such funds by the county treasurer."

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Section 7. Section 7-13-2529, MCA, is amended to read:

"7-13-2529. Exemption for nonbenefited taxpayers. (1) The taxpayers in the television district who do not receive the signal of the television translator station or who receive direct reception from the television station from which the television translator repeats a signal or receive service through the medium of a community antenna system on which they are a subscriber in good standing will be exempt from the payment of the tax for the support of the *television services of the* television district, provided they file an affidavit setting forth any of the grounds above mentioned. The affidavit shall be filed with the board of trustees, who shall upon the receipt of such affidavit have the names of such persons so exempted from the tax *for television services* stricken from the list of taxpayers certified to the board of county commissioners. The exempted persons shall not be liable for such tax.

(2) A similar exemption is available with respect to FM translator services. The procedure provided in subsection (1) shall be utilized for the FM exemption.

(3) Any person or persons who shall make a false or fraudulent claim for exemption as provided in this section shall be guilty of a misdemeanor."

Section 8. Section 7-13-2541, MCA, is amended to read:

"7-13-2541. Procedure to annex contiguous areas. The boundaries of a television district created by authority of this part may be altered and outlying areas be annexed from territory contiguous thereto in the following manner:

(1) A petition shall be signed by *at least* 51% of the registered electors who are *residents of* the area to be annexed.

(2) The petition shall designate the boundaries of the contiguous area to be annexed and ask that it be annexed to the existing television district.

(3) The petition shall be transmitted to the clerk and recorder, and the hearing and notice thereof shall be the same as provided by 7-13-2504 through 7-13-2507.

(4) After the hearing, the board of county commissioners shall adopt a resolution either annexing the area to the existing television district or denying the petition."

Section 9. Section 7-13-2542, MCA, is amended to read:

"7-13-2542. Procedure to abandon district. (1) If at any time a petition for abandonment of the television district, signed by *at least* 51% of the registered electors who are *residents of the district*, is filed with the board of trustees, the board of trustees shall forthwith notify the board or boards of county commissioners which created the district. Such board or boards of county commissioners shall by resolution immediately declare the district abandoned.

(2) All properties and money remaining after the satisfaction of all debts and obligations of such abandoned district shall be deposited to the

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credit of the general fund of the county. If the abandoned district embraced areas in more than one county, properties and money remaining after the satisfaction of all debts and obligations of such abandoned district shall be deposited to the credit of the general funds of such counties in proportion to the *population of the portion of the district located* in each county."

Section 10. **Authorization for FM translator.** (1) A television district may construct and operate a broadcast FM translator facility (88 to 108 Megahertz) as provided in this section.

(2) (a) A request to provide FM translator services may be initiated by a petition signed by at least 51% of the registered electors who are residents of the television district and presented to the board of county commissioners which initially established the district. The petition, its filing, and its processing are governed by 7-13-2503, 7-13-2504, and 7-13-2505.

(b) Upon receiving a certified petition, the board of county commissioners shall give notice and hold a hearing as provided in 7-13-2506 and 7-13-2507. After the hearing, the board of county commissioners shall approve or deny the petition by resolution. If the decision is to approve the petition, the resolution shall authorize the board of trustees of the district to provide the requested services and shall describe the proposed system, including the type of construction, proposed location, and estimated costs.

Section 11. **Codification.** It is intended that section 10 be codified as an integral part of Title 7, chapter 13, part 25, and the provisions of Title 7, chapter 13, part 25, apply to section 10.

Section 12. **Repealer.** Chapter 13, Laws of 1979, is repealed.

Approved April 9, 1979.

CHAPTER NO. 480

AN ACT TO REQUIRE AN AGENCY TO PREPARE AN ESTIMATE OF THE ECONOMIC IMPACT OF PROPOSED RULEMAKING UPON REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Estimate of economic impact.** (1) Upon request of the administrative code committee, an agency shall prepare a statement of the estimated economic impact of the adoption, amendment, or repeal of a rule as proposed. The statement must include an estimate of:

(a) the cost to the state of administering and enforcing the rule;

(b) the aggregate cost of compliance to all persons affected; and

(c) any economic benefit of compliance to all persons affected.

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(2) The statement must be filed with the secretary of state for publication in the register and mailed to persons who have requested advance notice of the agency's rulemaking proceedings. The statement must be published and mailed at least 20 days prior to the adoption, amendment, or repeal of the rule. If a hearing is held, it must be published 20 days prior to the hearing.

(3) If it is impossible to formulate such an estimate, the reasons for impossibility of formulation must be published instead of the estimate.

(4) This section does not apply to rulemaking pursuant to 2-4-303.

(5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a statement required under this section.

Section 2. **Codification.** The code commissioner shall codify section 1 in Title 2, chapter 4, part 3. Any reference in the Montana Code Annotated to Title 2, chapter 4, part 3, includes section 1.

Approved April 9, 1979.

CHAPTER NO. 481

AN ACT REMOVING FROM SPECIAL EDUCATION ALLOWABLE COSTS THE BENEFITS FOR TEACHERS' RETIREMENT, PUBLIC EMPLOYEES' RETIREMENT, SOCIAL SECURITY, AND UNEMPLOYMENT COMPENSATION; CLARIFYING THE PROCEDURES FOR FIXING AND LEVYING OF TAXES FOR THESE BENEFITS WHEN SPECIAL EDUCATION COOPERATIVE AGREEMENTS INVOLVE MORE THAN ONE COUNTY; PROVIDING FOR SPECIAL EDUCATION TUITION; ESTABLISHING PROCEDURES IF APPROVED BUDGETS EXCEED APPROPRIATIONS; AND AMENDING SECTIONS 20-7-421, 20-7-431, AND 20-9-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-431, MCA, is amended to read:

"20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting. (1) For the purpose of determining the maximum-budget-without-a-vote for special education as defined in 20-9-321, the following schedule of allowable costs shall be followed by the school district in preparation of its special education budget for state aid request purposes and by the superintendent of public instruction in his review and approval of the budget (for the purposes of determining the amount of the maximum-budget-without-a-vote for special education for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with 20-9-311 and 20-9-313):

(a) administration: salaries, benefits, supplies, and other expenses of the superintendent's office, the office of the board of trustees, and the business office including:

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(i) salaries of professional administrative personnel—a portion of the entire cost corresponding to the portion of entire working time which each such person devotes to the special program;

(ii) salaries of clerical personnel for administrative staff—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(iii) supplies and other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(b) instruction: salaries, benefits, supplies, textbooks, and other expenses including:

(i) salaries of principals and clerical personnel—a portion of the entire cost corresponding to the portion of the entire working time which each such person devotes to the special program, but not to exceed 1.75 times the amount budgeted per regular ANB for the current year;

(ii) salaries and benefits of special program teachers, regular program teachers, teacher aides, special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(iii) teaching supplies and textbooks if used exclusively for special programs—the actual total cost; if shared with regular programs—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(iv) other expenses with the exception of the following items—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year:

(A) contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies—the actual total cost;

(B) transportation costs for special education personnel who must travel on an itinerant basis from school to school or district to district—the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes;

(c) library services: salaries, books and periodicals, and other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(d) supportive services: salaries, benefits, and other expenses:

(i) salaries and benefits of professional supportive personnel—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire

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cost corresponding to the entire working time which each such person devotes to the special program. Professional supportive personnel may include counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) salaries and benefits of clerical personnel for professional personnel in supportive services—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(iii) other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(e) operation of plant: salaries, benefits, heat for buildings, utilities except heating, and other supplies and expenses—the superintendent of public instruction shall make regulations fixing a ratio for operation spending per full-time special pupil to such spending per current year's regular ANB. The proration shall be based on the ratio between the number of special pupils per class and the number of regular pupils per class and any other relevant factors.

(f) maintenance of plant: salaries, benefits, replacements and parts, contracted services—the superintendent of public instruction shall make regulations fixing a ratio for maintenance spending per full-time special pupil to such spending per current year's regular ANB. The proration shall be based on the ratio between the number of special pupils per class and the number of regular pupils per class and any other relevant factors.

(g) school food services—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(h) student body and auxiliary services: salaries and other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(i) other current charges: insurance, rental of land and buildings, and other expenses:

(i) rental of land and buildings, when such premises meet all requirements of the board of public education and the department of health and environmental sciences—no such costs may be charged to the special program without specific authorization from the superintendent of public instruction unless the land and buildings are shared between the special and regular pupils, and the amount of the total cost that may be charged to the special program may not exceed whatever proportion the number of special full-time pupils are to the total enrollment of the school district of the previous year. However, any school district renting land and buildings for special education purposes prior to the 1974-75 school year is not subject to this requirement and will charge a portion of the total cost when shared with regular programs, to be prorated based on the amount of building space used by each type of program.

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(ii) insurance—the superintendent of public instruction shall make regulations fixing a ratio for insurance spending per full-time special pupil to such spending per current year's regular ANB. The proration shall be based on the ratio between the number of special pupils per class and the number of regular pupils per class and any other relevant factors.

(iii) all other expenses—the amount allowed for budget purposes per full-time special pupil for a school year may not exceed the amount budgeted per regular ANB for the current school year;

(j) capital outlay: remodeling and improvements, equipment, and other:

(i) classroom remodeling and improvements for a program for handicapped students who need special facilities—the actual total cost; all other remodeling and improvements—the amount allowed for budget purposes per full-time special pupil for a school year may not exceed the amount budgeted per regular ANB for the current school year;

(ii) equipment—the actual total cost;

(iii) special equipment for district-owned school buses necessary to accommodate special students—the actual total cost;

(iv) special equipment for school buses contracted to transport special students—that portion of the contract price attributable to the cost of special equipment or personnel required to accommodate special students—the actual special cost;

(v) other—the amount allowed for budget purposes may not exceed the amount budgeted per regular ANB for the current year;

(k) room and board costs when the special pupil has to attend a program at such a distance from his home that commuting is undesirable as determined by the superintendent of public instruction.

(2) The superintendent of public instruction shall, prior to September 1, 1977, revise the rules in accordance with the policies of the board of public education for:

(a) keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs;

(b) defining the total special program caseload that shall be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(d) of this section;

(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(j)(ii) of this section; and

(d) prescribing formulas for calculating the portion of operation and maintenance costs, insurance, building, and rental costs properly allocable to the special programs, as prescribed by subsections (1)(e), (1)(f), (1)(i)(i), and (1)(i)(ii) of this section.

(3) An annual accounting of all expenditures of school district general fund moneys for special education shall be made by the district trustees

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on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for such accounting.

(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the maximum-budget-without-a-vote for special education.

(5) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, the federal social security system, or the costs for unemployment compensation insurance.

(6) Notwithstanding other provisions of the law the superintendent of public instruction shall not approve a maximum-budget-without-a-vote for special education which exceeds legislative appropriations."

Section 2. Section 20-7-421, MCA, is amended to read:

"20-7-421. Arranging attendance in another district in lieu of a special education program — tuition. *(1)* With the approval of the superintendent of public instruction, the trustees may arrange for the attendance of a child in need of special education in a special education program in another district within the state of Montana. Arrangements for the attendance of a child in need of special education are not subject to the laws governing the attendance of pupils in schools outside the district, *except as provided in subsection (2).*

(2) The resident district of pupils attending a special education program in another district is responsible for payment of tuition as established in 20-5-305 and 20-5-312."

Section 3. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement fund. (1) The trustees of any district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment compensation or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to such systems. The district's contribution for each employee who is a member of the teachers' retirement system shall be calculated in accordance with Title 19, chapter 4, part 6. The district's contribution for each employee who is a member of the public employees' retirement system shall be calculated in accordance with 19-3-801. The district may levy a special tax to pay its contribution to the public employees' retirement system under the conditions prescribed in 19-3-204. The district's contributions for each employee covered by any federal social security system shall be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment compensation shall be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of any district required to make a contribution to any such system shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution and such additional

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moneys, within legal limitations, as they may wish to provide for the retirement fund cash reserve. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to such systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the moneys available to reduce the retirement fund levy requirement by adding:

(i) any anticipated moneys that may be realized in the retirement fund during the ensuing school fiscal year; and

(ii) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the retirement fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the retirement fund. The retirement fund cash reserve shall not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and shall be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(b) subtracting the total of the moneys available for reduction of the levy requirement as determined in subsection (3)(a) from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district *or special educational cooperative agreement* levy requirements, and shall report each such levy requirement to the county commissioners on the second Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds. The county commissioners shall fix and set such county levy in accordance with 20-9-142.

(5) The net retirement fund levy requirement for a joint elementary district or a joint high school district shall be prorated to each county in which a part of such district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each such county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(6) The net retirement fund levy requirement for districts that are members of special educational cooperative agreements shall be prorated to each county in which such district is located in the same proportion as the budget for the special education cooperative agreement of the district bears to the total budget of the cooperative. The county superintendents of the counties affected shall jointly determine the net

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retirement fund levy requirement for each county in the same manner as provided in 20-9-151 and fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152."

Approved April 9, 1979.

CHAPTER NO. 482

AN ACT TO PROVIDE FOR A CHANGE IN THE DEFINITION OF ELECTROLOGY; AMENDING SECTION 37-32-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-32-102, MCA, is amended to read:

"**37-32-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Approved school" means a school which the board has approved as having a course of instruction or education and training in electrology which meets the criteria established by the board.

(2) "Board" means the board of cosmetologists.

(3) "Department" means the department of professional and occupational licensing.

(4) "Electrology" means the study and professional practice of removing superfluous hair by destroying the hair roots *by passage of an electric current, by any method.* Electrology as defined in this chapter shall include electrolysis and/or thermolysis."

Approved April 9, 1979.

CHAPTER NO. 483

AN ACT TO CHANGE THE METHOD OF APPOINTMENT OF THE COMMISSIONER OF CAMPAIGN FINANCES AND PRACTICES; TO REVISE THE TERM OF OFFICE; AND TO PROVIDE FOR TRANSITION BY EXTENDING THE TERM OF THE CURRENT COMMISSIONER TO JANUARY 1, 1981; AMENDING SECTIONS 13-37-102 THROUGH 13-37-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-102, MCA, is amended to read:

"**13-37-102. Creation of office.** (1) There is a commissioner of campaign finances and practices who is appointed by *the governor, subject*

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to confirmation by a majority of *the senate. A* four-member selection committee comprised of the speaker of the house, the president of the senate, and the minority floor leaders of both houses of the legislature *shall submit to the governor a list of not less than two or more than five names of individuals for his consideration. A majority of the members of the selection committee shall agree upon each nomination.*

(2) The individual selected to serve as commissioner of campaign finances and practices may be removed by the governor prior to the expiration of the term only for incompetence, malfeasance, or neglect of duty. The sufficiency of such causes shall be subject to judicial review."

Section 2. Section 13-37-103, MCA, is amended to read:

"**13-37-103. Term of office — limitations on holding other office.** *(1)* The individual selected to serve as the commissioner of campaign finances and practices is appointed for a *6-year* term, but he is thereafter ineligible to serve as the commissioner of campaign finances and practices.

(2) The individual selected to serve as commissioner of campaign finances and practices is precluded from being a candidate for public office as defined in 13-1-101 for a period of 5 years from the time that *he leaves office as commissioner.*"

Section 3. **Salary.** (1) The commissioner of campaign finances and practices is entitled to receive an annual salary of $22,000.

(2) The salary commission must review the commissioner's salary and may recommend salary increases to the legislature.

Section 4. Section 13-37-104, MCA, is amended to read:

"**13-37-104. Vacancy.** *(1)* If for any reason a vacancy occurs in the position of commissioner, a successor shall be appointed within 30 days as provided in 13-37-102(1) to serve out the unexpired term. *Every nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session.*

(2) An individual who is selected to serve out the unexpired term of a preceding commissioner *and who has served 3 years or more of an unexpired term is not eligible for reappointment.*

(3) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served less than 3 years may be reappointed for a 6-year term as provided in 13-37-102(1)."

Section 5. **Transition — term extended — appointment.** (1) The current 5-year term of office for the commissioner of campaign practices is extended from June 30, 1980, to January 1, 1981.

(2) If, for any reason, a vacancy occurs in the position of commissioner during the current term ending December 31, 1980, the individual serving as the commissioner on the effective date of this act may be reappointed to serve out the unexpired term, but he is thereafter ineligible to serve as the commissioner.

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(3) Subsequent commissioners shall be appointed by the governor to a 6-year term of office beginning January 1, 1981.

(4) The names of recommended individuals provided for in 13-37-102 shall be submitted to the governor no later than November 1, 1980.

Section 6. **Effective date.** This act shall become effective upon passage and approval.

Approved April 9, 1979.

CHAPTER NO. 484

AN ACT TO REVISE THE PROCEDURE FOR DETERMINING ELIGIBILITY FOR AND THE AMOUNT OF INCREASE OF A PUBLIC SCHOOL DISTRICT'S FOUNDATION PROGRAM DUE TO AN ANTICIPATED UNUSUAL ENROLLMENT INCREASE; SUBSTITUTING REFERENCES TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION FOR OBSOLETE REFERENCES TO THE BUDGET BOARD; AMENDING SECTION 20-9-314, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-314, MCA, is amended to read:

"20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase. A district which anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in *20-9-313(4)*, may increase its foundation program for the ensuing school fiscal year in accordance with the following provisions:

(1) The district shall estimate the current year's average number belonging by totaling the aggregate days of attendance and aggregate days of absence realized in the district through April 30 and dividing such total by 180. The resulting average number belonging shall be increased by the ratio that the total number of planned school days in the current school fiscal year bears to the number of school days completed through April 30.

(2) Prior to May 10, the district shall estimate the probable average number belonging to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(3) No later than May 10, the district shall submit its application for an unusual enrollment increase to the *superintendent of public instruction*. Such application shall include:

(a) the *previous year's* average number belonging;

(b) the estimate of the current school fiscal year's average number belonging, as provided in subsection *(1)* above;

(c) the estimated average number belonging for the ensuing school fiscal year, including the factual information on which the estimate is based, as provided in subsection *(2)* above; and

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(d) any other information or data that may be requested by the *superintendent of public instruction.*

(4) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing school fiscal year. *After approving an estimate, with or without adjustment, the superintendent of public instruction shall:*

(a) determine the percentage increase which the estimated average number belonging for the ensuing fiscal year is over the current year's average number belonging; and

(b) approve an increase of the average number belonging used to establish the ensuing year's foundation program in accordance with subsection (6) if the increase in subsection (4)(a) is at least 6%.

(5) The superintendent of public instruction shall notify the district of his decision by the fourth Monday in June.

(6) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the foundation program for the ensuing school fiscal year shall be *80% of the difference between the approved estimated average number belonging for the ensuing school fiscal year and 106% of the current year's average number belonging. The amount so determined* shall be the maximum allowable increase added to the actual average number belonging for the current school fiscal year for the purpose of establishing the ensuing year's foundation program.

(7) Any equalization or entitlement increases resulting from provisions of this section shall be reviewed at the end of the ensuing school fiscal year. If the actual average number belonging is less than the average number belonging used for foundation program and entitlement calculations, the superintendent of public instruction shall revise the foundation program and entitlement calculations using the actual average number belonging. All payments received by the district in excess of the revised entitlements shall be overpayments subject to the refund provisions of 20-9-344(3)."

Approved April 9, 1979.

CHAPTER NO. 485

AN ACT TO REQUIRE PERIODIC PHARMACEUTICAL OR MEDICAL REVIEWS OF RESIDENT MEDICATIONS; ESTABLISHING STIPULATIONS FOR THE RELEASE OF RECORDS; AND GENERALLY REVISING AND CLARIFYING THE LAWS RELATING TO THE DEVELOPMENTALLY DISABLED; AMENDING SECTIONS 53-20-104, 53-20-114, 53-20-123, 53-20-130, 53-20-142, 53-20-144 THROUGH 53-20-146, 53-20-148, 53-20-161, AND 53-20-164, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-20-104, MCA, is amended to read:

"**53-20-104. Powers and duties of mental disabilities board of visitors.** (1) The board shall be an independent board of inquiry and

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review to assure that the treatment of all persons admitted to a residential facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research or hazardous treatment procedures involving persons admitted to any residential facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare. No experimental research project involving persons admitted to any residential facility affected by this part may be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall investigate all cases of alleged mistreatment of a resident.

(4) The board shall at least annually inspect every residential facility which is providing a course of residential habilitation and treatment to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. The board shall inquire concerning all habilitation programs being implemented by the institution.

(5) The board shall inspect the file of each person admitted to a residential facility pursuant to this part to insure that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(6) The board may assist any *resident* at a residential facility in resolving any grievance he may have concerning his admission or his course of treatment and habilitation in the facility.

(7) If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any resident, it shall report its findings at once to the professional person in charge of the facility and the director of the department of institutions. If appropriate, after waiting a reasonable time for a response from such professional person, the board may notify the parents or guardian of any *resident* involved, the next of kin, if known, the responsible person appointed by the court for any *resident* involved, and the district court which has jurisdiction over the facility.

(8) The board shall report annually to the governor and shall report to each session of the legislature concerning the status of the residential facilities and habilitation programs which it has inspected."

Section 2. Section 53-20-114, MCA, is amended to read:

"53-20-114. Appointment of responsible person. Whenever, in any proceeding under this part, the court believes that a conflict of interest may exist between a person who is developmentally disabled or alleged to be developmentally disabled and his parents or guardian or that the parents or guardian are unable to protect the interests of such person or

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whenever there is no parent or guardian, the court shall appoint a responsible person to protect the interests of the person who is developmentally disabled or alleged to be developmentally disabled. *The responsible person may not be an employee of a residential facility.* Only one person shall at any one time be the responsible person within the meaning of this part. In appointing a responsible person, the court shall consider the preference of the respondent or patient. The court may at any time, for good cause shown, change its designation of who is the responsible person. *The appointment of the responsible person must terminate at the time of the resident's discharge from the residential facility. However, the appointment of the responsible person shall not terminate during any period of conditional release from the facility.*"

Section 3. Section 53-20-123, MCA, is amended to read:

"**53-20-123. Outcome of examination — dismissal of petition — court-ordered evaluation and treatment — hearing.** (1) If the professional person, based on his examination and inquiry, determines that the respondent is not developmentally disabled or is not in need of developmental disability services, he shall report this finding in writing to the court and the petition shall be dismissed. If the professional person concludes that the respondent is developmentally disabled and in need of developmental disability services, he shall report this conclusion to the court in writing, together with his recommendations for evaluation and treatment. The report shall include an explanation of the basis on which the professional person has reached his conclusion, a description of any tests or evaluation devices he has employed, *and an opinion of whether institutional or community services are required. The recommendation as to placement shall be based on consultation with the department of institutions and the department of social and rehabilitation services. The two departments shall develop written policies to implement this requirement.*

(2) (a) If the professional person's recommendation is for further evaluation and treatment, notice of this recommendation shall be sent to the respondent, his parents or guardian, the next of kin, the responsible person appointed by the court, if any, and any attorney representing the respondent or his parents or guardian. If no responsible person has yet been appointed, the court may appoint one at this time.

(b) If the respondent, his parents or guardian, the responsible person, if any, or counsel for any party requests a hearing on the recommendation, the court shall set a time and place for hearing. The hearing shall be before the court without a jury. The rules of civil procedure shall apply.

(3) Prior to any hearing held pursuant to this section, the court shall appoint counsel to represent the respondent if the respondent has not retained independent counsel. The parents (or guardian) shall be informed of their right to counsel, and if they are indigent, the court shall on their request appoint counsel for them. In no case may the same attorney represent the respondent and his parents or guardian.

(4) If the hearing is waived or if the court finds, after hearing, that the respondent is developmentally disabled and in need of further evaluation

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and treatment, the court shall order that the respondent undergo such evaluation and treatment. Evaluation and treatment ordered pursuant to this subsection may not be for more than 30 days. It shall take place in the least restrictive environment in which the necessary evaluation and treatment can be accomplished. Evaluation and treatment in a residential facility may be ordered only if the necessary evaluation and treatment cannot be accomplished through the use of community-based facilities."

Section 4. Section 53-20-130, MCA, is amended to read:

"53-20-130. Patient transfers from mental health facilities. If any person is a patient in a mental health facility and the professional person in charge of the patient determines that the patient is suffering from a developmental disability rather than mental illness and should more properly be admitted to a residential facility *or an appropriate less restrictive alternative*, then the professional person shall commence proceedings to effect such admission, consistent with the procedures set forth in this part for admissions generally."

Section 5. Section 53-20-142, MCA, is amended to read:

"53-20-142. Rights while in a residential facility. Persons admitted to a residential facility for a period of habilitation shall enjoy the following rights:

(1) Residents shall have a right to dignity, privacy, and humane care.

(2) Residents shall be entitled to send and receive sealed mail. Moreover, it shall be the duty of the facility to foster the exercise of this right by furnishing the necessary materials and assistance.

(3) Residents shall have the same rights and access to private telephone communication as patients at any public hospital except to the extent that a professional person responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for any such restrictions. The written order must be renewed monthly if any restrictions are to be continued.

(4) Residents shall have an unrestricted right to visitation except to the extent that a professional person responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for any such restrictions. The written order must be renewed monthly if any restrictions are to be continued.

(5) Residents shall have a right to receive suitable educational *and habilitation* services regardless of chronological age, degree of retardation, or accompanying disabilities or handicaps.

(6) Each resident shall have an adequate allowance of neat, clean, suitably fitting, and seasonable clothing. Except when a particular kind of clothing is required because of a particular condition, residents shall have the opportunity to select from various types of neat, clean, and seasonable clothing. Such clothing shall be considered the resident's throughout his stay in the institution. Clothing, both in amount and type, shall make it possible for residents to go out of doors in inclement weather, to go for trips or visits appropriately dressed, and to make a normal appearance in

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the community. The facility shall make provision for the adequate and regular laundering of the residents' clothing.

(7) Each resident shall have the right to keep and use his own personal possessions except insofar as such clothes or personal possessions may be determined by a professional person to be dangerous either to himself or to others.

(8) A resident has a right to a humane physical environment within the residential facilities. These facilities shall be designed to make a positive contribution to the efficient attainment of the habilitation goals of the resident. To accomplish this purpose:

(a) regular housekeeping and maintenance procedures which will ensure that the facility is maintained in a safe, clean, and attractive condition shall be developed and implemented;

(b) pursuant to an established routine maintenance and repair program, the physical plant shall be kept in a continuous state of good repair and operation so as to ensure the health, comfort, safety, and well-being of the residents and so as not to impede in any manner the habilitation programs of the residents;

(c) the physical facilities must meet all fire and safety standards established by the state and locality. In addition, the facility shall meet such provisions of the life safety code of the national fire protection association as are applicable to it.

(d) there must be special facilities for nonambulatory residents to assure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision shall be made to permit nonambulatory residents to communicate their needs to staff.

(9) Residents shall have a right to receive prompt and adequate medical treatment for any physical *or mental ailments or injuries or physical disabilities* and for the prevention of any illness or disability. Such medical treatment shall meet standards of medical practice in the community. *However, nothing in this subsection may be interpreted to impair other rights of any resident in regard to involuntary commitment for mental illness, use of psychotropic medication, use of hazardous, aversive, or experimental procedures, or the refusal of such treatment.*

(10) Corporal punishment shall not be permitted.

(11) The opportunity for religious worship shall be accorded to each resident who desires such worship. Provisions for religious worship shall be made available to all residents on a nondiscriminatory basis. No individual shall be compelled to engage in any religious activities.

(12) Residents shall have a right to a nourishing, well-balanced diet. The diet for residents shall provide at a minimum the recommended daily dietary allowance as developed by the national academy of sciences. Provisions shall be made for special therapeutic diets and for substitutes at the request of the resident, his parents, guardian, or next of kin, or the responsible person appointed by the court in accordance with the religious

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requirements of any resident's faith. Denial of a nutritionally adequate diet shall not be used as punishment.

(13) Residents shall have a right to regular physical exercise several times a week. It shall be the duty of the facility to provide both indoor and outdoor facilities and equipment for such exercise. Residents shall have a right to be outdoors daily in the absence of contrary medical considerations.

(14) Residents shall have a right, under appropriate supervision, to suitable opportunities for the interaction with members of the opposite sex except where a professional person responsible for the formulation of a particular resident's habilitation plan writes an order to the contrary and explains the reasons therefor. The order must be renewed monthly if the restriction is to be continued."

Section 6. Section 53-20-144, MCA, is amended to read:

"53-20-144. Rights concerning photographs. (1) A person admitted to a residential facility may be photographed upon admission for identification, *medical, habilitative,* and administrative purposes of the facility. Such photographs shall be confidential and shall not be released by the facility except pursuant to court order.

(2) No other nonmedical or nonhabilitative photographs shall be taken or used without consent of the resident's parents or guardian or the responsible person appointed by the court."

Section 7. Section 53-20-145, MCA, is amended to read:

"53-20-145. Right to be free from unnecessary or excessive medication. Residents have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written order of a physician. The professional person in charge of the facility and the attending physician shall be responsible for all medication given or administered to a resident. The use of medication shall not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication shall be kept in his medical records. *A pharmacist or a registered nurse shall review monthly the record of each resident on medication for potential adverse reactions, allergies, interactions, contraindications, rationality, and laboratory test modifications and shall advise the physician of any problems. Medications shall be reviewed quarterly by the attending or staff physician. At least monthly an attending physician shall review the drug regimen of each patient on psychotropic medication. All prescriptions shall be written with a termination date that may not exceed 90 days. Medication for newly admitted residents shall be reviewed and reordered as necessary upon admission and then every 30 days for the first 90 days.* Medications shall not be used as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with the resident's treatment program. *Nothing in this section may be interpreted to relieve any physician or other professional or medical staff person from any obligation to adequately monitor the medication of any resident, with due consideration to the nature of the medication, the purpose for which it is given, and the condition of the resident."*

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Section 8. Section 53-20-146, MCA, is amended to read:

"53-20-146. Right not to be subjected to certain treatment procedures. (1) Residents of a residential facility shall have a right not to be subjected to any unusual or hazardous treatment procedures without the express and informed consent of the resident, if the resident is able to give such consent, and of his parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and legal counsel. Such proposed procedures shall first have been reviewed and approved by the mental disabilities board of visitors before such consent shall be sought.

(2) Physical restraint shall be employed only when absolutely necessary to protect the resident from injury to himself or to prevent injury to others. *Mechanical supports used to achieve proper body position and balance which are ordered by a physician are not considered a physical restraint.* Restraint shall not be employed as punishment, for the convenience of staff, or as a substitute for a habilitation program. Restraint shall be applied only if alternative techniques have failed and only if such restraint imposes the least possible restriction consistent with its purpose. Only a professional person may authorize the use of restraints. Orders for restraints by a professional person shall be in writing and shall not be in force for longer than 12 hours. Whenever physical restraint is ordered, suitable provision shall be made for the comfort and physical needs of the person restrained.

(3) Seclusion, defined as the placement of a resident alone in a locked room for nontherapeutic purposes, shall not be employed. Legitimate "time out" procedures may be utilized under close and direct professional supervision as a technique in behavior-shaping programs.

(4) Behavior modification programs involving the use of noxious or aversive stimuli shall be reviewed and approved by the mental disabilities board of visitors and shall be conducted only with the express and informed consent of the affected resident, if the resident is able to give such consent, and of his parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel. Such behavior modification programs shall be conducted only under the supervision of and in the presence of a professional person who has had proper training in such techniques.

(5) No resident shall be subjected to a behavior modification program which attempts to extinguish socially appropriate behavior or to develop new behavior patterns when such behavior modifications serve only institutional convenience.

(6) Electric shock devices shall be considered a research technique for the purpose of this part. Such devices shall be used only in extraordinary circumstances to prevent self-mutilation leading to repeated and possibly permanent physical damage to the resident and only after alternative techniques have failed. The use of such devices shall be subject to the conditions prescribed by this part for experimental research generally and shall

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be used only under the direct and specific order of the professional person in charge of the residential facility."

Section 9. Section 53-20-148, MCA, is amended to read:

"53-20-148. Right to habilitation. (1) Persons admitted to residential facilities shall have a right to habilitation, including medical treatment, education, and care suited to their needs, regardless of age, degree of retardation, or handicapping condition. Each resident has a right to a habilitation program which will maximize his human abilities and enhance his ability to cope with his environment. Every residential facility shall recognize that each resident, regardless of ability or status, is entitled to develop and realize his fullest potential. The facility shall implement the principle of normalization so that each resident may live as normally as possible.

(2) Residents shall have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the facility shall make every attempt to move residents from:

(a) more to less structured living;

(b) larger to smaller facilities;

(c) larger to smaller living units;

(d) group to individual residence;

(e) segregated from the community to integrated into the community living;

(f) dependent to independent living.

(3) Within 30 days of his admission to a residential facility, each resident shall have an evaluation by appropriate specialists for programming purposes.

(4) Each resident shall have an individualized habilitation plan formulated by the facility. This plan shall be developed by appropriate professional persons and implemented as soon as possible, but no later than *30* days after the resident's admission to the facility. An interim program of habilitation, based on the preadmission evaluation conducted pursuant to this part, shall commence promptly upon the resident's admission. Each individualized habilitation plan shall contain:

(a) a statement of the nature of the specific limitations and *the* needs of the resident;

(b) a description of intermediate and long-range habilitation goals with a projected timetable for their attainment;

(c) a statement of and an explanation for the plan of habilitation for achieving these intermediate and long-range goals;

(d) a statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals of the resident;

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(e) a specification of the professional persons and other staff members who are responsible for the particular resident's attaining these habilitation goals;

(f) criteria for release to less restrictive settings for habilitation, *based on the resident's needs,* including criteria for discharge and a projected date for discharge.

(5) As part of his habilitation plan, each resident shall have an individualized postinstitutionalization plan *that includes an identification of services needed to make a satisfactory community placement possible.* This plan shall be developed by a professional person who shall begin preparation of such plan upon the resident's admission to the institution and shall complete such plan as soon as practicable. The parents or guardian or next of kin of the resident, the responsible person appointed by the court, if any, and the resident, if able to give informed consent, shall be consulted in the development of such plan and shall be informed of the content of such plan.

(6) In the interests of continuity of care, one professional person shall whenever possible be responsible for supervising the implementation of the habilitation plan, integrating the various aspects of the habilitation program, and recording the resident's progress as measured by objective indicators. This professional person shall also be responsible for ensuring that the resident is released when appropriate to a less restrictive habilitation setting.

(7) The habilitation plan shall be reviewed *monthly* by the professional person responsible for supervising the implementation of the plan and shall be modified if necessary. In addition, 6 months after admission and at least annually thereafter, each resident shall receive a comprehensive psychological, social, *habilitative*, and medical diagnosis and evaluation and his habilitation plan shall be reviewed by an interdisciplinary team of no less than two professional persons and such resident care workers as are directly involved in his habilitation and care. A habilitation plan shall be reviewed monthly.

(8) Each resident *placed in* the community shall *receive* transitional habilitation assistance.

(9) The professional person in charge of the residential facility shall report in writing to the parents or guardian of the resident or the responsible person at least every 6 months on the resident's *habilitation* and medical condition. Such report shall also state any appropriate habilitation program which has not been afforded to the resident because of inadequate habilitation resources.

(10) The parents or guardian of each resident or the responsible person appointed by the court shall promptly upon the resident's admission receive a written copy of all the above standards for adequate habilitation. Each resident, if the resident is able to comprehend, shall promptly upon his admission be orally informed in clear language of the above standards and, where appropriate, be provided with a written copy. *In addition, the parents, guardian, responsible person, and where able to comprehend, the*

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resident shall receive such other information concerning the care and habilitation of the resident as may be available to assist them in understanding the situation of the resident and the rights of the resident in the institution."

Section 10. Section 53-20-161, MCA, is amended to read:

"53-20-161. Maintenance of records. *(1)* Complete records for each resident shall be maintained and shall be readily available to professional persons, to the resident-care workers who are directly involved with the particular resident, and to the mental disabilities board of visitors. All information contained in a resident's records shall be considered privileged and confidential. The parents or guardian, the responsible person appointed by the court, and any person properly authorized in writing by the resident, if such resident is capable of giving informed consent, or by his parents or guardian or the responsible person shall be permitted access to the resident's records. *No information may be released from the records of a resident or former resident of the residential facility unless the release of such information has been properly authorized in writing by:*

(a) the court;

(b) the resident or former resident if he is over the age of majority and is capable of giving informed consent;

(c) the parents or guardian in charge of a resident under the age of 12;

(d) the parents or guardian in charge of a resident over the age of 12 but under the age of majority and the resident if the resident is capable of giving informed consent;

(e) the guardian of a resident over the age of majority who is incapable of giving informed consent;

(f) the superintendent of the residential facility or his designee as custodian of a resident over the age of majority who is incapable of giving informed consent and for whom no legal guardian has been appointed;

(g) the superintendent of the residential facility or his designee as custodian of a resident under the age of majority for whom there is no parent or legal guardian; or

(h) the superintendent of the residential facility or his designee as custodian of a resident of that facility whenever release is required by federal or state law or department of social and rehabilitation services rules.

(2) Information may not be released by a superintendent or his designee as set forth in subsection (1)(f), (1)(g), or (1)(h) less than 15 days after sending notice of the proposed release of information to the resident, his parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, and the court which ordered the admission. If any of the parties so notified objects to the release of information, they may petition the court for a hearing to determine whether the release of information should be allowed. No information may be released pursuant to

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subsection (1)(f), (1)(g), or (1)(h) unless it is released to further some legitimate need of the resident or to accomplish a legitimate purpose of the institution which is not inconsistent with the needs and rights of the resident. No information may be released pursuant to these subsections except in accordance with written policies consistent with the requirements of this part adopted by the institution. Persons receiving notice of a proposed release of information shall also receive a copy of the written policy of the institution governing release of information.

(3) These records shall include:

(a) identification data, including the resident's legal status;

(b) the resident's history, including but not limited to:

(i) family data, educational background, and employment record;

(ii) prior medical history, both physical and mental, including prior institutionalization;

(c) the resident's grievances, if any;

(d) an inventory of the resident's life skills, *including mode of communication*;

(e) a record of each physical examination which describes the results of the examination;

(f) a copy of the individual habilitation plan and any modifications thereto and an appropriate summary which will guide and assist the resident care workers in implementing the resident's program;

(g) the findings made in *monthly* reviews of the habilitation plan, which findings shall include an analysis of the successes and failures of the habilitation program and shall direct whatever modifications are necessary;

(h) a copy of the postinstitutionalization plan *that includes a statement of services needed in the community* and any modifications thereto and a summary of the steps that have been taken to implement that plan;

(i) a medication history and status;

(j) a summary of each significant contact by a professional person with a resident;

(k) a summary of the resident's response to his *habilitation plan*, prepared by a professional person involved in the resident's habilitation and recorded at least monthly. Wherever possible, such response shall be scientifically documented.

(l) a monthly summary of the extent and nature of the resident's work activities and the effect of such activity upon the resident's progress along the habilitation plan;

(m) a signed order by a professional person for any physical restraints;

(n) a description of any extraordinary incident or accident in the facility involving the resident, to be entered by a staff member noting personal

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knowledge of the incident or accident or other source of information, including any reports of investigations of resident's mistreatment;

(o) a summary of family visits and contacts;

(p) a summary of attendance and leaves from the facility;

(q) a record of any seizures, illnesses, *injuries, and* treatments thereof and immunizations."

Section 11. Section 53-20-164, MCA, is amended to read:

"53-20-164. Resident labor. The following rules shall govern resident labor:

(1) No resident shall be required to perform labor which involves the operation and maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditioned upon the performance of labor covered by this provision. Residents may voluntarily engage in such labor if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C., sec. 206, as amended.

(2) No resident shall be involved in the care (feeding, clothing, bathing), training, or supervision of other residents unless he:

(a) has volunteered;

(b) has been specifically trained in the necessary skills;

(c) has the humane judgment required for such activities;

(d) is adequately supervised; and

(e) is reimbursed in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C., sec. 206, as amended.

(3) Residents may be required to perform vocational training tasks which do not involve the operation and maintenance of the facility, subject to a presumption that an assignment of longer than 3 months to any task is not a training task, provided the specific task or any change in task assignment is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by a professional person responsible for supervising the resident's habilitation;

(b) supervised by a staff member to oversee the habilitation aspects of the activity.

(4) Residents may voluntarily engage in habilitative labor at nonprogram hours for which the facility would otherwise have to pay an employee, provided the specific labor or any change in labor is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by a professional person responsible for supervising the resident's habilitation;

(b) supervised by a staff member to oversee the habilitation aspects of the activity; and

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(c) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C., sec. 206, as amended.

(5) If any resident performs habilitative labor which involves the operation and maintenance of a facility but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then *such resident* may be compensated at a rate which bears the same approximate relation to the statutory minimum wage as his ability to perform that particular job bears to the ability of a person not so afflicted.

(6) Residents may be required to perform tasks of a personal housekeeping nature, such as the making of one's own bed.

(7) Deductions or payments for care and other charges shall not deprive a resident of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

(8) Staffing shall be sufficient so that the facility is not dependent upon the use of residents or volunteers for the care, maintenance, or habilitation of other residents or for income-producing services. The facility shall formulate a written policy to protect the residents from exploitation when they are engaged in productive work."

Section 12. **Clothing for residents discharged or conditionally released.** A resident may not be discharged or conditionally released from a residential facility for the developmentally disabled without suitable reasonable clothing that will allow the resident to make a normal appearance in the community.

Section 13. **Codification.** Section 12 is intended to be codified as an integral part of Title 53, chapter 20, part 1, and the provisions of Title 53, chapter 20, part 1, apply to section 12.

Approved April 9, 1979.

CHAPTER NO. 486

AN ACT TO STIPULATE THAT INTEREST ACCRUING ON THE FUNDS OF A FIRE DISTRICT OR DEPARTMENT IN UNINCORPORATED AREAS MUST BE CREDITED TO THE ACCOUNT OF THAT FIRE DISTRICT OR DEPARTMENT; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Interest to be credited to fire district or department account.** All interest paid and collected on the deposits or investments of the funds of a volunteer fire district or department organized in

an unincorporated area under Title 19, chapter 12, must be credited to the account of that fire district or department.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 9, 1979.

CHAPTER NO. 487

AN ACT TO REQUIRE COUNTY CLERKS TO CHARGE A FEE FOR COPIES OF BIRTH AND DEATH CERTIFICATES; REQUIRING STATE AGENCIES TO PAY FEES FOR RECORDING DOCUMENTS; AMENDING SECTION 7-4-2631, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2631, MCA, is amended to read:

"7-4-2631. Fees of county clerk. *(1)* The county clerks must charge, for the use of their respective counties:

(a) for recording and indexing a written instrument allowed by law to be recorded, except as otherwise provided in 7-4-2632 and 7-4-2633:

(i) (A) for the first folio, 60 cents; and

(B) for each subsequent folio or fraction of one, 30 cents;

(ii) for each entry in index, 20 cents;

(iii) for a certificate that an instrument has been recorded with seal affixed, $1;

(b) for recording and indexing each real estate mortgage or an assignment, renewal, or release of a real estate mortgage:

(i) for each folio, 40 cents;

(ii) for each entry in index, 20 cents;

(iii) for a certificate that the mortgage, assignment, or release has been recorded with seal affixed, $1;

(c) for recording and indexing each certificate of location of a quartz or placer mining claim, millsite claim, or notice of appropriation of water, including a certificate that the instrument has been recorded with seal affixed, $4;

(d) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

(i) for the first mining claim in the affidavit, $2; and

(ii) for each additional mining claim included in it, 50 cents;

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(e) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, $1;

(f) for filing and indexing each certificate of incorporation or annual statement of a corporation, $2;

(g) for recording and platting each townsite or map:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 10 cents;

(iii) for recording the field notes of survey of a townsite, 50 cents per folio.

(h) for a copy of a record or paper:

(i) for each folio, 30 cents; and

(ii) for each certification with seal affixed, $1;

(i) for searching an index record of files of the office for each year when required in abstracting or otherwise, 30 cents;

(j) for each entry of discharge or satisfaction of a mortgage, lien, or other instrument on the margin of record of it or upon the original instrument and noting the entry in the indexes concerned, 50 cents;

(k) for administering an oath with certificate and seal, no charge;

(l) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(m) for recording and indexing an instrument which may be recorded under 70-21-207 and which pertains to land allotted to an Indian or land within an Indian reservation, except fee patents, no charge;

(n) for filing, indexing, or other services provided for by 30-9-401 through 30-9-407, the fees prescribed in those sections;

(o) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, 50 cents;

(p) for filing an order creating a television district pursuant to 7-13-2509, $3;

(q) for filing, recording, or indexing any other instrument not expressly provided for in this section, 7-4-2632, or 7-4-2633, the same fee provided in this section, 7-4-2632, or 7-4-2633 for a similar service;

(r) for each copy of a birth certificate or a death certificate, $2.

(2) State agencies submitting documents for recording shall pay the recording fees provided for in this section. These fees may be paid by a state agency on a monthly basis."

Approved April 9, 1979.

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CHAPTER NO. 488

AN ACT REVISING THE LAWS RELATING TO HERD DISTRICTS TO INCREASE THE PENALTIES FOR VIOLATIONS; CLARIFYING THE REQUIREMENT OF A REASONABLY REGULAR AND SYMMETRICAL BOUNDARY; AMENDING SECTIONS 81-4-301, 81-4-306, 81-4-308, AND 81-4-309, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-4-301, MCA, is amended to read:

"81-4-301. Herd districts — creation, size, and location. (1) Herd districts may be created in any county in the state of Montana upon petition of owners or possessors of 55% of the land in such district and providing 25% or more of the land in such district is in actual cultivation or being used for residential purposes. Such districts must contain 12 square miles or more, lying not less than 1 mile in width, outside of the incorporated cities, except that herd districts may be created containing not less than 6 or more than 54 square miles, lying not less than 2 miles in width, when such territory joins and is contiguous with the boundaries of a city having a population of 10,000 or more and such territory so to be created in a herd district has a suburban population of not less than 200 people.

(2) In formation of such a district the entire holding of any owner or lessee must be included unless such owner or lessee consents that less than his entire contiguous holdings be included in the petition.

(3) Such petition shall designate the months of the year when the herd district is effective, and upon presentation and filing of such petition, properly signed, giving the outside boundaries and description of the proposed district and the post-office address of the signers thereto, with the clerk and recorder in the county in which the said district is being created, the county commissioners of such county, upon receipt thereof, shall set a date for hearing protests and verifying the signatures thereto and shall give not less than 20 days' notice of the same by three publications in a newspaper of general circulation in the county of the proposed district. At the hearing held pursuant to such notices, the county commissioners shall examine the petition and shall cause a map to be made in order to determine the shape and regularity of the boundaries of the proposed district. The commissioners may then establish the district, but such district shall be established only in such manner that the district will be reasonably regular and symmetrical in shape or practicable in relation to the geographical features of such district. *It is not required that the boundaries of any district follow section lines to meet the requirement of reasonably regular and symmetrical boundaries.*

(4) Should it appear to such county commissioners after such hearing that the signatures attached to such petition were genuine, they shall immediately declare such herd district created and established; after which the county commissioners must give notice by four weekly publications in

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some newspaper nearest the district of the creation of such districts, also stating the period such districts will be in effect. Such districts shall not be in effect until 30 days have expired after the order.

(5) Upon petition of any owner or possessor of lands lying contiguous and adjoining any herd district theretofore created and upon like hearing and notice as hereinabove provided for, such lands shall be included in said herd district and become a part thereof. Should the signature of lessee appear on the petition creating or abolishing any herd district, the owner or owners of said land may appear either in person or agent and enter their protest and the board of county commissioners shall remove the name of the lessee from said petition, and no person shall be permitted to withdraw his name after the hour set for hearing same."

Section 2. Section 81-4-306, MCA, is amended to read:

"81-4-306. Penalty for permitting animals to run at large in herd districts. (1) Any person who is the owner or entitled to the possession of any horses, mules, cattle, sheep, *asses, hogs,* or goats, who shall willfully permit same to run at large within any herd district, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than *$50* or more than *$250* for each offense. Each day that each five head or less of such horses, mules, cattle, sheep, *asses, hogs,* or goats are willfully permitted to run at large shall constitute a separate offense.

(2) Any person who is the owner or entitled to the possession of any bull, *stallion, or jackass* over 1 year of age who shall willfully permit same to run at large within any herd district shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than *$50* or more than *$250* for each offense. Each day that such bull be permitted to run at large shall constitute a separate offense."

Section 3. Section 81-4-308, MCA, is amended to read:

"81-4-308. Retrieval of impounded animals a misdemeanor — penalty. Any person who takes or rescues any animal impounded as provided in 81-4-307 from the possession of the person in whose custody the same may be, without his consent, shall be guilty of a misdemeanor and upon conviction therefor be subject to a fine of not *less* than $100 *or more than $500* or shall be confined in the county jail not more than 60 days or both such fine and imprisonment."

Section 4. Section 81-4-309, MCA, is amended to read:

"81-4-309. Unlawful introduction of livestock into herd district a misdemeanor — penalty. Any person not the owner or person in charge of any livestock who shall drive, put, place, or introduce any livestock into any herd district established under the provisions of 81-4-301 through 81-4-309 or who shall so place, move, or interfere with such livestock that they will trespass on such herd district shall be guilty of a misdemeanor and upon conviction thereof be subject to a fine of not less than *$250 or more than $500* or shall be confined in the county jail not less than 60 days or both such fine and imprisonment and shall be liable for all damages and costs occurring from such trespass. For the purposes of

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this section each separate animal so moved, placed, or interfered with shall constitute a separate offense."

Section 5. **Validation.** No herd district established prior to [the effective date of this act] may be held invalid because the boundaries do not follow section lines.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 9, 1979.

CHAPTER NO. 489

AN ACT TO PROVIDE FOR THE DISQUALIFICATION OF A COUNTY SUPERINTENDENT FROM HEARING MATTERS OF CONTROVERSY UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR APPOINTMENT OF ANOTHER COUNTY SUPERINTENDENT BY THE COUNTY SUPERINTENDENT OF SCHOOLS; AUTHORIZING PAYMENT OF NECESSARY AND PROPER EXPENSES BY THE COUNTY IN WHICH THE CONTROVERSY WAS INITIATED; AND AMENDING SECTION 20-3-210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Disqualification of county superintendent.** A county superintendent may not hear or decide matters of controversy pursuant to 20-3-210 when:

(1) he is a party to or has an interest in the controversy;

(2) he is related to either party in the controversy by consanguinity or affinity within the sixth degree, computed according to the rules of law; or

(3) either party to the controversy makes and files with the county superintendent of schools an affidavit that he has reason to believe and does believe that he cannot have a fair and impartial hearing before the county superintendent by reason of the bias or prejudice of the county superintendent.

Section 2. **The county superintendent to appoint another county superintendent.** (1) When a county superintendent is disqualified pursuant to [section 1], that county superintendent must appoint another county superintendent to hear and decide the matter of controversy arising pursuant to 20-3-210.

(2) The county in which the controversy was initiated shall reimburse the county served by the county superintendent appointed pursuant to subsection (1) for actual costs of travel, room, and board as a result of the appointment. Such county superintendent is entitled to expenses as provided in 20-3-203(1).

Section 3. Section 20-3-210, MCA, is amended to read:

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"20-3-210. Controversy appeals and hearings. (1) *Except as provided under [section 1] the* county superintendent shall hear and decide all matters of controversy arising in his county as a result of decisions of the trustees of a district in the county. When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney at law to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the superintendent of public instruction under the provisions for appeal of controversies in this title. Furthermore, he shall hear and decide all controversies arising under:

(a) section 20-5-304 or 20-5-311 relating to the approval of tuition applications; or

(b) any other provision of this title for which a procedure for resolving controversies is not expressly prescribed.

(2) The county superintendent shall hear the appeal and take testimony in order to determine the facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. He shall prepare a written transcript of the hearing proceedings. The decision on the matter of controversy which is made by the county superintendent shall be based upon the facts established at such hearing.

(3) The decision of the county superintendent may be appealed to the superintendent of public instruction, and if it is appealed, the county superintendent shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the superintendent of public instruction.

(4) Cost incurred by the office of the county superintendent shall be paid from the general fund budget of the county in which the controversy is initiated."

Approved April 9, 1979.

CHAPTER NO. 490

AN ACT TO REQUIRE LENDING INSTITUTIONS TO RENDER ANNUAL STATEMENTS ON CERTAIN PREPAID RESERVE FUNDS AND TO LIMIT THE AMOUNT OF SUCH RESERVE FUNDS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Limit on the amount of funds on reserve.** Except as provided in [section 2], if a lending institution requires a borrower under a mortgage or trust indenture of real property to include in his regular payment additional payment into a reserve fund held by the lending institution for the future payment of property taxes, insurance premiums, and

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other expenses, the amount of funds on reserve may not exceed 110% of the projected amount needed to pay such expenses.

Section 2. **Exception to limitation.** If the borrower desires, the lending institution and borrower may enter into a written contract in which they agree that the funds on reserve exceed 110% of the reasonable amount needed to pay such expenses.

Section 3. **Record of reserve fund required.** Every lending institution shall keep an itemized record of each payment entered into the reserve fund and each disbursement withdrawn from the reserve fund. The lending institution shall annually mail a statement of total receipts and disbursements to each borrower under a mortgage or trust indenture of real property.

Section 4. **Effective date.** This act is effective on January 1, 1980.

Approved April 9, 1979.

CHAPTER NO. 491

AN ACT CREATING A BOARD OF PHYSICAL THERAPY EXAMINERS AND GENERALLY REVISING THE PHYSICAL THERAPY LAWS; AMENDING SECTIONS 2-8-103, 37-11-101, 37-11-103, 37-11-201, 37-11-202, 37-11-301, 37-11-303, 37-11-307 THROUGH 37-11-309, AND 37-11-321, MCA.

WHEREAS, the practice of physical therapy within the state of Montana is a privilege granted by legislative authority and is not a right of individuals; and

WHEREAS, it is necessary and in the best interests of the health, safety, and welfare of the people of Montana to provide laws covering the granting of licenses and their regulation so that the public may be protected from the unprofessional, unauthorized, or unqualified practice of physical therapy and to license only competent physical therapists to practice physical therapy.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Board of physical therapy examiners.** (1) There is a board of physical therapy examiners.

(2) The board consists of three members appointed by the governor, upon the recommendation of the Montana chapter of the American physical therapy association, for a term of 3 years.

(3) Each member must have been a resident of Montana and a practicing physical therapist for the 3 years preceding appointment to the board but need not be a member of the Montana chapter of the American physical therapy association.

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(4) Within 30 days following [the effective date of this act], the governor shall make initial appointments to the board of physical therapy examiners. He shall appoint one member each to hold office for terms of 1 year, 2 years, and 3 years, respectively. At the end of each member's appointed term, a member shall be appointed for a full 3-year term.

(5) Ninety days prior to the end of the board member's term of office a nominating committee comprised of members and nonmembers of the Montana chapter of the American physical therapy association shall submit to the governor a list of individuals qualified to serve as a member of the board. The list shall contain not less than three times the number of candidates needed to fill the vacancies.

(6) A vacancy on the board must be filled in the same manner as the original appointment, except that the names of qualified individuals must be submitted to the governor upon notice of a pending vacancy or within 10 days after a vacancy occurs. These appointments may only be made for the unexpired portions of the term.

(7) No member may be appointed for more than two consecutive terms.

(8) The governor may remove any board member for negligence in performance of any duty required by law and for incompetence or unprofessional or dishonorable conduct.

(9) A board member is not liable to civil action for any act performed in good faith in the execution of the duties required by Title 37, chapter 11.

(10) The board shall provide for its organizational structure by rule, which shall include a chairman, vice-chairman, and secretary-treasurer.

(11) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of public accountants, department of professional and occupational licensing, created by 2-15-1641;

(c) board of architects, department of professional and occupational licensing, created by 2-15-1651;

(d) state banking board, department of business regulation, created by 2-15-1803;

(e) state electrical board, department of professional and occupational licensing, created by 2-15-1654;

(f) board of professional engineers and land surveyors, department of professional and occupational licensing, created by 2-15-1653;

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(g) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(h) office of the investment commissioner, state auditor's office, created by 2-15-1901;

(i) board of landscape architects, department of professional and occupational licensing, created by 2-15-1652;

(j) board of county printing, department of community affairs, created by 2-15-1102;

(k) board of plumbers, department of professional and occupational licensing, created by 2-15-1655;

(l) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(m) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(n) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

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(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(n) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(t) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(u) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish and game, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631;

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(j) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(k) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following unit of state government shall terminate on July 1, 1985: board of physical therapy examiners, created by [section 1]."

Section 3. Section 37-11-101, MCA, is amended to read:

"**37-11-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Physical therapy" means the *evaluation,* treatment, *and instruction* of *human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental conditions* by the use of *therapeutic exercise and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.*

(2) "Physical therapist" *or "physiotherapist"* means a person who practices physical therapy.

(3) "Physical therapy student" or "physical therapy intern" means an individual enrolled in an accredited physical therapy curriculum and who, as part of his professional, educational, and clinical training, is practicing in a physical therapy setting under the direction, guidance, and observation of a licensed physical therapist.

(4) "Physical therapy assistant" means a person who is a graduate of an accredited curriculum approved by the board and who assists a physical therapist in the practice of physical therapy and whose activities require an understanding of physical therapy.

(5) "Physical therapy aide" means a person who aids in the practice of physical therapy and whose activities require on-the-job training and supervision by a licensed physical therapist who must be available for periodic checks during any procedure or treatment involving a patient.

(6) "Board" means the board of *physical therapy* examiners provided for in *[section 1].*

(7) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(8) "Hearing" means the adjudicative proceeding concerning the issuance, denial, suspension, or revocation of a license, after which the appropriate action toward an applicant or licensee is to be determined by the board."

Section 4. **Physical therapy — practiced under referral — treatment.** (1) Physical therapy is practiced under referral from physicians, osteopaths, dentists, and podiatrists and includes the administration, interpretation, and evaluation of tests and measurements of bodily functions and structures, the establishment and modification of treatment, and

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consultative, educational, and other advisory services, and instruction and supervision of supportive personnel.

(2) Treatment employs, for therapeutic effects, physical measures, activities and devices, for preventive and therapeutic purposes, exercises, rehabilitative procedures, massage, mobilization, and physical agents including but not limited to mechanical devices, heat, cold, air, light, water, electricity, and sound.

Section 5. **Equivalent terms.** "Physical therapy practitioner", "physical therapy specialist", "physiotherapy practitioner", or "manual therapists" are equivalent terms, and any derivation of the above or any letters implying the above are equivalent terms; any reference to any one of them in this chapter includes the others but does not include certified corrective therapists or massage therapists.

Section 6. **Supervision of physical therapist assistants.** A physical therapist assistant must practice under the direct supervision of a licensed physical therapist who is responsible for and participates in a patient's care.

Section 7. Section 37-11-103, MCA, is amended to read:

"37-11-103. Restrictions on scope of practice. Nothing in this chapter shall be construed as authorizing a physical therapist, whether licensed or not, to practice medicine, osteopathy, or chiropractic, *dentistry, or podiatry; nor shall Title 37, chapter 11, be construed to limit or regulate any other business or profession or any services rendered or performed in connection with physical therapy.*"

Section 8. Section 37-11-201, MCA, is amended to read:

"37-11-201. General powers — rulemaking power — records. (1) The board may:

(a) adopt rules to carry this chapter into effect;

(b) grant, suspend, and revoke licenses;

(c) issue subpoenas requiring the attendance of witnesses or the production of books and papers; and

(d) take any other disciplinary action necessary to protect the public.

(2) The board shall:

(a) examine applicants for licenses twice a year at reasonable places and times determined by the board;

(b) review the qualifications of applicants who are approved for examination for licensure; and

(c) conduct written examinations that measure the qualifications of individual applicants along with any oral or practical examinations when determined by the board to be appropriate.

(3) The department shall keep a record of the board's proceedings under this chapter and a register of persons licensed under it. The register

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shall show the name of every living licensed physical therapist, his last-known place of business, last-known place of residence, and the date and number of his license and certificate as a licensed physical therapist.

(4) The department shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized to practice physical therapy in the state and shall mail, *upon request,* a copy of that list to the superintendent of every known hospital and every person licensed to practice medicine and surgery in the state. An interested person in the state is entitled to obtain a copy of the list on application to the department and payment of an amount not in excess of the cost of the list so furnished.

(5) The department may change addresses and surnames on the licensee's records only on the specific written request by the individual licensee."

Section 9. Section 37-11-202, MCA, is amended to read:

"37-11-202. Investigation and report of violations. *(1)* The board shall:

(a) investigate every *alleged* violation of this chapter coming to its notice;

(b) report to the proper authority all cases that, in the judgment of the board, warrant prosecution;

(c) formulate a written complaint process for use in reporting alleged violations;

(d) assist the proper county attorney or the attorney general in the prosecution of all persons who violate any provision of Title 37, chapter 11.

(2) The attorney general shall serve as attorney for the board."

Section 10. **Travel expense — deposit of fees.** (1) Each board member shall be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503 for each day actually engaged in the duties of his office.

(2) All fees collected by the department shall be deposited in the earmarked revenue account for the use of the board, subject to 37-1-101(6). The department shall keep an accurate account of funds received and expenditures made from the account.

(3) The board of medical examiners shall transfer funds in the earmarked revenue account collected after January 1, 1979, which were derived from the examination and licensure or relicensure of physical therapists in this state to the earmarked account designated as the "physical therapist account".

Section 11. Section 37-11-301, MCA, is amended to read:

"37-11-301. Unauthorized representation as licensed therapist. A person who is not licensed under this chapter as a physical therapist or whose license has been suspended or revoked or whose license has

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lapsed and has not been revived who uses in connection with his name the words or letters "L.P.T.", "Licensed Physical Therapist", *"P.T.", "Physical Therapist", "R.P.T.", "Registered Physical Therapist"*, or any other letters, words, or insignia indicating or implying that he is a licensed physical therapist or who in any way, orally or in writing or in print or by sign, directly or by implication, represents himself as a physical therapist shall be guilty of a misdemeanor."

Section 12. Section 37-11-303, MCA, is amended to read:

"37-11-303. Qualifications of applicants for license. To be eligible for a license as a physical therapist, an applicant must:

(1) be of good moral character *and at least 18 years of age*;

(2) have graduated from *an accredited* school of physical therapy approved by the *board*;

(3) either:

(a) pass to the satisfaction of the board an examination to determine his fitness for practice as a physical therapist; or

(b) be entitled to a license without examination under 37-11-307."

Section 13. Section 37-11-307, MCA, is amended to read:

"37-11-307. Applicants licensed in other states. The board may, in its discretion, authorize the department to *license* as a physical therapist, without examination, on the payment of the required fee, *not to exceed $100,* as established by the board, an applicant for license who is a physical therapist licensed under the laws of another state or territory if the requirements for a license for physical therapists in the state or territory in which the applicant was licensed were at the date of his license substantially equal to the requirements in force in this state. *However, the board may require a written, oral, or practical examination.*"

Section 14. Section 37-11-308, MCA, is amended to read:

"37-11-308. Annual renewal of license — fee. A licensed physical therapist shall, during January, apply to the department for a renewal of his license and pay a fee *not to exceed $50 which shall be set by board rule.* A license that is not renewed before April every year automatically lapses. The board may, in its discretion, revive and renew a lapsed license on the payment of all past unpaid renewal fees *or a late renewal fee.*"

Section 15. Section 37-11-309, MCA, is amended to read:

"37-11-309. Temporary license. (1) On payment to the department of a fee *not to exceed $100 which shall be set by board rule* and the submission of a written application on forms provided by it, the department shall issue, without examination, a temporary license to practice physical therapy in this state for a period not to exceed 1 year to a person who meets the qualifications set forth in 37-11-303, on submission by the person of evidence satisfactory to the board that he is in this state on a temporary basis to assist in a case of medical emergency or to engage in a special physical therapy project.

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(2) On the submission of a written application on forms provided by it, the department shall issue a temporary license to a person who has applied for a license under this chapter and who is, in the judgment of the board, eligible to take the examination provided for in 37-11-303. This temporary license is available to an applicant only with respect to his first application for a license under 37-11-307, *or to a foreign-trained physical therapist,* and the license expires when the board makes a final determination with respect to the application."

Section 16. **Foreign-trained applicants.** The foreign-trained physical therapist applicant's transcripts will be evaluated by the board. The board will compare the applicant's transcript to the standards set by the American physical therapy association. If the applicant's professional education credit hours are approved by the board and the school the applicant attended was approved by the American physical therapy association at the time the applicant attended, the applicant is eligible for a temporary license prior to examination.

Section 17. Section 37-11-321, MCA, is amended to read:

"37-11-321. Refusal to issue or renew license. The board, after due notice and hearing, may refuse to license any applicant, and may refuse to renew, *may suspend, may revoke, or take lesser disciplinary action on* the license of any licensed person who:

(1) is habitually intoxicated or is addicted to the use of narcotic drugs;

(2) has been convicted of violating any state or federal narcotic law, subject to chapter 1, part 2 of this title;

(3) is, in the judgment of the board, guilty of immoral or unprofessional conduct *as defined by board rule*;

(4) has been convicted of any crime involving moral turpitude, subject to chapter 1, part 2 of this title;

(5) is guilty, in the judgment of the board, of gross negligence in his practice as a physical therapist;

(6) has obtained or attempted to obtain *licensure* by fraud or material misrepresentation;

(7) has been declared to be seriously mentally ill by a court of competent jurisdiction and has not thereafter been released from treatment *and declared not to be seriously mentally ill*;

(8) has treated or undertaken to treat ailments of human beings otherwise than by physical therapy;

(9) *is guilty, in the judgment of the board, of conduct unbecoming a person licensed as a physical therapist or of conduct detrimental to the best interests of the public; or*

(10) has practiced physical therapy beyond the scope and limitation of his training and education."

Section 18. **Display of license.** Each licensee shall display his original license or an official duplicate issued by the department and a renewal

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certificate in a conspicuous place in the principal office where he practices physical therapy. A reproduction displayed in lieu of the above is not authorized unless the reproduction is signed and notarized by a notary public.

Section 19. **Saving clause.** A license to practice physical therapy issued prior to the effective date of this act remains in effect for the period of its validity but upon expiration may be renewed only in accordance with this act.

Section 20. **Codification.** (1) Section 1 is intended to be codified as an integral part of Title 2, chapter 15, part 16, and the provisions contained in Title 2, chapter 15, part 16, apply to section 1.

(2) Sections 4 through 6, 10, 16, and 18 are intended to be codified as an integral part of Title 37, chapter 11, and the provisions contained in Title 37, chapter 11, apply to sections 4 through 6, 10, 16, and 18.

Approved April 9, 1979.

CHAPTER NO. 492

AN ACT PROVIDING THAT A PUBLIC EMPLOYEE SEPARATED FROM EMPLOYMENT SHALL RECEIVE HIS FINAL PAYCHECK ON THE NEXT REGULAR PAYDAY FOR THE PAY PERIOD DURING WHICH HE WAS SEPARATED FROM EMPLOYMENT OR 15 DAYS FROM THE DATE OF SEPARATION, WHICHEVER OCCURS FIRST; PROVIDING FOR IMMEDIATE PAYMENT UPON SEPARATION FROM EMPLOYMENT IN CERTAIN CASES; AMENDING SECTION 39-3-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-205, MCA, is amended to read:

"**39-3-205. Payment of wages when employee separated from employment prior to payday.** *(1) Except as provided in subsection (2), whenever* any employee is separated from the employ of any employer, all the unpaid wages of such employee shall become due and payable within 3 days, *except for employees of the state of Montana and its political subdivisions who would be paid on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from employment, whichever occurs first*, either through the regular pay channels or by mail if requested by the employee. However, where an employer's payroll checks originate at an office outside the state, the time provided herein for payment of wages shall be extended for 3 additional days.

(2) When an employee is separated for cause from employment by the employer, all the unpaid wages of the employee shall become due and payable immediately upon such separation."

Approved April 9, 1979.

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CHAPTER NO. 493

AN ACT TO REVISE THE DISCIPLINARY POWERS OF THE BOARD OF DENTISTS; AMENDING LIMITATIONS ON DENTAL ADVERTISING AND ORAL HYGIENE; REQUIRING IDENTIFICATION OF DENTURES; AMENDING SECTIONS 37-4-321 THROUGH 37-4-323, AND 37-4-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-4-321, MCA, is amended to read:

"37-4-321. Grounds for disciplinary proceedings — range of sanctions. *The board may censure, prescribe probation, suspend, or revoke any license issued under this chapter for any of the following causes:*

(1) conviction of a felony or misdemeanor when the sentence imposed is imprisonment in the state prison. A certified copy of the conviction record from the district court imposing the sentence is conclusive evidence;

(2) physical or mental incompetence;

(3) gross malpractice or repeated malpractice;

(4) unprofessional conduct, as defined by rule of the board; or

(5) violation of any of the provisions of this chapter or rules or orders of the board."

Section 2. Section 37-4-322, MCA, is amended to read:

"37-4-322. When publishing professional cards not unprofessional conduct. (1) It shall not be considered unprofessional for a dentist to place in any newspaper or publication, subject to the limitations stated hereafter, a card bearing his name only, together with his degree or the word "dentist" and giving office location, hours, and telephone numbers. If he limits his practice to a specialty he may so announce it or he may announce his absence from or his return to practice in the same manner.

(2) *A dentist may publish a list of his fees, but such listing must include full and complete information stating if the published fee is minimum, maximum, or usual and whether or not any additional charges may be made for the services published. All announcements or publications must be done in a professional manner that will in no way coerce or confuse the public."*

Section 3. Section 37-4-323, MCA, is amended to read:

"37-4-323. Procedure for investigation — sanctions. *(1) Upon receipt of a complaint or upon its own motion the board shall determine whether the matters alleged warrant investigation and may cause investigation to be made. If the board finds preliminary cause for imposing the sanctions listed in 37-4-321, it may do so in accordance with the provisions of the Montana Administrative Procedure Act. If the board finds*

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that the evidence obtained does not justify the imposition of sanctions, it must so notify the licensee concerned and the complaining party and take no further action.

(2) If the board finds that the evidence obtained does not warrant suspension or revocation of a license but does warrant other sanctions, it may either:

(a) issue a public or private decree of censure; or

(b) impose a probation with terms and conditions appropriately adapted under the circumstances of the particular case.

(3) The licensee is entitled to an opportunity for a contested case hearing before a sanction of censure or probation becomes effective to the same extent an opportunity for hearing is afforded prior to suspension or revocation.

(4) In addition to its authority to impose sanctions, the board may deny an application for a license for any of the following reasons:

(a) failure to meet the relevant requirements of Title 37, chapter 4;

(b) making any untrue or fraudulent statement in support of the application; or

(c) any of the grounds set forth in 37-4-321 for suspension or revocation of a license."

Section 4. Section 37-4-405, MCA, is amended to read:

"37-4-405. Dental hygienist to practice under supervision of licensed dentist. *(1)* A licensed dental hygienist may practice in the office of a licensed and actively practicing dentist, in a public or private institution, under a board of health, or in a public clinic authorized by the board but may not practice except under the direct personal supervision of a licensed dentist; however, the dental hygienist may give instruction in *oral* hygiene without the supervision of a licensed dentist in a public or private institution *or hospital or extended care facility* or under a board of health or in a public clinic authorized by the board.

(2) The board may, in lieu of the direct supervision requirement set forth in subsection (1), permit a licensed dental hygienist to provide clinical dental hygiene services to a public or private institution, a hospital or extended care facility, or a school or public health program after a review by the board of a request for such service and a description of the type of supervision necessary is made by the board. For the purposes of this section "supervision" is defined as follows:

(a) "direct supervision" means the supervision of those tasks and procedures that do not require the dentist in the room where performed but require his presence on the premises and availability for prompt consultation and treatment; and

(b) "general supervision" means those tasks and procedures that do not require the presence of a dentist on the premises but shall remain

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under the dentist's directive order, control, responsibility, and evaluation."

Section 5. **Identification of dentures.** All nonmetal full dentures shall be permanently identified with the first and last name of the owner at the time of processing the dentures.

Section 6. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 9, 1979.

CHAPTER NO. 494

AN ACT AMENDING SECTION 13-27-103, MCA, TO INDICATE MORE CLEARLY WHEN A PETITION SIGNATURE MAY BE COUNTED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-27-103, MCA, is amended to read:

"13-27-103. Sufficiency of signature. A signature may not be counted unless the elector has signed in substantially the same manner as on the voter registry card. *If the elector is registered with a first and middle name, the use of an initial instead of either the first or middle name, but not both names, need not disqualify the signature; the signature may be counted so long as the signature, taken as a whole, bears sufficient similarity to the signature on the registry card as to provide reasonable certainty of its authenticity."*

Approved April 9, 1979.

CHAPTER NO. 495

AN ACT TO ELIMINATE REFERENCES TO THE BOARD OF INSTITUTIONS; AMENDING SECTIONS 53-1-101 AND 53-1-407, MCA; REPEALING SECTIONS 2-15-2303 AND 53-1-205, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, will terminate the board of institutions and require a performance evaluation of the board by the legislative audit committee; and

WHEREAS, as a result of the performance evaluation, the legislative audit committee recommends that the board of institutions be abolished.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-101, MCA, is amended to read:

"53-1-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

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(1) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(2) "Director" means the director of institutions provided for in 2-15-2301.

(3) "Institution" means any of the institutions listed in 53-1-202."

Section 2. Section 53-1-407, MCA, is amended to read:

"53-1-407. Appeal of determination of ability to pay. If a resident or financially responsible person disagrees with the determination of the department as to his ability to pay any part of the per diem or ancillary charge, an appeal may be filed within 30 days of the date of the department's determination in any court of record in Montana having jurisdiction of the resident or financially responsible person liable for payment."

Section 3. **Repealer.** Sections 2-15-2303 and 53-1-205, MCA, are repealed.

Section 4. **Effective date.** This act is effective July 1, 1979, except that for the purpose of winding up the affairs of the board the sections repealed have effect in accordance with 2-8-121.

Approved April 9, 1979.

CHAPTER NO. 496

AN ACT TO EXEMPT THE WORK PRODUCT OF THE PROSECUTION, EXCEPT EXCULPATORY INFORMATION, FROM DISCOVERY IN A CRIMINAL ACTION; AMENDING SECTION 46-15-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-15-302, MCA, is amended to read:

"46-15-302. Discovery of writings and objects. In all criminal cases originally triable in the district court the following rules shall apply:

(1) Upon motion of either party and upon showing of good cause, the court may issue a subpoena prior to the trial directing any person other than the defendant to produce books, statements, papers, and objects before the court at a time prior to the trial or prior to the time when they are to be offered in evidence. Upon their production, the court may permit the books, statements, papers, objects, or portions thereof to be inspected, copied, or photographed by the parties and their attorneys.

(2) Upon motion of the defendant within a reasonable time before trial, the court may, upon a showing of good cause, order the prosecution to produce, prior to trial at a time and place designated by the court, for inspection, photographing, or copying by the defendant designated books, statements, papers, or objects obtained from the defendant or others by

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the prosecution which are material, relevant, and necessary to the preparation of the defendant's case. *This subsection does not apply to the work product of the prosecution, which is documents drawn up by law enforcement officials for internal communications and law enforcement officers' field notes, except that any exculpatory information contained in such documents or notes must be produced.*

(3) (a) On motion of any party within a reasonable time before trial, each party shall produce at a reasonable time and place designated by the court all documents, papers, or things which it intends to introduce in evidence. Each party shall be permitted to inspect or copy, in the presence of a person designated by the court, any such documents, papers, or things. The order shall specify the time, place, and manner of making the inspection and of taking the copies or photographs and may prescribe such terms and conditions as are just. If the evidence relates to scientific tests or experiments, the opposing party shall, if practicable, be permitted to be present during the tests and to inspect the results thereof. Upon a sufficient showing, the court may at any time order that the discovery or inspection be denied, restricted, or deferred or make other appropriate orders.

(b) If, subsequent to compliance with an order issued pursuant to this rule and prior to or during trial, a party discovers additional material previously requested which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional material. The court shall exclude any evidence not presented for inspection or copying pursuant to this rule unless good cause is shown for failure to comply. In the latter case the opposing party is entitled to a recess or a continuance during which it may inspect or copy the evidence in the manner provided for in this subsection (3)."

Approved April 9, 1979.

CHAPTER NO. 497

AN ACT PROVIDING FOR REGULATION OF THE REAL ESTATE INDUSTRY BY A BOARD OF REALTY REGULATION CREATED IN THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING; TERMINATING OPERATION OF THE BOARD OF REAL ESTATE IMMEDIATELY; ELIMINATING REFERENCES TO THE BOARD OF REAL ESTATE; PERMITTING ADOPTION OF A FEE SCHEDULE; AMENDING SECTIONS 2-8-121, 37-51-102, 37-51-205, 76-4-1101, 76-4-1202, AND 76-4-1203, MCA; REPEALING SECTIONS 2-15-1642 AND 37-51-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, will terminate the board of real estate and require a performance evaluation of the board by the legislative audit committee; and

WHEREAS, as a result of the performance evaluation, the legislative audit committee recommends that the board of real estate be abolished

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and the board of realty regulation in the department of professional and occupational licensing be established to regulate the real estate industry and that certain statutory provisions be amended or repealed.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Board of realty regulation.** (1) There is a board of realty regulation.

(2) The board consists of five members appointed by the governor with the consent of the senate. Three members shall be licensed real estate brokers or salesmen who are actively engaged in the real estate business as a broker or salesman in this state. Two members shall be representatives of the public who are not state government officers or employees and who are not engaged in business as a real estate broker or salesman. The members shall be:

(a) residents of this state; and

(b) appointed so not more than three members are from the same congressional district.

(3) Not more than three members, including the chairman, may be from the same political party.

(4) The members shall serve staggered terms of 4 years. A member may not serve more than two terms or any portion thereof.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

Section 2. Section 2-8-121, MCA, is amended to read:

"2-8-121. Effect of termination. *Unless otherwise provided, upon* termination, each agency or unit shall continue in existence until July 1 of the next succeeding year for the purpose of winding up its affairs. During the windup period, termination does not reduce or otherwise limit the powers or authority of each respective agency except that no action may be taken which would continue in effect beyond the 1-year windup period. Upon the expiration of the 1 year after termination, each agency not modified or reestablished shall be abolished and all unexpended balances of appropriations, allocations, or other funds shall revert to the fund from which they were appropriated or, if that fund is abolished, to the general fund."

Section 3. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of *realty regulation provided for in [section 1].*

(2) "Broker" includes an individual who for another or for a fee, commission, or other valuable consideration or who with the intent or expectation of receiving the same negotiates or attempts to negotiate the listing,

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sale, purchase, rental, exchange, or lease of real estate or of the improvements thereon or collects rents or attempts to collect rents or advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes an individual employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition thereof at a salary or for a fee, commission, or any other consideration. The term "broker" also includes an individual who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers, or both, and any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease.

(3) "Department" means the department of professional and occupational licensing, provided for in Title 2, chapter 15, part 16.

(4) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(5) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(6) "Salesman" includes an individual who for a salary, commission, or compensation of any kind is employed, either directly, indirectly, regularly, or occasionally, by a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate."

Section 4. Section 37-51-205, MCA, is amended to read:

"37-51-205. Compensation of members — expenses. Each member of the board shall receive as compensation for each day actually spent on his official duties the sum of *$25* and travel expenses, as provided for in 2-18-501 through 2-18-503, connected with the performance of duties for the board."

Section 5. **Schedule of fees.** The board shall adopt a schedule of fees to be charged by the department and to be paid into the earmarked revenue fund for the use of the board. The fees charged must be reasonably related to the cost incurred in regulating the real estate industry.

Section 6. Section 76-4-1101, MCA, is amended to read:

"76-4-1101. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Blanket encumbrance" shall be considered to mean a trust deed or mortgage or any other lien or encumbrance, mechanics' lien or otherwise, securing or evidencing the payment of money and affecting land to be subdivided or affecting more than one lot or parcel of subdivided land or an agreement affecting more than one such lot or parcel by which the owner or subdivider holds said subdivision under an option, contract to sell, or trust agreement.

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(2) "Board" means the board of *realty regulation provided for in [section 1].*

(3) "Department" means the department of professional and occupational licensing, provided for in Title 2, chapter 15, part 16.

(4) "Subdivision" and "subdivided lands" mean any tract of land which is hereafter divided into five or more parcels, a parcel of which is less than 5 acres in size, and which is offered for sale or lease outside the state of Montana."

Section 7. Section 76-4-1202, MCA, is amended to read:

"76-4-1202. Definitions. When used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of *realty regulation provided for in [section 1].*

(2) "Chairman" means the chairman of the board of *realty regulation.*

(3) "Department" means the department of professional and occupational licensing, provided for in Title 2, chapter 15, part 16.

(4) "Disposition" includes sale, lease, assignment, or any other transaction concerning a subdivision if undertaken for gain or profit.

(5) "Offer" includes every inducement, solicitation, or attempt to encourage a person to acquire an interest in land if undertaken for gain or profit.

(6) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(7) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land.

(8) "Subdivider" means any owner of subdivided land who offers it for disposition or the principal agent of an inactive owner.

(9) "Subdivision" and "subdivided lands" mean any land which is divided or is proposed to be divided for the purpose of disposition into five or more lots, parcels, units, or interests and also include any land, whether contiguous or not, if five or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale."

Section 8. Section 76-4-1203, MCA, is amended to read:

"76-4-1203. Administration and rules. (1) This part shall be administered by the board. In the administration of this part, the board shall have all of the powers and duties as stated in 37-51-201(2), (3), and (4) and 37-51-205.

(2) The board shall adopt reasonable rules relating to the administration of this part, but not inconsistent therewith, which may be amended or repealed. The rules shall include but need not be limited to:

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(a) provisions for advertising standards to assure full and fair disclosure;

(b) provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for;

(c) provisions for operating procedures; and

(d) other rules necessary and proper to accomplish the purpose of this part."

Section 9. **Transfer of funds.** All unexpended balances of appropriations, allocations, or other funds of the board of real estate shall be transferred to the board of realty regulation on the effective date of this act to be used for the purpose of regulating the real estate industry.

Section 10. **Transition.** All orders and rules relating to regulation of the real estate industry made by the board of real estate remain in full force and effect until revoked or modified in accordance with law by the board of realty regulation. The records and documents of the board of real estate are transferred to the board of realty regulation. Licenses, permits, and certificates issued prior to the effective date of this act remain valid under the same terms and conditions as when issued and are subject to the provisions of Title 37, chapter 51.

Section 11. **Termination of board of real estate.** Notwithstanding the provision of 2-8-103(1), the board of real estate terminates on the effective date of this act. Section 2-8-121 does not apply to the board of real estate.

Section 12. **Initial appointments.** Within 30 days of the effective date of this act, the governor shall appoint the initial board of realty regulation. The initial terms shall consist of one term of 1 year, one term of 2 years, one term of 3 years, and two terms of 4 years.

Section 13. **Codification.** Section 1 is intended to be codified in Title 2, chapter 15, part 16, and the provisions of Title 2, chapter 15, part 16, apply to section 1.

Section 14. **Repealer.** Sections 2-15-1642 and 37-51-101, MCA, are repealed.

Section 15. **Effective date.** This act is effective on passage and approval.

Approved April 9, 1979.

CHAPTER NO. 498

AN ACT TO REVISE THE PROCEDURE FOR PREAUDIT OF LIQUIDATED CLAIMS BY THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTION 17-8-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-8-202, MCA, is amended to read:

"17-8-202. Preaudit of liquidated or settled claims and transmittal of unliquidated claims. (1) The department *of administration*

is not required to preaudit a liquidated claim against the state. *However, all state agencies shall submit copies of all claims to the department of administration which may preaudit those claims it considers necessary. The agency shall retain the original of all documents sent to the department. These documents are subject to postaudit by the legislative auditor.*

(2) The department may not make any charge against any appropriation unless the balance of the appropriation is available and adequate. If no appropriation is available for the payment of a liquidated claim, the department shall audit it and, if it is a valid claim, transmit it to the governor for presentation to the legislature.

(3) An unliquidated claim submitted to the department shall be transmitted to the board of examiners to be processed as provided by law."

Approved April 9, 1979.

CHAPTER NO. 499

AN ACT TO REQUIRE THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, IN COOPERATION WITH OTHER AGENCIES AND OFFICIALS, TO GATHER, MAINTAIN, AND ANALYZE STATISTICS ON DOMESTIC VIOLENCE AND SPOUSE ABUSE IN THE STATE FOR A PERIOD OF 4 YEARS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Statistics on domestic violence and spouse abuse.** The department of social and rehabilitation services shall establish and administer a program to collect, maintain, and analyze statistics relating to domestic violence and spouse abuse in the state.

Section 2. **Agencies and officials to report information to department.** (1) The department of social and rehabilitation services is the lead agency for the collection of data on domestic violence and spouse abuse.

(2) The following agencies and officials shall provide, upon request, information on domestic violence and spouse abuse on a regular basis to the department of social and rehabilitation services:

(a) county sheriffs;

(b) municipal police;

(c) county attorneys;

(d) city attorneys;

(e) hospitals licensed by the state;

(f) mental health centers;

(g) drug and alcohol programs;

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(h) the department of justice;

(i) the department of labor and industry; and

(j) other social service agencies identified by the department of social and rehabilitation services.

Section 3. **Suggested form — information to be reported.** (1) The department of social and rehabilitation services shall develop a single check-off form as a guide to those agencies and officials required in [section 2] to gather and provide statistics on domestic violence and spouse abuse.

(2) An agency or official required to submit information pursuant to [section 2] need not use the form developed by the department of social and rehabilitation services but must submit to the department all the information requested on the department form.

Section 4. **Program to terminate.** The provisions of [this act] shall terminate on July 1, 1983.

Approved April 9, 1979.

CHAPTER NO. 500

AN ACT TO REQUIRE THAT THE COST OF GIVING NOTICE UNDER THE PUBLIC UTILITY, MOTOR CARRIER, AND RAILROAD LAWS SHALL BE PAID BY THE AFFECTED UTILITY, CARRIER, OR RAILROAD; AMENDING SECTIONS 69-3-204 AND 69-12-423, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-204, MCA, is amended to read:

"69-3-204. Fees to be charged by commission. (1) The public service commission shall, except as otherwise provided by law, require and receive fees before filing annual reports, schedules, and supplements of these and shall require and receive fees for copies of orders, documents, classifications, blank forms, and other instruments prepared by it or on file in its office, unless provided by law to be furnished free of charge, under the following schedule:

(a) filing annual reports, each ..... $ 5.00;

(b) classification for public utilities, each ..... $ 1.50;

(c) for blank forms of annual reports for utilities ..... cost.

(2) The commission shall require and receive an additional sum to be set by the commission to pay the cost of publishing notice as required by this chapter.

(3) This section does not require or authorize the public service commission to collect fees for the filing of annual reports, schedules, and supplements of these which relate solely to interstate commerce."

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Section 2. Section 69-12-423, MCA, is amended to read:

"69-12-423. Fees to be charged by commission. (1) The public service commission shall, except as otherwise provided by law, require and receive fees before filing annual reports, tariffs, schedules, and supplements of these and shall require and receive fees for copies of orders, documents, classifications, blank forms, and other instruments prepared by it or on file in its office, unless provided by law to be furnished free of charge, under the following schedule:

(a) filing annual reports, each ..... $ 5.00;

(b) filing tariffs, time schedules, and supplements thereto, each .$ 2.00;

(c) for issuing certificates of public convenience and necessity to motor carriers, each ..... $ 2.00;

(d) classification for motor carriers, each ..... $ .50;

(e) for a copy of the rules for motor carriers and blank forms of annual reports for common carriers ..... cost.

(2) The commission shall require and receive an additional sum to be set by the commission to pay the cost of publishing such notice as may be required by this chapter.

(3) This section does not require or authorize the public service commission to collect fees for the filing of annual reports, tariffs, schedules, and supplements of these which relate solely to interstate commerce."

Section 3. **Fees to be charged by commission.** The commission shall require and receive a fee from the affected railroad to pay the cost of publishing notice as required by [Title 69, chapter 14].

Section 4. **Codification.** It is intended that section 3 be codified as an integral part of Title 69, chapter 14, and the provisions of Title 69, chapter 14, apply to section 3.

Approved April 9, 1979.

CHAPTER NO. 501

AN ACT TO REVISE THE PROCEDURE IN THE SMALL CLAIMS DIVISION OF JUSTICE'S COURT; AMENDING SECTIONS 25-35-201, 25-35-203, 25-35-206, AND 25-35-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-35-201, MCA, is amended to read:

"25-35-201. Commencement of action — assistance to claimant. (1) A small claims action is commenced whenever any person appears before a justice of the peace and executes a sworn small claims complaint in substantially the same form as set forth in 25-35-202.

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(2) The justice shall assist any claimant in preparing his complaint or instruct his clerk to provide such assistance. *The attorney general shall prepare a pamphlet explaining in plain language the procedures for prosecuting and defending a claim in small claims court and distribute a sufficient number of copies of the pamphlet to each small claims court. The justice or his clerk shall give the plaintiff a copy when the plaintiff appears to execute his complaint, and a copy must be attached to the order of the court/notice to defendant.*"

Section 2. Section 25-35-203, MCA, is amended to read:

"**25-35-203. Hearing date.** The date for the appearance of the defendant to be set forth in the order shall be determined by the justice of the peace or by his clerk in accordance with rules adopted by the justice of the peace and may not be more than *40* or less than 10 days from the date of the order. Service of the order and a copy of the sworn complaint shall be made upon the defendant not less than 5 days prior to the date set for his appearance by the order. If the order is not timely served, the plaintiff may have a new appearance date set by the justice of the peace or his clerk and a new order issued and delivered to the sheriff, constable, or other process server. If necessary, repeated orders may be issued at any time within 1 year after the commencement of the action."

Section 3. **Defendant's counterclaim.** (1) The defendant may assert a counterclaim against the plaintiff arising out of the same transaction or occurrence that is the subject matter of the plaintiff's claim by appearing before the justice of the peace and executing a sworn small claims counterclaim in substantially the same form as set forth in subsection (3). The defendant shall cause the counterclaim to be served on the plaintiff not less than 72 hours before the date set for the hearing. Service shall be made in the same manner in which service of the order of court/notice to defendant is made on the defendant. A defendant may not assert as a counterclaim any claim not arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim.

(2) A counterclaim or setoff may not exceed $750. If a counterclaim or setoff is asserted in excess of $750, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether the plaintiff's claim is discharged thereby, leaving the defendant to prosecute the balance of his claim in an appropriate district court action.

(3) The counterclaim shall be made on a blank substantially in the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF
..... COUNTY, MONTANA
BEFORE ....., JUSTICE OF THE PEACE

.....

.....
Plaintiff

vs. Counterclaim

..... Case No. ...

.....
Defendant(s)

.....

Comes now the defendant, being first duly sworn, upon oath, and alleges that defendant is entitled to counterclaim against the plaintiff in the plaintiff's pending action in the sum of $....., for .....

.....

.....

which sum is now due, together with defendant's costs herein expended.

Dated this ... day of ....., 19...

.....
Defendant

.....
Defendant's address

Subscribed and sworn to before me this ..... day of ....., 19...

.....
Justice of the peace
By: .....
Clerk, small claims division

Section 4. Section 25-35-206, MCA, is amended to read:

"25-35-206. No further pleadings. No form of pleading other than the complaint, the order of the court/notice to defendant, *and the counterclaim of the defendant, if there is one,* is allowed."

Section 5. Section 25-35-207, MCA, is amended to read:

"25-35-207. Fees. (1) The clerk of the justice's court shall collect a fee of *$5*:

(a) from the plaintiff upon the filing of the sworn complaint; and

(b) from the defendant upon his appearance and contesting of the complaint *or execution of a counterclaim.*

(2) The laws relating to paupers' affidavits apply to actions before the small claims court."

Section 6. **Codification.** Section 3 is intended to be codified as an integral part of Title 25, chapter 35, and the provisions contained in Title 25, chapter 35, apply to section 3.

Approved April 9, 1979.

CHAPTER NO. 502

AN ACT TO CLARIFY THE LAWS RELATING TO THE FILING OF LIENS ON MOTOR VEHICLES; TO LIMIT THE NUMBER OF LIENS WHICH MUST BE ENDORSED IN DETAIL ON THE FACE OF THE CERTIFICATE OF OWNERSHIP; TO INCREASE THE LIEN FILING FEE AND FEE FOR A COPY OF A LIEN ON A TITLE TO $3; AMENDING SECTIONS 61-3-103, 61-3-104, 61-3-202, 61-3-303, AND 61-3-322, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-103, MCA, is amended to read:

"61-3-103. Filing of security interests, rights, procedure, fees. (1) No *security interest in* a motor vehicle shall be valid as against

creditors, subsequent purchasers or encumbrancers unless *the security agreement or other lien instrument that creates the security interest* or a true copy thereof certified by a notary public has been filed with the division as provided *in this section.* The division shall not file any *security agreement or other lien instrument* unless *it* is accompanied by the certificate of ownership of *the* vehicle *encumbered,* except in the sale of a new motor vehicle by a duly licensed dealer. *The* division shall file the *security agreement, lien instrument, or its certified copy by* entering upon its records the name and address of the *secured party* together with the amount of the *security interest* and, *except as provided in subsection (2),* shall endorse the same information upon the face of the certificate of ownership. *The division shall mail a* statement certifying to the filing of *a security agreement or lien instrument* to the *secured party,* and mail the certificate of ownership to the owner at the address given on *the* certificate. *The* owner *of a motor vehicle is* the person entitled to operate and possess such motor vehicle.

*(2) Whenever a security agreement or lien instrument is filed against a motor vehicle that is subject to two security interests previously perfected by filing under this section, the division shall endorse on the face of the certificate of ownership, "*NOTICE. *This motor vehicle is subject to additional security interests on file with the Division of Motor Vehicles." No other information regarding such additional security interests need be endorsed on the certificate.*

(3) Satisfactions or statements of release filed with the division under this chapter shall be retained by it for a period of 8 years after receipt, after which they may be destroyed. *Security agreements and other lien instruments* filed with the division, and all renewals and assignments thereof, shall be retained by it for a period of 8 years after the maturity date stated in *the security agreement, lien instrument,* or renewal, or if no maturity date is therein stated, for a period of 13 years after receipt, after which they may be destroyed.

(4) The filing of a security agreement or other lien instrument or copy thereof, as herein provided, perfects a security interest which has attached under the document filed. Filing of a security agreement or other lien instrument constitutes constructive notice to subsequent purchasers or encumbrancers, from the time of filing, of the existence of the security interest created by the document filed.

(5) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle the mortgagee or vendor has the same remedies as in the case of other personal property, except that the remedy of seizure prescribed by 30-9-508 shall be available upon delivery to the sheriff of the original instrument or a copy certified by the division and such undertaking as may be required by the sheriff. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 shall be applicable except that deposits must be made with the division.

(6) A conditional sales vendor or chattel mortgagee or assignee *who* fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment shall be

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required to pay the division the sum of $1 for each day thereafter that he fails to file such satisfaction.

(7) Upon receipt of any liens, or notice of liens dependent on possession, or attachments, etc., against the record of any motor vehicle registered in this state, the division shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any thereof a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and/or attaching creditor.

(8) It shall not be necessary to refile with the division any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(9) A fee of *$3* shall be paid to the division *to file* any *security agreement or other lien instrument* against *a* motor vehicle. *The $3 fee shall* include and cover the cost of filing a satisfaction or release of the *security interest* and also the cost of *entering* such satisfaction or release on the records of the division *and deleting the endorsement of the security interest from the face of the certificate of ownership.* A fee of *$3* shall be paid the division for issuing a certified copy of a *security agreement or other lien instrument* on file in the office of the division, or for filing *an* assignment of any instrument on file with the division. All fees provided for in this section shall be deposited by the division in the *motor vehicle recording account of the* earmarked revenue fund."

Section 2. Section 61-3-104, MCA, is amended to read:

"61-3-104. Parts of motor vehicle subject to security interest. Tires, casings, and/or tubes mounted on a motor vehicle are an integral and component part of said motor vehicle and any tire, casing, and/or tube placed thereon is subject to any conditional sales contract, mortgage, lease, or other lien on said motor vehicle in the order of filing with the division."

Section 3. Section 61-3-202, MCA, is amended to read:

"61-3-202. Certificate of ownership — contents — issuance. (1) Upon completion of the application for *certificate of ownership,* on forms furnished by the division, the county treasurer shall forward one copy of the application to the division which shall cause to be entered the information contained in said application upon the corresponding records of its office and shall furnish the applicant a certificate of ownership subject to the provisions of 61-3-103.

(2) The certificate of ownership shall contain upon the face thereof:

(a) the date issued;

(b) the *certificate of ownership* number assigned to the owner and the vehicle;

(c) the name and complete address of the owner, or the names and addresses of joint owners;

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(d) *except as provided in 61-3-103(2),* the name and complete address of any *holder of a perfected security interest in the registered vehicle*;

(e) a description of the registered vehicle including the year built and serial number;

(f) *except as provided in 61-3-103(2), the filing date of* any lien against such motor vehicle; and

(g) such other statement of facts as may be determined by the division.

(3) When the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of ownership, joint ownership with right of survivorship, and not as tenants in common, is presumed.

(4) Upon receipt of the application the division shall make a recheck of the application and in the event that there is any error in the application it may be returned to the county treasurer to effectively secure the correction of such error, who shall return the same to the division.

(5) The certificate of ownership shall contain a form of notice to the division of a transfer of title or interest of the owner and such other statement on forms as may be determined by the division."

Section 4. Section 61-3-303, MCA, is amended to read:

"61-3-303. Application for registration. (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as herein otherwise expressly provided, file or cause to be filed in the office of the county treasurer where the motor vehicle is owned or taxable an application for registration or reregistration upon a blank form to be prepared and furnished by the division. The application shall contain:

(a) name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable;

(b) name and address of *the* holder of *any security interest in* the motor vehicle;

(c) description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, type of body, and if truck, the rated capacity;

(d) in case of reregistration, the license number for the preceding year; and

(e) such other information as the division may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 15-1-101(1), shall upon the filing of the application:

(a) pay to the county treasurer the registration fee, as provided in 61-3-311 and 61-3-321; and

(b) pay the personal property taxes assessed or the new motor vehicle sales tax against the vehicle for the current year of registration, unless the

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same shall have been theretofore paid for the year, before the application for registration or reregistration may be accepted by the county treasurer.

(3) The county treasurer may make full and complete investigation of the tax status of the vehicle. Any applicant for registration or reregistration must submit proof from the tax records of the proper county at the request of the county treasurer."

Section 5. Section 61-3-322, MCA, is amended to read:

"61-3-322. Certificates of registration — issuance. (1) Upon completion of the application for registration, on forms furnished by the division, the county treasurer shall issue to the applicant two copies of the application marked "Owner's Certificate of Registration and Tax Receipt", one of which shall be marked "file copy".

(2) The certificate of registration shall contain upon the face thereof *the information described in 61-3-202(2).*

(3) Every owner, upon receiving a registration receipt shall write his signature thereon with pen and ink in the space provided. Every such registration receipt or a notarized photostatic copy thereof or a duplicate thereof furnished by the division shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of such vehicle, who shall display the same upon demand of a police officer or any officer or employee of the division or the highway department.

(4) Upon receipt of application for registration and payment of license fees and taxes as herein provided, the county treasurer shall:

(a) file one copy of said application in his office;

(b) issue to the applicant two copies of the application entitled "Owner's Certificate of Registration and Tax Receipt" one of which shall be marked "file copy"; and

(c) forward one copy to the county clerk and recorder.

(5) The county treasurer shall daily forward to the division one copy of the application for registration.

(6) It shall not be necessary for the county treasurer, in said receipt, to segregate the amount of said taxes for state, county, school district, and municipal purposes."

Section 6. **Saving clause.** Nothing contained herein shall affect the perfected status of a security interest filed prior to [the effective date of this act]. The division shall endorse information regarding any security interest perfected prior to [the effective date of this act] upon the face of any certificate of ownership in the same manner as any other security interest.

Approved April 9, 1979.

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CHAPTER NO. 503

AN ACT TO PROHIBIT ANY RECORD OF INVOLVEMENT IN A TRAFFIC ACCIDENT FROM BEING ENTERED ON A PERSON'S DRIVING RECORD BY THE DIVISION OF MOTOR VEHICLES UNLESS THE PERSON WAS CONVICTED OF A TRAFFIC VIOLATION RELATING TO THE ACCIDENT; AND TO RESTRICT RELEASE OF INFORMATION REGARDING INVOLVEMENT IN A TRAFFIC ACCIDENT; AMENDING SECTION 61-11-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-11-102, MCA, is amended to read:

"61-11-102. Records to be kept by the division. (1) The division shall file every application for a driver's license received by it and shall maintain suitable indexes containing, in alphabetical order:

(a) all applications denied and on each thereof note the reasons for such denial;

(b) all applications granted; and

(c) the name of every licensee whose license has been suspended or revoked by the division and after each such name note the reasons for such action.

(2) The division shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and *certain* traffic accidents in which he has been involved shall be readily ascertainable and available for the consideration of the division upon any application for renewal of license and at other suitable times. *No record of involvement in a traffic accident may be entered on a licensee's record unless he was convicted, as defined in 61-11-203, for an act causally related to the accident.*

(3) The division is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident."

Section 2. **Restrictions on release of information.** No information relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may be released by the division unless the release is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena.

Section 3. **Codification.** Section 2 is intended to be codified as an integral part of Title 61, chapter 11, part 1.

Approved April 9, 1979.

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CHAPTER NO. 504

AN ACT TO CLARIFY THE COMPULSORY ENROLLMENT AND ATTENDANCE PROVISIONS OF SCHOOL LAW TO MAKE IT CLEAR THAT THE COMPULSORY PROVISIONS APPLY UNTIL A CHILD REACHES HIS 16TH BIRTHDAY AND COMPLETES THE 8TH GRADE; AMENDING SECTIONS 20-5-102 AND 20-5-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-102, MCA, is amended to read:

"20-5-102. Compulsory enrollment and excuses. (1) *Except as provided in subsection (2), any* parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program prescribed by the board of public education pursuant to 20-7-111 *until the later of the following dates:*

(a) the child's 16th birthday;

(b) the date of completion of the work of the 8th grade.

(2) Such parent, guardian, or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when he establishes residence in the district unless the child is:

(a) enrolled in a private institution which provides instruction in the program prescribed by the board of public education pursuant to 20-7-111;

(b) enrolled in a school of another district or state under any of the tuition provisions of this title;

(c) provided with supervised correspondence study or supervised home study under the transportation provisions of this title;

(d) excused from enrollment in a school of the district when it is shown that his bodily or mental condition does not permit his attendance and the child cannot be instructed under the special education provisions of this title;

(e) excused from compulsory school attendance upon a determination by a district judge that such attendance is not in the best interest of the child*; or*

(f) excused by the board of trustees upon a determination that such attendance by a child who has attained the age of 16 is not in the best interest of the child and the school.

(3) The excuse provided for in subsection *(2)(d)* of this section shall be issued by the district superintendent or the county superintendent when there is no district superintendent employed by the district. Whenever an excuse is denied by the applicable official, an appeal of such decision may

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be made to the district court of the county within 10 days after the decision upon giving a bond in the amount set by the court to pay all costs of the appeal. The decision of the district court shall be final."

Section 2. Section 20-5-103, MCA, is amended to read:

"20-5-103. Compulsory attendance and excuses. *(1) Except as provided in subsection (2), any* parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to attend the school in which he is enrolled for the school term and each school day therein prescribed by the trustees of the district *until the later of the following dates*:

(a) the child's 16th birthday;

(b) the date of completion of the work of the 8th grade.

(2) The provisions of subsection (1) do not apply in the following cases:

(a) The child has been excused under one of the conditions specified in 20-5-102.

(b) The child is absent because of illness, bereavement, or other reason prescribed by the policies of the trustees.

(c) The child has been suspended or expelled under the provisions of 20-5-202."

Approved April 9, 1979.

CHAPTER NO. 505

AN ACT TO MAKE SEXUAL ABUSE OF CHILDREN A CRIMINAL OFFENSE; DEFINING THE OFFENSE TO INCLUDE THE ACTUAL SEXUAL ABUSE OF CHILDREN AND THE PREPARATION, DISTRIBUTION, AND SALE OF CHILD PORNOGRAPHY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if he knowingly:

(a) employs, uses, or permits the employment or use of a child in an exhibition of sexual contact, actual or simulated;

(b) photographs, films, videotapes, or records a child engaging in sexual contact, actual or simulated;

(c) persuades, entices, counsels, or procures a child to engage in sexual contact, actual or simulated, for use as designated in (1)(a), (1)(b), or (1)(d);

(d) processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits, or advertises material consisting of

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or including a photograph, photographic negative, undeveloped film, videotape, or recording representing a child engaging in sexual contact, actual or simulated; or

(e) finances any of the activities described in subsections (1)(a) through (1)(d) knowing that the activity is of the nature described in those subsections.

(2) A person convicted of the offense of sexual abuse of children shall be fined not to exceed $10,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

(3) For the purposes of this section, "child" means any person less than 16 years old.

Section 2. **Codification.** Section 1 is intended to be codified as an integral part of Title 45, chapter 5, part 6, and the provisions contained in Title 45 apply to section 1.

Approved April 9, 1979.

CHAPTER NO. 506

AN ACT TO PERMIT ELECTION OR APPOINTMENT OF CITY JUDGES IN THIRD-CLASS CITIES; REMOVING THE RESIDENCE REQUIREMENT FOR SUCH OFFICE; AMENDING SECTIONS 7-4-4102 AND 7-4-4104 THROUGH 7-4-4106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-4102, MCA, is amended to read:

"7-4-4102. Officers of city of second or third class. (1) The officers of a city of the second or third class consist of:

(a) one mayor;

(b) two aldermen from each ward;

(c) one city judge;

(d) one city treasurer, who may be ex officio tax collector.

(2) The officers listed in subsection (1), *except the city judge for a city of the third class,* must be elected by the qualified electors of the city as hereinafter provided.

(3) The governing body of a city of the third class may by ordinance determine whether the office of city judge shall be filled by appointment by the governing body or by election.

(4) There may also be appointed by the mayor, with the advice and consent of the council:

(a) one city attorney;

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(b) one city clerk, who is ex officio city assessor;

(c) one chief of police; and

(d) any other officers necessary to carry out the provisions of this title.

(5) The city council may prescribe the duties of all city officers and fix their compensation, subject to the limitations contained in this title."

Section 2. Section 7-4-4104, MCA, is amended to read:

"7-4-4104. General qualifications for municipal office. No person is eligible to any municipal office, elective or appointive:

(1) who is not a citizen of the United States; and

(2) who, *except for city judges of third-class cities,* has not resided in the town or city or an area which has been annexed by such town or city for at least 2 years immediately preceding his election or appointment and is not a qualified elector thereof."

Section 3. Section 7-4-4105, MCA, is amended to read:

"7-4-4105. Authority to abolish appointive municipal offices. (1) The city or town council has the power to abolish, by a majority vote of the council, any office, *except that of city judge,* the appointment to which is made by the mayor with the advice and consent of the council and discharge any officer so appointed.

(2) No office created under this title must be abolished by the council."

Section 4. Section 7-4-4106, MCA, is amended to read:

"7-4-4106. Authority to consolidate municipal offices. The city or town council may by ordinance consolidate any of the offices, *except that of city judge,* the appointment to which is made by the mayor with the advice and consent of the council and may require any of the elected officers to perform any of the duties of an appointed officer whose office has been abolished."

Approved April 9, 1979.

CHAPTER NO. 507

AN ACT TO CLARIFY WHO IS PERMITTED ACCESS TO YOUTH COURT RECORDS AND RELATED DOCUMENTS; AMENDING SECTIONS 41-5-603 AND 41-5-604, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-603, MCA, is amended to read:

"41-5-603. Youth court records. (1) Youth court records, including social, medical, and psychological records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers, are open to inspection prior to the sealing of the records only to the following:

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(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon such party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority.

(2) All or any part of records information secured from records listed in subsection (1) of this section, when presented to and used by the court in a proceeding under this chapter, shall also be made available to the counsel for the parties to the proceedings.

(3) All other court records, including docket, petitions, motions, and other papers filed in a case, transcripts of testimony, findings, verdicts, orders, and decrees, shall be open to inspection by those persons and agencies listed in subsection (1) of this section and the parties to the proceedings and their counsel.

(4) All information obtained in discharge of an official duty by any officer or other employee of the youth court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this chapter to receive such information, unless otherwise ordered by the judge.

(5) After youth court records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

(a) those persons and agencies listed in subsection (1); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority."

Section 2. Section 41-5-604, MCA, is amended to read:

"**41-5-604. Disposition of records.** (1) All court findings, orders, judgments, and the legal and social files and records of the court, probation services, and law enforcement agencies pertaining to a youth coming under this chapter shall be physically sealed when the youth reaches the age of 18 years.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the above records and files shall be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any agency or department that has in its possession

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copies of the records so sealed shall also seal or destroy such copies of records. Anyone violating the provisions of this subsection shall be subject to contempt of court.

(4) Nothing herein contained shall prohibit the destruction of such records with the consent of the youth court judge or county attorney after 10 years from the date of sealing. The records of youths who were 28 years old or older on July 1, 1974, may be destroyed with the consent of the youth court judge or county attorney.

(5) This section shall not apply to youth traffic records."

Approved April 9, 1979.

CHAPTER NO. 508

AN ACT TO INCLUDE WITHIN THE DEFINITION OF 'BICYCLE' CERTAIN MOTORIZED BICYCLES; EXEMPTING BICYCLES FROM TAXATION AND AMENDING SECTIONS 15-6-201, 61-1-102, 61-1-103, 61-1-105, 61-1-106, 61-1-123, 61-3-321, AND 61-8-605, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) (a) The property of the United States, the state, counties, cities, towns, school districts, irrigation districts organized under the laws of Montana and not operating for profit, municipal corporations, public libraries; buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship and for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings owned by a church; such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, hospitals, and all property, both real and personal, without limitation as to amount except that real property owned shall not exceed 640 acres, owned and held by any association or corporation organized under Title 35, chapter 20 or 21, Cemeteries, provided such cemeteries and any land claimed to be exempt are not maintained and operated for private or corporate profit; institutions of purely public charity; evidence of debt secured by mortgages of record upon real or personal property in the state of Montana; and public art galleries and public observatories not used or held for private or corporate profit are exempt from taxation, but no more land than is necessary for such purpose is exempt.

(b) As used in this subsection, the term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit, and the terms "public art galleries" and "public observatories" mean only such art galleries and observatories, whether of public or private ownership, as are open to the public without charge or fee at all reasonable hours and are used for the purpose of education only.

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(2) All household goods and furniture, including clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence are exempt from taxation.

(3) A truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached is exempt from taxation.

(4) A bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes is exempt from taxation."

Section 2. Section 61-1-102, MCA, is amended to read:

"61-1-102. Motor vehicle. *"Motor vehicle" means every vehicle propelled by its own power and designed primarily to transport persons or property upon the highways of the state, except that for the purpose of chapter 3, the term also includes trailers, semitrailers, and housetrailers. The term does not include a bicycle as defined in 61-1-123.*"

Section 3. Section 61-1-103, MCA, is amended to read:

"61-1-103. Vehicle. "Vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public highway, *except* devices moved by human or animal power or used exclusively upon stationary rails or tracks. *However, in chapters 3 and 4, the term means "motor vehicle" as defined in this part. The term does not include a bicycle as defined in 61-1-123.*"

Section 4. Section 61-1-105, MCA, is amended to read:

"61-1-105. Motorcycle. *"Motorcycle" means* a motor vehicle having not more than three wheels in contact with the ground and a saddle on which the operator sits or a platform on which he stands and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself. *A* motorcycle may carry one or more attachments and a seat for the conveyance of a passenger. *The term does not include a tractor or a bicycle as defined in 61-1-123.*"

Section 5. Section 61-1-106, MCA, is amended to read:

"61-1-106. Motor-driven cycle. "Motor-driven cycle" means every motorcycle, including every motor scooter, with a motor which produces not to exceed 5 horsepower. *The term does not include a bicycle as defined in 61-1-123.*"

Section 6. Section 61-1-123, MCA, is amended to read:

"61-1-123. Bicycle. "Bicycle" means:

(1) every device propelled by human power upon which any person may ride, having two tandem wheels either of which is more than 20 inches in diameter*; or*

(2) every device equipped with two or three wheels, foot pedals to permit muscular propulsion and an independent power source providing a maximum of two brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement may not exceed 3.05 cubic inches

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(50 centimeters) regardless of the number of chambers in the power source. The power source must not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour (48.28 kilometers an hour) on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged."

Section 7. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles — public owned vehicles exempt from license or registration fees — disposition of fees. (1) Registration or license fees shall be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under, other than motortrucks, $5;

(b) motor vehicles weighing over 2,850 pounds, other than motortrucks, $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles, $2;

(e) tractors and/or trucks, $10;

(f) buses shall be classed as motortrucks and licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds maximum gross loaded weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds maximum gross loaded weight, except housetrailers, $5;

(i) trailers and semitrailers over 6,000 pounds maximum gross loaded weight, $10;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, and bridge material exclusively, new and secondhand, and trailers used exclusively for the transportation of road machinery and bridge materials, shall pay a fee of $15 annually, regardless of size or capacity.

(2) All rates shall be 25% higher for motor vehicles, trailers, and semitrailers when not equipped with pneumatic tires.

(3) Tractors, as specified in this section, shall mean any motor vehicle except passenger cars used for towing a trailer or semitrailer.

(4) If any motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half of the regular fee above given.

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(5) When a new plate is issued, an additional fee of $1 per year for each registration of a vehicle shall be added to the registration fee. Revenue from this fee shall be forwarded by the respective county treasurers to the state treasurer for deposit in the motor vehicle recording account of the earmarked revenue fund. Disbursements from the motor vehicle recording account shall be made by warrant drawn by the division.

(6) The provisions of this part with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers, or tractors owned or controlled by the United States of America or any state, county, or city, but in all other respects the provisions of this section shall be applicable to and binding upon motor vehicles, tractors, trailers, and semitrailers.

(7) The provisions of this section relating to the payment of registration fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317(1), 61-3-332(7), and 61-3-335.

(8) All fees, other than license fees, unless otherwise specifically provided, shall hereafter be deposited in, and paid into, the earmarked revenue fund and shall be used to pay all salaries, operating expenses, and all other expenses of the division, including the manufacturer and delivery of license plates. Any reference in this code to the motor vehicle recording fund or the motor vehicle administration fund shall be taken to mean the motor vehicle recording account in the earmarked revenue fund."

Section 8. Section 61-8-605, MCA, is amended to read:

"61-8-605. Riding on roadways and bicycle paths. (1) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

(2) Persons riding bicycles upon a roadway shall ride in single file except on paths or parts of roadways set aside for the exclusive use of bicycles. A person riding a bicycle may overtake and pass another bicycle when safe to do so and when other traffic is not obstructed by so doing.

(3) Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway. *A person riding a bicycle defined in 61-1-123(2) is excluded from the provisions of this subsection when such bicycle is prohibited from using such paths.*

(4) A bicycle, as defined in 61-1-123(2), is excluded from the provisions of subsections (1) and (2)."

Section 9. **License required for bicycle.** A person operating a bicycle defined in 61-1-123(2) shall have in his possession at all times when operating the bicycle a valid Montana driver's license.

Approved April 20, 1979.

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CHAPTER NO. 509

AN ACT DEFINING THE RESPONSIBILITY AND LIABILITY OF SKI AREA OPERATORS AND THE RESPONSIBILITY AND RISK BORNE BY SKIERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** It is recognized that there are inherent risks in the sport of skiing that are essentially impossible to eliminate by the ski area operator but that should be known by the skier. It is the purpose of [this act] to define those areas of responsibility and affirmative acts for which the ski area operator is liable for loss, damage, or injury and those risks for which the skier expressly assumes or shall be considered to have voluntarily assumed the risk of loss or damage and for which there can be no recovery.

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Skier" means any person admitted to a ski area under the control of a ski area operator for the purpose of engaging in the sport of skiing by using the ski slopes, trails, and areas and does not include a person using an aerial passenger tramway.

(2) "Ski slopes, trails, and areas" means those areas designated by the ski area operator to be used by skiers for the purpose of participating in the sport of skiing.

Section 3. **Duties of operator regarding ski areas.** A ski area operator shall:

(1) mark all trail maintenance vehicles and furnish the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the ski area;

(2) mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snowmaking operations and located on ski slopes, trails, and areas;

(3) maintain one or more trail boards at prominent locations at each ski area displaying that area's network of ski trails and slopes;

(4) post a notice of the requirement for the use of ski-retention devices;

(5) designate by trail board or otherwise which trails or slopes are open or closed.

Section 4. **Duties of operator with respect to passenger tramways.** A ski area operator shall construct, operate, maintain, and repair any passenger tramway in accordance with the rules of the department of administration. However, nothing in this section relieves an operator from the duty of taking whatever other actions are necessary to properly construct, operate, maintain, and repair a passenger tramway.

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Section 5. **Duties of passenger.** No passenger may:

(1) board or disembark from a passenger tramway except at an area designated for such purposes;

(2) throw or expel any object from a passenger tramway;

(3) commit an act that interferes with the running or operation of a passenger tramway;

(4) use a passenger tramway unless the passenger has the ability to use it safely without any instruction on its use by the operator or requests and receives instruction before boarding;

(5) embark on a passenger tramway without the authority of the operator.

Section 6. **Skier's assumption of responsibility — duties.** (1) A skier assumes the risk and all legal responsibility for injury to himself or loss of property that results from participating in the sport of skiing by virtue of his participation. The assumption of risk and responsibility includes but is not limited to injury or loss caused by the following: variations in terrain, surface or subsurface snow or ice conditions, bare spots, rocks, trees, other forms of forest growth or debris, lift towers and components thereof, pole lines, and plainly marked or visible snowmaking equipment.

(2) A skier is responsible for knowing the range of his own ability to ski any slope, trail, or area and for skiing within the limits of his ability, skiing only on designated slopes and trails, maintaining control of speed and course at all times while skiing, heeding all posted warnings, and refraining from acting in a manner that may cause or contribute to the injury of anyone. The responsibility for collisions with a person or object while skiing, is the responsibility of the person or persons and not the responsibility of the ski area operator.

(3) A person who is skiing may not place an object in the ski area or on the uphill track of a passenger tramway that may cause a passenger or skier to fall, cross the track of a passenger tramway except at a designated and approved area, or if involved in a skiing accident, depart from the scene of the accident without leaving personal identification before notifying the proper authorities or obtaining assistance when the skier knows that a person involved in the accident is in need of medical or other assistance.

Section 7. **Effect of comparative negligence.** Notwithstanding any comparative negligence law in this state, a person is barred from recovery from a ski area operator for loss or damage resulting from any risk inherent in the sport of skiing as described in [section 6].

Approved April 9, 1979.

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CHAPTER NO. 510

AN ACT TO FURTHER PROHIBIT THE LITTERING OF HIGHWAYS AND INCREASE THE PENALTY FOR LITTERING; AMENDING SECTION 61-8-365, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-365, MCA, is amended to read:

"61-8-365. Putting refuse on highway prohibited. (1) No person shall throw or deposit upon any highway any glass bottles, glass, nails, tacks, wire, cans, *paper,* or any other substance likely to injure any person, animal, or vehicle upon such highway.

(2) Any person who drops or permits to be dropped or thrown upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

(3) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

(4) A person convicted of violating this section shall be fined not less than $50. Except for the minimum fine of $50 as provided in this subsection the penalty provisions of 61-8-711 apply to this section."

Approved April 9, 1979.

CHAPTER NO. 511

AN ACT TO ALLOW THE SUPERINTENDENT OF PUBLIC INSTRUCTION AND THE BOARD OF PUBLIC EDUCATION TO ADOPT A SPECIALIST CERTIFICATE; AMENDING SECTIONS 20-2-121, 20-3-205, 20-3-362, 20-4-101 THROUGH 20-4-106, 20-4-108 THROUGH 20-4-111, AND 20-4-201 THROUGH 20-4-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-2-121, MCA, is amended to read:

"20-2-121. Board of public education — powers and duties. The board of public education shall:

(1) effect an orderly and uniform system for teacher certification, *specialist certification,* and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 20-4-102 and 20-4-111;

(2) consider the suspension or revocation of teacher *or specialist* certificates and appeals from the denial of teacher *or specialist* certification in accordance with the provisions of 20-4-110;

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(3) administer and order the distribution of state equalization aid in accordance with the provisions of 20-9-344;

(4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 20-10-111;

(5) approve or disapprove a reduction of the number of hours in a district's school day in accordance with the provisions of 20-1-302;

(6) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for such days in accordance with the provisions of 20-1-303 and 20-1-304;

(7) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of 20-7-101 and 20-7-102;

(8) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 20-7-201;

(9) as the governing board of the state of Montana for vocational education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(10) consider applications for postsecondary vocational-technical center designation in accordance with the provisions of 20-7-311;

(11) for the purposes of postsecondary vocational-technical centers, approve or disapprove programs and budgets, direct the distribution of moneys in support of such budgets, determine tuition rates and fees, and enter into lease agreements or real property purchases in accordance with the postsecondary vocational-technical center provisions of the vocational education part of this title;

(12) adopt policies for the conduct of special education in accordance with the provisions of 20-7-402;

(13) perform any other duty prescribed from time to time by this title or any other act of the legislature."

Section 2. Section 20-3-205, MCA, is amended to read:

"20-3-205. Powers and duties. The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts and fill additional trustee position vacancies in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in his county in accordance with the provisions of 20-3-307;

(3) fill by appointment any trustee position vacancies when required under the provisions of 20-3-309;

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(4) register the teacher *or specialist certificates* or emergency authorization of employment of any person employed in the county as a teacher, *specialist,* principal, or district superintendent in accordance with the provisions of 20-4-202;

(5) act on each tuition application submitted to him in accordance with the provisions of 20-5-301, 20-5-302, 20-5-304, and 20-5-311 and transmit the tuition information required by 20-5-312;

(6) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(7) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(8) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of 20-6-103;

(9) fulfill all responsibilities assigned to him under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(10) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(11) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(12) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(13) complete the budgets, compute the budgeted revenues and tax levies, give notices of the budget meetings, file final and emergency budgets, and fulfill such other responsibilities assigned to him under the provisions of this title regulating school budgeting systems;

(14) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(15) quarterly, unless otherwise provided by law, order the county treasurer to apportion state moneys, county school moneys, and any other school moneys subject to apportionment in accordance with the provisions of 20-9-212, 20-9-334, 20-9-347, 20-9-351, 20-10-145, or 20-10-146;

(16) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(17) calculate the estimated budgeted general fund sources of revenue in accordance with the provisions of 20-9-348 and the other general fund revenue provisions of the general fund part of this title;

(18) compute the revenues and the district and county levy requirements for each fund included on each district's final budget and report such computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

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(19) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(20) for districts which do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(21) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(22) act on district requests to allocate federal moneys for indigent children for school food services in accordance with the provisions of 20-10-205;

(23) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, or the rules of the superintendent of public instruction;

(24) administer the oath of office to trustees without the receipt of pay for administering the oath;

(25) keep a record of his official acts, preserve all reports submitted to him under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender such records, books, supplies, and equipment to his successor;

(26) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(27) hold meetings for the members of the trustees from time to time at which matters for the good of the districts shall be discussed."

Section 3. Section 20-3-362, MCA, is amended to read:

"20-3-362. Powers of joint board of trustees. (1) When a joint board of trustees is formed as provided by 20-3-361, it shall have the power to:

(a) jointly employ a district superintendent under the provisions of 20-4-401;

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(b) jointly employ teachers *and specialists* under the provisions of 20-4-201;

(c) open a junior high school under the provisions of 20-6-505;

(d) prescribe and administer joint administrative policy; and

(e) prorate all items of joint expense between the elementary and high school districts, provided that a controversy over any decision by the joint board to prorate joint costs may, within 30 days, be appealed by the trustees of either district to the superintendent of public instruction for a final decision as to what constitutes a fair and just proration of the cost.

(2) The joint board of trustees shall not have the power to transact business that is not specifically related to the joint administration of the two districts."

Section 4. Section 20-4-101, MCA, is amended to read:

"20-4-101. System of teacher and specialist certification — student teacher exception. (1) In order to establish a uniform system of quality education and to ensure the maintenance of professional standards, a system of teacher *and specialist* certification shall be established and maintained under the provisions of this title and no person shall be permitted to teach in the public schools of the state until he has obtained a teacher certificate *or specialist certificate* or the district has obtained an emergency authorization of employment from the state.

(2) The above certification requirement shall not apply to a student teacher who is hereby defined as a student enrolled in an institution of higher learning approved by the board of regents of higher education for teacher training and who is jointly assigned by such institution of higher learning and the governing board of a district or a public institution to perform practice teaching in a nonsalaried status under the direction of a regularly employed and certificated teacher.

(3) A student teacher, while serving such nonsalaried internship under the supervision of a certificated teacher, shall be accorded the same protection of the laws as that accorded a certificated teacher and shall, while acting as such student teacher, comply with all rules of the governing board of the district or public institution and the applicable provisions of 20-4-301 relating to the duties of teachers."

Section 5. Section 20-4-102, MCA, is amended to read:

"20-4-102. Board of public education policies. To effect an orderly and uniform system of teacher *and specialist* certification, the board of public education shall, upon the recommendation of the superintendent of public instruction and in accordance with the provisions of this title, prescribe and adopt policies for the issuance of teacher *or specialist* certificates. Such policies shall provide for:

(1) reasonable training and experience requirements for teacher, *specialist,* supervisor, and administrative certificates and endorsements thereon as provided by the certification classification in 20-4-106;

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(2) the renewal of teacher *or specialist* certificates based on the same conditions prescribed for the initial issuance of certificates;

(3) the conduct of hearings on teacher *or specialist* certification revocation, suspension, or denial;

(4) the issuance of emergency authorization to a district to employ a person who is not the holder of a valid teacher certificate as an instructor of pupils; and

(5) any other policy, not inconsistent with the law, which is necessary for the proper operation of a system of teacher *and specialist* certification."

Section 6. Section 20-4-103, MCA, is amended to read:

"20-4-103. Issuance of teacher or specialist certificates. The superintendent of public instruction shall issue all teacher *and specialist* certificates in the state of Montana. In issuing teacher *or specialist* certificates, the superintendent of public instruction shall comply with the provisions of this title and the teacher *and specialist* certification policies adopted by the board of public education. The superintendent of public instruction shall not issue a teacher *or specialist* certificate to any person who does not satisfy the qualifications or other requirements of this title and of the board of public education policies for teacher *or specialist* certification."

Section 7. Section 20-4-104, MCA, is amended to read:

"20-4-104. Qualifications. *(1)* Any person may be certified as a teacher when he satisfies the following qualifications:

(a) He is 18 years of age or older but is not more than 70 years of age.

(b) He has a certificate of a licensed physician attesting to his satisfactory health.

(c) He is a citizen of the United States except as provided in 20-4-105.

(d) He is of good moral and professional character.

(e) He has completed the teacher education program of a unit of the Montana university system or an essentially equivalent program at an accredited institution in the United States of equal rank and standing as that of any unit of the Montana university system, and such training shall be evidenced by at least a bachelor's degree and a certification of the completion of the teacher education program, except as provided for in 20-4-106(1)(d).

(f) He has subscribed to the following oath or affirmation before an officer authorized by law to administer oaths:

"I solemnly swear (or affirm) that I will support The Constitution of the United States of America, The Constitution of the State of Montana, and the laws of the United States and the state of Montana and will, by precept and example, promote respect for the flag and the institutions of the United States and the state of Montana, reverence for law and order, and undivided allegiance to the government of the United States of America."

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(2) Any person may be certified as a specialist when he satisfies the requirements of subsections (1)(a) through (1)(d) and the requirement for a specialist certificate provided in [subsection (2) of section 9]."

Section 8. Section 20-4-105, MCA, is amended to read:

"20-4-105. Noncitizen teacher or specialist certification. (1) The superintendent of public instruction may issue a class 5 provisional certificate to a person who is not a citizen of the United States when:

(a) the trustees of a district request certification of such person; and

(b) he otherwise qualifies for at least a class 5 provisional certificate.

(2) The superintendent of public instruction also may issue an annual teacher *or specialist* certificate to a person who is not a citizen of the United States and who is an exchange teacher *or specialist* from a foreign country intending to return to that country."

Section 9. Section 20-4-106, MCA, is amended to read:

"20-4-106. Classifications of teacher and specialist certificates. (1) The superintendent of public instruction shall issue teacher certificates and the board of public education shall adopt teacher certification policies on the basis of the following classifications of teacher certificates:

(a) The class 1 professional certificate may be issued to an otherwise qualified applicant who has completed a teacher education program which includes a bachelor's degree and a minimum of 1 year of study beyond such degree in a unit of the Montana university system or an equivalent institution. The professional certificate may be endorsed for elementary instruction, secondary instruction, or both and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(b) The class 2 standard certificate may be issued to an otherwise qualified applicant who has completed a 4-year teacher education program and who has been awarded a bachelor's degree by a unit of the Montana university system or an equivalent institution. The standard certificate may be endorsed for elementary instruction, secondary instruction, or both and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(c) The class 3 administrative and supervisory certificate may be issued to an otherwise qualified applicant who is the holder of a teacher certificate endorsed for teaching in the school or schools in which he would be an administrator or he would supervise. The applicant also shall possess the training and experience required by the policies of the board of public education for an endorsement as superintendent, principal, or supervisor.

(d) The class 4 vocational, recreational, or adult education certificate may be issued to an otherwise qualified applicant who has the qualifications of training and experience required by the United States office of education or the qualifications required by the special needs of the several

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vocational, recreational, or adult education fields and who can qualify under the policy of the board of public education for the issuance of this classification of teacher certification.

(e) The class 5 provisional certificate may be issued to an otherwise qualified applicant who can provide satisfactory evidence of his intent to qualify in the future for a class 1 or a class 2 certificate and who has completed a 4-year college program or its equivalent and holds a bachelor's degree from a unit of the Montana university system or its equivalent. The provisional certificate may be endorsed for elementary instruction, secondary instruction, or both and for special subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher *or specialist* certification endorsement.

(2) The superintendent of public instruction shall issue specialist certificates and the board of public education shall adopt specialist certification policies. The specialist certificate may be issued to an otherwise qualified applicant who has the training, experience, and license required under the standards of the board of public education for the certification of a profession other than the teaching profession.

(3) For purposes of evaluating the qualifications of applicants for *either* teacher *or specialist* certificates, a year means the instructional period consisting of three quarters or two semesters or other terms which are recognized as an academic year by any unit of the Montana university system or equivalent institution."

Section 10. Section 20-4-108, MCA, is amended to read:

"20-4-108. Term of teacher and specialist certificates — renewal. (1) Any teacher *or specialist* certificate issued by the superintendent of public instruction shall bear the dates of issue and validity and shall be valid for a term of 5 school fiscal years, except that class 5 provisional certificates shall be valid for the number of years, up to a maximum of 5 years, provided by the policies of the board of public education. The period of validity for any certificate shall begin on July 1 immediately preceding the date of issue.

(2) Teacher *and specialist* certificates shall be renewed for similar periods of time on the basis of the board of public education policies for teacher *and specialist* certification renewal."

Section 11. Section 20-4-109, MCA, is amended to read:

"20-4-109. Fees for teacher and specialist certificates. Each person applying for the issuance or renewal of a teacher *or specialist* certificate shall pay a fee of $2 for each school fiscal year that the certificate will be valid. In addition to this fee, each person who has never held any class of Montana teacher *or specialist* certificate or for whom an emergency authorization of employment has never been issued shall pay a filing fee of $2. Such fees shall be paid to the superintendent of public instruction, who shall deposit the fees with the state treasurer to the credit of the general fund."

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Section 12. Section 20-4-110, MCA, is amended to read:

"20-4-110. Suspension, revocation, and denial — appeals. (1) The board of public education shall have the power and authority to suspend or revoke the teacher *or specialist* certificate of any person for any of the following reasons:

(a) any reason that would have required or authorized the denial of the teacher *or specialist* certificate to such person if it had been known at the time such certificate was issued;

(b) by reason of incompetency, immorality, intemperance, physical inability, or conviction of a felony under state law; or

(c) by reason of the failure of the certificate holder to comply with the terms of any contract between such holder and the trustees of a district without the consent of the trustees in writing or without good cause. Such breach of contract shall constitute unprofessional conduct.

(2) Whenever a substantial reason for the suspension or revocation of the teacher *or specialist* certificate of any person is brought to the attention of the board of public education, it shall afford the person an opportunity to defend himself and his qualifications against the charge before the board. The superintendent of public instruction shall give a 30-day written notification to any person when the board of public education intends to consider the suspension or revocation of his certificate. The board of public education shall implement an investigation of the reasons for the suspension or revocation charge and then, if the investigation warrants further action, conduct a hearing in the manner provided by board of public education policies.

(3) After a full investigation and proper hearing, the board of public education may suspend or revoke the person's teacher *or specialist* certificate, except that in cases of a first violation under subsection (1)(c) above, the maximum penalty shall not be more than a suspension of the person's certificate for the current school fiscal year and the ensuing school fiscal year.

(4) Whenever the superintendent of public instruction denies the issuance or the renewal of a teacher *or specialist* certificate to a person, he may appeal the denial to the board of public education. The appeal shall be heard in the same manner provided for in this section for suspension or revocation and in accordance with the policies of the board of public education. The decision of the board of public education shall be final."

Section 13. Section 20-4-111, MCA, is amended to read:

"20-4-111. Emergency authorization of employment. (1) Any district may request from the superintendent of public instruction an emergency authorization of employment for a person who is not the holder of a valid teacher *or specialist* certificate as an instructor of pupils when such district cannot secure the services of a person holding a valid certificate. The person shall have previously held a valid teacher *or specialist* certificate or shall meet the standards of preparation prescribed by the policies of the board of public education for and during such emergency. Such emergency authorization of employment shall indicate:

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(a) the district to which such authorization is issued;

(b) the person whom the district is authorized to employ;

(c) the endorsement for elementary or secondary instruction and the specific subject fields for which authorization to employ such person is given; and

(d) the school fiscal year for which such emergency authorization of employment is given.

(2) Emergency authorization of employment of a person shall be valid for the school fiscal year identified on such authorization and may be renewed in accordance with the board of public education policies. A fee of $2 and, if no teacher *or specialist* certificate or emergency authorization of employment has ever been issued for such person, a filing fee of $2 shall be paid for the issuance of an emergency authorization of employment. The superintendent of public instruction shall deposit the fees with the state treasurer to the credit of the general fund.

(3) Emergency authorization of employment of a person may be revoked for good cause in accordance with the provisions of 20-4-110."

Section 14. Section 20-4-201, MCA, is amended to read:

"20-4-201. Employment of teachers and specialists by contract. (1) The trustees of any district shall have the authority to employ any person as a teacher *or specialist*, but only a person who holds a valid Montana teacher *or specialist* certificate or for whom an emergency authorization of employment has been issued that qualifies such person to perform the duties prescribed by the trustees for the position of employment. Each teacher *or specialist* shall be employed under written contract, and each contract of employment shall be authorized by a proper resolution of the trustees and shall be executed in duplicate by the chairman of the trustees and the clerk of the district in the name of the district and by the teacher *or specialist*.

(2) No contract of employment with a teacher *or specialist* shall require such teacher *or specialist* to teach more than 5 days a week or on any holiday recognized by 20-1-305. No deduction shall be made from a teacher's *or specialist's* salary by reason of the fact that a holiday falls on a school day. Any teacher's *or specialist's* contract made in conflict with the 5-days-per-week provision of this section shall not be enforceable against the teacher *or specialist*.

(3) Whenever the trustees of a county high school and the trustees of the elementary district where the county high school is located form a joint board of trustees under the provisions of 20-3-361, such joint board of trustees may execute a contract of employment with a teacher *or specialist* who shall serve both districts. When such a contract is executed, the two districts shall prorate the compensation provided by such contract

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on the basis of the total number of instructional hours expended by such teacher *or specialist* within each district.

(4) Any contract executed under the provisions of this section may contain the oath or affirmation prescribed in 20-4-104, and the teacher *or specialist* shall subscribe to such oath or affirmation before an officer authorized by law to administer oaths."

Section 15. Section 20-4-202, MCA, is amended to read:

"20-4-202. Teacher and specialist certification registration. (1) Any person employed as a teacher, *specialist,* principal, or district superintendent shall register his certificate or the district shall register its emergency authorization of employment for a teacher with the county superintendent of the county wherein he is employed in order to validate his employment status and permit payment under his employment contract. If a teacher *or specialist* does not register his certificate with the county superintendent within 60 calendar days after *he* begins to perform his services, he shall not be eligible to receive any further compensation under his contract of employment until he has registered his certificate. After the schools of a district have been open for 60 calendar days in the current school fiscal year, the county superintendent shall notify each district of the county of each teacher *or specialist* who has registered his current valid certificate, and the district shall not pay any teacher who has not registered his certificate until the county superintendent does notify the district of such registration.

(2) A teacher *or specialist* employed by a joint district shall register his certificate with the county superintendent of the county in which he is *working.*"

Section 16. Section 20-4-203, MCA, is amended to read:

"20-4-203. Teacher tenure. Whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent *or specialist,* the teacher shall be deemed to be reelected from year to year thereafter as a tenure teacher at the same salary and in the same or a comparable position of employment as that provided by the last executed contract with such teacher, unless:

(1) the trustees resolve by majority vote of their membership to terminate the services of the teacher in accordance with the provisions of 20-4-204; or

(2) the teacher will attain the age of 65 years before the ensuing September 1 and the trustees have notified the teacher in writing by April 1 that his services will not be needed in the ensuing school fiscal year, except that the trustees may continue to employ such a teacher from year to year until the school fiscal year following his 70th birthday."

Approved April 9, 1979.

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CHAPTER NO. 512

AN ACT TO REVISE THE LAWS RELATING TO EMPLOYEE EXEMPTIONS FROM THE STATE PAY PLAN; AMENDING SECTIONS 2-18-101, 2-18-103, 2-18-104, AND 2-18-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-101, MCA, is amended to read:

"2-18-101. Definitions. As used in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Compensation" means the annual wage or salary plus the annual state contribution of health insurance premiums under provisions of 2-18-703.

(3) "Department" means the department of administration.

(4) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 *or 2-18-104* from the statewide classification system.

(5) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in *Article VI, section 1, of the Montana constitution or by the public service commission as a whole.*

(6) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(7) "Program" means a combination of planned efforts to provide a service."

Section 2. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials;

(2) county assessors and their chief deputy;

(3) officers and employees of the legislative branch;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, appointed by the legislature, or appointed by other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

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(9) academic and professional administrative personnel who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of institutions."

Section 3. Section 2-18-104, MCA, is amended to read:

"2-18-104. Exemption for personal staff — limit. *(1) Subject to the limitations in subsections (2) and (3), members of a personal staff are exempt from the application of 2-18-204, 2-18-205, 2-18-207, and 2-18-1011 through 2-18-1013.*

(2) The personal staff *who are exempted by subsection (1)* may not exceed 10 unless otherwise approved by the department according to criteria developed by the department. *Under no circumstances may the total exemptions of each elected official exceed 15.*

(3) The number of members of the personal staff of the public service commission who are exempted by subsection (1) may not exceed 5 and must be approved by the department according to criteria approved by the department."

Section 4. Section 2-18-201, MCA, is amended to read:

"2-18-201. Development of personnel classification plan. The department shall develop a personnel classification plan for all state positions and classes of positions in state service following hearings involving affected employees and employee organizations, except those exempt in 2-18-103 *and 2-18-104.*"

Approved April 9, 1979.

CHAPTER NO. 513

AN ACT TO PROVIDE FOR THE CREATION AND ADMINISTRATION OF TRUSTS IN FAVOR OF UNLOCATABLE OWNERS OF INTERESTS IN MINERALS AND TO REQUIRE THOSE HOLDING FUNDS FOR UNLOCATABLE OWNERS TO PETITION FOR CREATION OF SUCH TRUSTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Creation of trust for unlocatable mineral, leasehold, or royalty interest owners.** (1) Any person who owns an interest in minerals underlying a tract of land may petition the district court of the county in which the tract or a portion of the tract is located to declare a trust in favor of a person or persons also owning or claiming an interest in the minerals underlying the tract if their place of residence and present whereabouts is unknown and cannot reasonably be ascertained.

(2) In requesting the appointment of a trustee, the petitioner must show that:

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(a) a diligent but unsuccessful effort to locate the absent owner or claimant has been made; and

(b) appointment of a trustee will be in the best interest of all owners of interest in the minerals.

(3) After determining that the conditions of subsection (2) have been met, the court shall appoint the clerk of court as a trustee and shall authorize him to execute and deliver an oil, gas, or other mineral lease, a ratification, division order, or other related document or instrument on such terms and conditions as the court may approve.

Section 2. **No further liability for petitioner.** If a trust in favor of unlocatable owners or claimants of an interest in minerals has been created and all bonuses, rental payments, royalties, and other income due to the absent owners are being or have been paid to the trustee, the person petitioning for creation of the trust is not liable for further claims by unlocatable owners for bonuses, rental payments, royalties, and other income produced after the creation of the trust.

Section 3. **Administration of the trust.** (1) The administration of the trust shall comply with the appropriate provisions regulating trusts contained in Title 72.

(2) No trustee or attorney fees may be paid from the trust proceeds.

(3) All bonuses, rental payments, royalties, and other income shall be paid to the trustee until the trust is terminated and notice of its termination given to all interested parties. The trustee shall distribute all money held in the trust to the person or persons entitled to it upon the order of the district court.

(4) A trust in favor of unlocatable owners shall be in force until the unlocatable owners of the mineral interest in question have successfully claimed the share of funds held in trust and filed the notice provided in [section 5].

(5) The trustee shall invest funds under his management in the manner of a prudent man, as defined in 72-21-104. Fifty percent of the interest earned on each trust shall be credited to the general fund of the county in which the mineral interest is located to defray the costs of administration.

(6) Funds held in the trusts are subject to the provisions governing abandoned property contained in Title 70, chapter 9.

Section 4. **Existing trust for unlocatable mineral, leasehold, and royalty interest owners — transfer of trustees — penalty.** (1) Any bonuses, rental payments, royalties, and other income now held by any person or association for unlocatable owners or claimants of an interest in minerals underlying a tract of land must be deposited with the clerk of the district court in which the tract is located within 6 months after [the effective date of this act]. An accounting for the funds, any related documents, and any instrument creating a trust must be filed with the funds.

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(2) No person may personally hold for longer than 6 months any bonuses, rental payments, royalties, and other income for unlocatable owners or claimants of an interest in minerals, but in such case must petition the district court for creation of a trust as provided in [section 1].

(3) If any person fails to comply with subsections (1) or (2), he is liable for all attorney fees and court costs and interest on such funds at twice the current average passbook account rate paid by financial institutions in that district.

Section 5. **Filing of addresses.** Upon the payment of a $5 fee, any person claiming an interest in minerals underlying a tract of land which is the subject of a trust proceeding under [section 1] may file with the clerk and recorder of each county wherein the mineral interests lie a notice of his address and the legal description of his interest and thereby establish a rebuttable presumption that such person owns the interest claimed.

Section 6. **Definition.** The word "person", as used herein shall mean any individual, corporation, partnership, joint venture, trust or other entity capable of owning real property in Montana.

Approved April 9, 1979.

CHAPTER NO. 514

AN ACT TO AMEND SECTION 69-12-102, MCA, TO EXEMPT THE TRANSPORTATION OF CERTAIN CONSTRUCTION AND EXCAVATION MATERIALS FROM TITLE 69, CHAPTER 12, MCA, RELATING TO MOTOR CARRIERS; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-102, MCA, is amended to read:

"69-12-102. Scope of chapter — exemptions. (1) This chapter does not affect:

(a) motor vehicles used in carrying property consisting of agricultural commodities (not including manufactured products thereof) if the motor vehicles are not used in carrying other property or passengers for compensation;

(b) the operation of school buses which are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities which are sponsored or supervised by school authorities;

(c) the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of

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employees, supplies, and materials in construction and production is concerned;

(d) the transportation of property by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas thereof, as determined by the commission;

(e) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(f) tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles;

(g) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(h) ambulances; *or*

(i) the transportation of pit run or processed sand and gravel, concrete mix, aggregate, plant mix asphalt pavement, aggregate mix, dirt, rock, material from demolished buildings and structures, used paving materials, used concrete, broken concrete, riprap, and other forms and types of materials transported solely for the purpose of excavation or fill.

(2) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 9, 1979.

CHAPTER NO. 515

AN ACT TO PROVIDE FOR THE DEPOSIT OF MONEY RECEIVED FOR THE USE OF THE BOARD OF REAL ESTATE WHENEVER OTHER DISPOSITION IS NOT PROVIDED FOR.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Deposit of money not otherwise provided for.** Whenever money is received by the board or by the department for the use of the board and there is no provision for the disposition or deposit of the money, the money is to be deposited in the earmarked revenue fund for the use of the board.

Section 2. **Codification instructions.** It is intended that section 1 of this act be codified as an integral part of Title 37, chapter 51, part 2, and the provisions of Title 37, chapter 51, apply to section 1 of this act.

Approved April 9, 1979.

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CHAPTER NO. 516

AN ACT TO REVISE THE LAWS RELATING TO CONSTRUCTION STANDARDS FOR UTILITY LINES AND FACILITIES TO CONFORM WITH THE NATIONAL ELECTRICAL SAFETY CODE, INCREASING THE MAXIMUM ELECTRIC POTENTIAL FOR CERTAIN EXEMPTIONS FROM 250 VOLTS TO 450 VOLTS AND REVISING THE PENALTY FOR VIOLATIONS; AMENDING SECTIONS 69-4-201, 69-4-203, 69-4-204, AND 69-4-205, MCA; AND REPEALING SECTIONS 69-4-202 AND 69-4-211 THROUGH 69-4-241, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-4-201, MCA, is amended to read:

"69-4-201. Application of national electrical safety code. The national electrical safety code standards shall govern all future construction *involving* wires for power, heat, light, telephone, telegraph, or signal *transmission or reception. Except as provided in 69-4-203,* electrical construction of overhead and underground electrical supply and communication lines in the state shall be in conformity with the rules set forth in the national electrical safety code approved by the American *national standards institute* as published by the *institute of electrical and electronic engineers. The national electrical safety code shall furnish construction standards and shall be enforced by the public service commission.*"

Section 2. Section 69-4-203, MCA, is amended to read:

"69-4-203. Scope of law. *Section 69-4-201 shall not apply to:*

(1) interstate railroad electrification construction except where the wires of the railroad cross or are crossed by wires belonging to others; and

(2) any electrical construction of any person using *the* construction for power wires where:

(a) *the* construction and wires and the power plant furnishing electricity therefor are wholly owned by *this* person and the electricity conducted thereby is produced and used solely by *this* person on his own premises and not sold or delivered to any other person off his premises;

(b) the wires or construction are not *over or across* any highway or public place or the property of others; and

(c) *these* wires *have a potential of* less than *450* volts *between any phases.*"

Section 3. Section 69-4-204, MCA, is amended to read:

"69-4-204. Effect of local ordinances. All ordinances or parts of ordinances of cities and towns in the state in conflict with *the national electrical safety code* are repealed. *No* ordinance in conflict with any provisions of *the national electrical safety code may* be enacted in any city or town in the state."

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Section 4. Section 69-4-205, MCA, is amended to read:

"69-4-205. Violations. Every corporation or joint-stock company or individual which *violates 69-4-201 is* guilty of a misdemeanor."

Section 5. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. **Repealer.** Sections 69-4-202 and 69-4-211 through 69-4-241, MCA, are repealed.

Approved April 9, 1979.

CHAPTER NO. 517

AN ACT TO AUTHORIZE AND DIRECT THE DEPARTMENT OF INSTITUTIONS TO CHARGE REASONABLE RATES FOR BOARD AND ROOM FOR ANY RESIDENTIAL COMMUNITY CORRECTIONAL PROGRAMS OPERATED BY THE DEPARTMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Rates for board and room charged by the department.** The department of institutions shall establish and charge reasonable rates for board and room for persons committed to any residential community correctional programs operated by the department. The department is directed to establish policies and rules to implement the charging of reasonable rates of board and room for such programs operated by the department.

Approved April 9, 1979.

CHAPTER NO. 518

AN ACT TO INCREASE THE BOND DEBT LIMIT OF THE MONTANA BOARD OF HOUSING TO $375 MILLION; AMENDING SECTION 90-6-111; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-111, MCA, is amended to read:

"90-6-111. Bonds and notes. (1) The board may by resolution, from time to time, issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds,

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including the reserve funds created under 90-6-119, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds to pay notes, including interest, and whenever it deems refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its notes and bonds shall be obligations of the board payable out of any revenues, assets, or moneys of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or moneys.

(4) The notes and bonds shall be authorized by resolutions of the board, bear a date, and mature at times as the resolutions provide. A note shall not mature more than 10 years and a bond shall not mature more than 50 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at a rate or rates, be in denominations, be in a form either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment at places within or without the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale at prices determined by the board.

(5) The total amount of notes and bonds outstanding at any one time may not exceed *$375* million. The maximum rate of interest on bonds issued by the board may not exceed the maximum rate for revenue bonds issued by political subdivisions as provided in 17-5-102. The notes and bonds may not be sold for less than par."

Section 2. **Saving clause.** Nothing in [section 1] affects or impairs any provision of resolution indentures, loans, contracts, bonds, or notes adopted, entered into, or issued before [the effective date of this act].

Section 3. **Effective date.** This act is effective on its passage and approval.

Approved April 9, 1979.

CHAPTER NO. 519

AN ACT TO REVISE THE LAW CONCERNING HABITUAL TRAFFIC OFFENDERS BY REDUCING THE TIME OF ACCUMULATION OF POINTS FROM 5 YEARS TO 3 YEARS AND REVISING CERTAIN POINT VALUES; AMENDING SECTION 61-11-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle which is prohibited by law, ordinance, or administrative order.

(2) "Habitual traffic offender" means any person who within a *3-year* period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide or negligent homicide resulting from operation of a motor vehicle, 12 points;

(c) any *offense* punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind, 10 points;

(e) operating a motor vehicle while his license to do so has been suspended or revoked, *6* points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, *as defined in 61-7-105,* 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or to otherwise fail to report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, *5* points;

(j) operating a motor vehicle without a license to do so, *2* points (this subsection (j) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(k) speeding, 3 points;

(l) all other moving violations, 2 points. There shall be no multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points shall be chargeable against that defendant.

(3) "License" means any type of license or permit to operate a motor vehicle."

Approved April 9, 1979.

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CHAPTER NO. 520

AN ACT TO IMPROVE THE DELIVERY OF HUMAN SERVICES THROUGH THE DEVELOPMENT AND IMPLEMENTATION OF A PLAN TO PROVIDE FOR ONE-STOP SERVICE, MULTIPURPOSE SOCIAL WORKER AND TEAM MANAGEMENT, COLOCATION OF AGENCIES, AND INFORMATION AND REFERRAL SYSTEMS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Client" means a person served by or utilizing the services of a human services agency.

(2) "Colocation of agencies" means the placement of staff by two or more autonomous human services agencies in a common facility, where appropriate.

(3) "Human services agencies" means the department of institutions, the department of social and rehabilitation services, and those portions of the department of community affairs, the department of health and environmental sciences, the department of labor and industry, and the office of the superintendent of public instruction which deal with human services.

(4) "Information and referral system" means a centralized information system that utilizes single purpose application and referral form to provide for the assessment of client problems, identification of required service, assessment of eligibility, referral of clients to appropriate agencies, and followup of the referrals.

(5) "Multipurpose social worker and team management" means an arrangement in which one staff member, with the possible assistance of a number of staff members representing different services, helps a client to identify all appropriate services and advocates for the client to confirm that the services are provided.

(6) "One-stop service" means a common intake system for two or more services provided to clients.

(7) "Oversight committee" means the permanent legislative human services oversight committee created by [House Bill No. 117].

Section 2. **Plan development.** (1) The governor shall appoint a committee composed of the governor's human service advisor and knowledgeable professionals practicing in the human services field to develop a plan to demonstrate and evaluate the applicability of the following concepts in certain Montana localities:

(a) one-stop service;

(b) multipurpose caseworkers and team management;

(c) colocation of agencies, where appropriate;

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(d) information and referral systems.

(2) The governor's committee shall determine the specific cost relationship between the present system of providing human services compared to the plan demonstrated by [this act].

(3) No later than November 30, 1979, the governor's committee shall submit the plan for demonstration and evaluation. This plan may include proposed legislation whenever necessary, and a report to the oversight committee. The oversight committee shall review and make recommendations to the governor's committee regarding the plan.

Section 3. **Implementation.** No later than April 30, 1980, the governor's committee shall implement the plan for demonstration and evaluation.

Section 4. **Committee to report results and make recommendations.** No later than October 30, 1980, the oversight governor's committee shall prepare a report to be submitted to the oversight committee. The report shall evaluate and make recommendations for legislation to aid in the implementation of a statewide plan for the previously identified objectives of this act.

Section 5. **Mandatory plan development.** In the event that [House Bill No. 117] does not pass, the governor's committee shall implement the plan for demonstration and evaluation provided for in [section 2(1) of this act].

Approved April 9, 1979.

CHAPTER NO. 521

AN ACT AUTHORIZING THE DEPARTMENT OF COMMUNITY AFFAIRS TO TRANSFER WEATHERIZATION FUNDS AMONG THE GOVERNOR'S SUBSTATE PLANNING DISTRICTS, ALTERING THE FORMULA BY WHICH SUCH WEATHERIZATION FUNDS ARE ALLOCATED, AND REQUIRING SUBMISSION OF PLANS TO LOCAL GOVERNMENTS; AMENDING SECTION 90-4-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-202, MCA, is amended to read:

"90-4-202. Allocation formula. (1) The department of community affairs may use not more than 5% of the total weatherization funds for administration of the weatherization program.

(2) *Each of the governor's substate planning districts shall receive that fraction of the remaining money as the number of eligible households in the district bears to the total number of eligible households in the state.*

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(3) The department of community affairs may transfer weatherization money among the governor's substate planning districts if it finds that the money is not being expended in accordance with the terms of the agreements executed to carry out the provisions and purposes of this section and federal laws and regulations.

(4) Each of the governor's substate planning districts shall submit plans and proposed agreements to the units of local government in the district for review and comment before the agreements are approved by the department of community affairs."

Approved April 9, 1979.

CHAPTER NO. 522

AN ACT TO PROVIDE FOR THE SALE OF BONDS BY THE MONTANA BOARD OF HOUSING AT PRICES ABOVE OR BELOW PAR AND TO CLARIFY THE BOND DEBT LIMITATION AND INTEREST RATE; AMENDING SECTION 90-6-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-111, MCA, is amended to read:

"90-6-111. Bonds and notes. (1) The board may by resolution, from time to time, issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 90-6-119, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds to pay notes, including interest, and whenever it deems refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its notes and bonds shall be obligations of the board payable out of any revenues, assets, or moneys of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or moneys.

(4) The notes and bonds shall be authorized by resolutions of the board, *shall* bear a date and *shall* mature at times as the resolutions provide. A note shall not mature more than 10 years and a bond shall not mature more than 50 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or

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as a combination thereof. The notes and bonds shall bear interest at a rate, or rates, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places within or without the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale at *such* prices, *which may be above or below par, as are* determined by the board.

(5) The total amount of notes and bonds outstanding at any one time, *except notes or bonds as to which the board's obligation has been satisfied and discharged by refunding or for which reserve for payment or other means of payment have been otherwise provided,* may not exceed $75 million. The rate of interest on bonds *or notes* issued by the board may not exceed *9% per annum.*"

Section 2. **Prior transactions not impaired.** Nothing herein affects or impairs any provision of resolutions, indentures, loans, contracts, bonds, or notes adopted, entered into, or issued before the effective date of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 9, 1979.

CHAPTER NO. 523

AN ACT ESTABLISHING A DIVISION OF VISUAL SERVICES IN THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND PROVIDING FOR A VISUAL SERVICES ADVISORY COUNCIL; SPECIFYING THE RESPONSIBILITIES AND POWERS OF THE DIVISION OF VISUAL SERVICES AND OF THE VISUAL SERVICES ADVISORY COUNCIL.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Division of visual services.** There is a division of visual services within the department of social and rehabilitation services. The division head is an administrator appointed by the director of the department of social and rehabilitation services in accordance with merit system and classification requirements. The division is responsible for administration of rehabilitative and other services for blind and visually handicapped persons.

Section 2. **Division share of vocational rehabilitation funds.** The share of federal funds received by the state for vocational rehabilitation and allocated to the department for the division of visual services shall be established on a line item basis, in the budget of the department, by the legislature. This share may not be reduced by budget amendment between legislative sessions.

Section 3. **State plan for visual services.** The department shall develop and update, as necessary, a state plan for the provision of services

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to blind individuals. The department shall consult with the visual services advisory council in the development and updating of the plan and shall provide opportunity for public participation.

Section 4. **Codification.** It is intended that section 1 be codified as an integral part of Title 2, chapter 15, part 22, and the provisions of Title 2, chapter 15, part 22, shall apply to section 1. It is intended that sections 2 and 3 be codified as an integral part of Title 53, chapter 7, part 3, and the provisions of Title 53, chapter 7, part 3, apply to sections 2 and 3.

Approved April 9, 1979.

CHAPTER NO. 524

AN ACT TO PROVIDE FOR THE CREATION AND CONVEYANCING OF SOLAR EASEMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Solar easement — creation.** An easement obtained for the purpose of exposure of a solar energy device must be created in writing and is subject to the same conveyancing and instrument recording requirements as other easements on real property.

Section 2. **Solar easement — contents.** An instrument creating a solar easement must specify at least:

(1) the vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement; and

(2) any terms or conditions under which the solar easement is granted or will be terminated.

Approved April 10, 1979.

CHAPTER NO. 525

AN ACT TO REGULATE THE COLLECTION, STORAGE, AND DISSEMINATION OF CRIMINAL JUSTICE INFORMATION; TO PROVIDE FOR PRIVACY OF THE INFORMATION IN CERTAIN CIRCUMSTANCES AND PROCEDURES FOR REQUESTING CERTAIN INFORMATION; TO REQUIRE PHOTOGRAPHING AND FINGERPRINTING OF PERSONS UNDER CERTAIN CIRCUMSTANCES; AND TO REPEAL SECTIONS 44-2-103, 44-2-203, AND 44-2-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Montana Criminal Justice Information Act of 1979".

Section 2. **Purpose.** The purpose of [this act] is to require the photographing and fingerprinting of persons under certain circumstances,

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to ensure the accuracy and completeness of criminal history information, and to establish effective protection of individual privacy in criminal justice information recordkeeping.

Section 3. **Definitions.** As used in [this act], the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless such information is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

(i) records of traffic offenses maintained by the division of motor vehicles, department of justice; or

(ii) court records.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information including information derived from reports of informants or investigators or from any type of surveillance.

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(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance. It does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;

(b) any state or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice; or

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order.

(8) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency. It does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

(i) conviction at trial or on a plea of guilty;

(ii) acquittal;

(iii) acquittal by reason of mental disease or defect;

(iv) acquittal by reason of mental incompetence;

(v) the sentence imposed, including all conditions attached thereto by the sentencing judge;

(vi) deferred imposition of sentence with any conditions of deferral;

(vii) nolle prosequi;

(viii) nolo contendere plea;

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(ix) deferred prosecution or diversion;

(x) bond forfeiture;

(xi) death;

(xii) release as a result of a successful collateral attack;

(xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

(xiv) a finding of civil incompetence or mental illness;

(xv) exercise of executive clemency;

(xvi) correctional placement on probation or parole or release; or

(xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains such information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Public criminal justice information" means information, except confidential criminal justice information:

(a) made public by law;

(b) of court records and proceedings;

(c) of convictions, deferred sentences, and deferred prosecutions;

(d) of postconviction proceedings and status;

(e) originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(13) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(14) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable.

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Section 4. **Relationship to other statutes.** Laws requiring disclosure of public records, writings, or information are not superseded by [this act] unless clearly inconsistent with its specific language. Laws requiring confidentiality of information contained in records or writings are not superseded by [this act], which applies only when information may be disclosed consistent with such laws.

Section 5. **Scope of authority to collect, process, and preserve criminal justice information.** A criminal justice agency may collect, process, and preserve only that criminal justice information which is necessary for the performance of its authorized functions.

Section 6. **Photographs and fingerprints.** (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

(b) the department of institutions; and

(c) the department of justice.

(2) The department of institutions may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if:

(a) the charge is the commission of a felony;

(b) the identification of an accused is in issue; or

(c) it is required to do so by court order.

(4) Whenever a person charged with the commission of a felony is not arrested, he shall submit himself to the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of his initial appearance in court to answer the information or indictment against him.

(5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if he has been arrested for the commission of a misdemeanor, except that an individual arrested for a traffic, regulatory, or fish and game offense may not be photographed or fingerprinted unless he is incarcerated.

(6) Within 10 days the originating agency shall send the state repository a copy of each fingerprint taken on a completed form provided by the state repository.

(7) The state repository shall compare the fingerprints received with those already on file in the state repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall at once inform the originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record.

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(8) Photographs and fingerprints taken shall be returned by the state repository to the originating agency, which shall return all copies to the individual from whom they were taken:

(a) if a court so orders; or

(b) upon the request of the individual:

(i) if no charges were filed;

(ii) if a misdemeanor charge did not result in a conviction; or

(iii) if the individual was found innocent of the offense charged.

Section 7. **Records — form, contents, limits on use.** A criminal justice agency originating initial offense reports, initial arrest records, bail records, or daily jail occupancy rosters may maintain a chronological or numerical record of these items. These records may not contain any prior criminal history record information and may not be used to gain access to any other public criminal justice information.

Section 8. **Record preservation.** Unless required by federal law, expunging, purging, or destroying of criminal justice information is not required based on the length of time such records are held.

Section 9. **Procedures to ensure accuracy of criminal history records.** In order to ensure complete and accurate criminal history record information:

(1) the department of justice shall maintain a centralized state repository of criminal history record information to serve all criminal justice agencies in the state;

(2) dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who has been photographed and fingerprinted under [section 6] shall be reported to the originating agency and the state repository within 15 days. If the dispositions can readily be collected and reported through the court system, the dispositions may be submitted to the state repository by the administrative office of the courts.

(3) an originating agency shall advise the state repository within 30 days of all dispositions concerning the termination of criminal proceedings against an individual who has been photographed and fingerprinted under [section 6];

(4) the department of institutions shall advise the state repository within 30 days of all dispositions subsequent to conviction of an individual who has been photographed and fingerprinted under [section 6];

(5) each criminal justice agency shall query the state repository prior to dissemination of any criminal history record information to ensure the timeliness of the information. When no final disposition is shown by the state repository records, the state repository shall query the source of the document or other appropriate source for current status. Inquiries shall be made prior to any dissemination except in those cases in which time is of the essence and the repository is technically incapable of responding

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within the necessary time period. If time is of the essence, the inquiry shall still be made and the response shall be forwarded as soon as it is received.

(6) each criminal justice agency shall ensure that all its criminal justice information is complete, accurate, and current; and

(7) the department of justice shall adopt rules for criminal justice agencies other than those that are part of the judicial branch of government to implement this section. The department of justice may adopt rules for the same purpose for the judicial branch of government if the supreme court consents to the rules.

Section 10. **Dissemination of public criminal justice information.** (1) There are no restrictions on the dissemination of public criminal justice information except for the following:

(a) Whenever a record or index is compiled by name or universal identifier from a manual or automated system, only information about convictions, deferred prosecutions, or deferred sentences is available to the public.

(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and whenever there are no convictions except for traffic, regulatory, or fish and game offenses for a period of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to subsection (1)(a). However, the original documents are available to the public from the originating criminal justice agency.

(2) All public criminal justice information is available from the agency that is the source of the original documents and that is authorized to maintain the documents according to applicable law. These documents shall be open, subject to the restrictions in this section, during the normal business hours of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public criminal justice information.

Section 11. **Dissemination of criminal history record information that is not public criminal justice information.** Criminal history record information may not be disseminated to agencies other than criminal justice agencies unless:

(1) the information is disseminated with the consent or at the request of the individual about whom it relates according to procedures specified in [sections 19 and 20];

(2) a district court considers dissemination necessary;

(3) the information is disseminated in compliance with [section 13]; or

(4) the agency receiving the information is authorized by law to receive it.

Section 12. **Dissemination of confidential criminal justice information.** Dissemination of confidential criminal justice information is restricted to criminal justice agencies or to those authorized by law to

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receive it. A criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of such information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

Section 13. **Development of statistical information — agreements as to access.** (1) An individual or agency with the express purpose of developing statistical information may have access to criminal history record information pursuant to an agreement with a criminal justice agency. The agreement shall contain, but need not be limited to, the following provisions:

(a) specific authorization for access to specific information;

(b) a limitation on the use of the information to research, evaluative, or statistical purposes;

(c) assurance of the confidentiality and security of the information; and

(d) sanctions for violations of the agreement or this section.

(2) Proposed agreements and any completed research, statistical, or evaluative study or product developed from the use of statistical information is subject to review and approval by the department of justice to ensure compliance with [this act].

Section 14. **Criminal justice information system security.** Provisions for the recording, preservation, dissemination, and management of court records are made by statute and may be supplemented by supreme court rule. Any other criminal justice agency shall protect the security of any criminal justice information system, automated or manual, under its control by taking reasonable precautions and establishing procedures to protect the system and data stored in the system from damage and for the prevention of and recovery from hazards such as fire, flood, power failure, and entry into secure areas by unauthorized persons.

Section 15. **Automated equipment security.** In an automated criminal justice information system, information shall be collected, processed, and preserved on a computer dedicated solely to criminal justice information, except that, if this is impractical, a central computer may be used if adequate safeguards are built into the criminal justice information system to prevent unauthorized inquiry, modification, or destruction of criminal justice information in conformity with the current federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

Section 16. **Computer programming security.** Procedures for each automated criminal justice information system shall assure that the information is secured by the following programming techniques and security procedures:

(1) the assignment of a terminal identification code to each terminal authorized to access the criminal justice information system;

(2) the assignment of a unique identification number to each authorized terminal operator, which number must be used to gain access to the files;

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(3) the maintenance of a record of each inquiry to identify the inquiring agency, the program used to make the inquiry, the date of the inquiry, and the name of the file being queried;

(4) computer programming controls to ensure that each terminal user can obtain only that information which the user is authorized to use;

(5) creation and use of a safe place for storage of duplicate computer files;

(6) built-in program controls to ensure that each terminal is limited to the appropriate or authorized information that can be input, modified, or canceled from it;

(7) destruction or safeguarding of system documentation and data input forms; and

(8) creation of reports to provide for an audit trail and periodic review of file accessed, modifications, and deletions. All criminal justice intelligence information shall be identified as such.

Section 17. **Manual equipment security.** In a manual criminal justice information system, information shall be protected as follows:

(1) provision of adequate physical security;

(2) marking of all criminal justice intelligence information and precautions against unauthorized copying; and

(3) establishment of a log of each external inquiry to reflect the identity of the inquirer, the date of inquiry, and the name of the files being queried.

Section 18. **Personnel security.** Each automated or manual criminal justice information system, except those that are or may be maintained by courts of criminal jurisdiction, shall establish the following procedures to ensure that personnel security is achieved and maintained:

(1) Applicants for employment and persons presently employed to work with or in a computer center or manual system that processes criminal justice information are subject to investigation by the employing agency to establish their honesty and fitness to handle sensitive information. Consent to such an investigation may be a prerequisite to the processing of an employment application.

(2) The character and fitness of criminal justice information system personnel to handle sensitive information, including personnel working with manual criminal justice file systems and terminal operators as well as personnel working with the system at a central computer, shall be reviewed by the employing agency periodically. Serious violations or deficiencies under this section are grounds for dismissal.

(3) Each criminal justice agency shall develop and maintain an in-service training program and security manual to ensure that each employee who works with or has access to the criminal justice information system annually reviews and understands the nature and importance of the system's security provisions.

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(4) With regard to automated systems, the criminal justice agency shall screen and may reject for employment and initiate or cause to be initiated administrative action relating to employees having direct access to criminal history record information as required by federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

Section 19. **Inspection or transfer of criminal history records.** (1) An individual or his agent may inspect any criminal history record information maintained about the individual or transfer copies of that information to any other person upon the presentation of satisfactory identification to the criminal justice agency maintaining the criminal history record information. Fingerprints may be required for identification. An agent must also submit a notarized authorization from his principal or an authorization order from a district court.

(2) If an individual's criminal history record information is maintained in the state repository, copies of the records shall be transferred to the local agency for inspection upon proper request of the individual or his agent. A local agency shall honor a verified affidavit accompanying a request by an individual for a transfer of copies of criminal history record information concerning that individual to a criminal justice agency of another state for the purpose of complying with [this act].

(3) (a) An individual may request inspection or transfer of copies, or both, of criminal history record information only during normal working hours.

(b) Copies of records may be made by or at the request of a properly identified individual or his authorized agent. If a machine for making copies is not reasonably available, the individual or his agent may make handwritten copies. A charge, not to exceed the cost of labor and materials, may be made by the agency for machine-produced copies. Each copy must be clearly marked to indicate that it is for inspection only.

(c) An agency employee should be available to answer questions concerning record content. A record of each request to inspect records under this section must be maintained.

Section 20. **Challenge and correction.** (1) After inspection of criminal history record information, an individual may contest the accuracy or completeness, or both, of the information about himself.

(2) If the agency maintaining the criminal history record information does not correct it to the individual's satisfaction, the individual may request review and correction by the executive head of the agency.

(3) If the requested correction is denied by the head of the agency, the individual may present a challenge to the department of justice.

(4) If the agency in charge of the record in question can verify the accuracy of its record by communication with the originating criminal justice agency, it shall do so. If accuracy or completeness cannot be verified and the agency primarily originating the information containing the alleged error or omission is in the state, the individual shall address his challenge to that agency. If information necessary to verify the accuracy or

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completeness of the record cannot be obtained by the originating agency, it may rely on verified written documents or include the individual's allegation in its records in dissemination until there is a final disposition of the challenge.

(5) If the challenge is successful, the agency shall:

(a) supply to the individual, if requested, a list of those noncriminal justice agencies which have received copies of the criminal history record information about the individual; and

(b) immediately correct its records and notify all criminal justice agencies to which it has given erroneous or incomplete information of these changes.

Section 21. **Dissemination of copied or inspected records.** (1) Criminal justice agencies shall maintain a record of all agencies and individuals to which or whom copies of criminal history record information have been disseminated.

(2) A criminal justice agency supplying criminal history record information to an individual upon request is not responsible for the use or secondary dissemination of copied or inspected information and is not required to furnish updated information except upon a subsequent request by the individual.

Section 22. **Sanctions.** The sanctions provided in 44-2-205 apply to any knowing or purposeful violation of [this act].

Section 23. **Department of justice — powers.** The department of justice may:

(1) adopt rules necessary to carry out the purposes of [this act];

(2) hear and decide contested cases or challenges that may arise under the provisions of the Montana Administrative Procedure Act;

(3) conduct audits of the criminal history record information systems of a representative sample of state and local criminal justice agencies chosen annually on a random basis to determine whether they are in compliance with the provisions of [this act]. The function authorized in this subsection may not be assigned to any subagency that has supervisory authority over any criminal justice information system.

Section 24. **Court order to enforce compliance.** Any person may apply for an order from a district court to enforce compliance with any provision of [this act].

Section 25. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 26. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains

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in effect in all valid applications that are severable from the invalid applications.

Section 27. **Repealer.** Sections 44-2-103, 44-2-203, and 44-2-204, MCA, are repealed.

Approved April 10, 1979.

CHAPTER NO. 526

AN ACT TO REVISE THE LAWS RELATING TO FILLING VACANCIES IN COUNTY AND LEGISLATIVE OFFICES; ALLOWING POLITICAL PARTIES TO NOMINATE CANDIDATES IN SOME INSTANCES; AMENDING SECTIONS 5-2-406, 7-4-2106, AND 7-4-2206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-406, MCA, is amended to read:

"5-2-406. Elections to fill vacancies in senate. (1) Whenever a vacancy occurs *50* days or more before the general election held during the second year of the term, an individual shall be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs *50* days or more prior to the primary election during the second year, the same procedure as is used for senators who will be elected to full 4-year terms at that general election shall be utilized.

(b) Whenever the vacancy occurs on or after the *50th* day prior to the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in *13-10-327 and 13-38-204*. A political party shall notify the secretary of state of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate shall be filed with the secretary of state on or before the *40th* day prior to the general election.

(2) Whenever a vacancy occurs on or after the *50th* day prior to the general election held during the second year of the term, the person appointed by the board under 5-2-402 shall serve until the end of the term."

Section 2. Section 7-4-2106, MCA, is amended to read:

"7-4-2106. Vacancy on board of county commissioners. *(1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.*

(2) Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the district judge or judges in whose

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district the vacancy occurs must fill the vacancy, and such appointee shall hold office until the next general election *unless otherwise provided in subsection (3) or (4).*

(3) Whenever a vacancy occurs 50 days or more before the general election held during the second or fourth year of the term, an individual shall be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 50 days or more before the primary election during the second or fourth year of the term, the same procedure shall be utilized as is used to elect county commissioners to full 6-year terms.

(b) Whenever the vacancy occurs after the 50th day preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate shall be filed with the clerk and recorder on or before the 40th day prior to the general election. A candidate for a nonpartisan office shall file as provided in [Title 13, chapter 14].

(4) Whenever a vacancy occurs after the 50th day preceding the general election held during the fourth year of the term, the person appointed by the district judge under 7-4-2106(2) shall serve until the end of the term."

Section 3. Section 7-4-2206, MCA, is amended to read:

"7-4-2206. Vacancies. *(1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.*

(2) Vacancies in all county offices, except that of county commissioner, shall be filled by appointment by the board of county commissioners. *Except for the justice of the peace, the* appointee shall hold his office, if elective, until the next general election *unless otherwise provided in subsections (3) or (4)*, and if not elective, the appointee serves at the pleasure of the commissioners.

(3) Whenever a vacancy occurs 50 days or more before the general election held during the second year of the term, an individual shall be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 50 days or more before the primary election during the second year of the term, the same procedure shall be utilized as is used to elect a person to that office for a full 4-year term.

(b) Whenever the vacancy occurs after the 50th day preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the

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procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate shall be filed with the clerk and recorder on or before the 40th day prior to the general election. A candidate for a nonpartisan office shall file as provided in [Title 13, chapter 14].

(4) Whenever a vacancy occurs after the 50th day preceding the general election held during the second year of the term, the person appointed by the commissioners under 7-4-2206(2) shall serve until the end of the term.

(5) Vacancies occurring in the office of justice of the peace shall be filled as provided in Title 3, chapter 10, part 2."

Approved April 10, 1979.

CHAPTER NO. 527

AN ACT PROVIDING THAT CERTAIN NATURAL GAS OR CRUDE OIL FACILITIES AND ASSOCIATED FACILITIES ARE NOT WITHIN THE DEFINITION OF "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTION 75-20-104, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the certificate was issued.

(2) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(5) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

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(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection (7), including upgrading to a design capacity covered by subsection (7)(b), except that the term does not include normal maintenance or repair of an existing facility.

(6) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(7) "Facility" means:

(a) *except for crude oil and natural gas refineries, and facilities and associated facilities designed for or capable of producing, gathering, processing, transmitting, transporting, or distributing crude oil or natural gas,* each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of $250,000;

(ii) producing 25 million cubic feet of gas per day or more or any addition thereto having an estimated cost in excess of $250,000;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of $250,000;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of $250,000; or

(v) utilizing, refining, or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $250,000;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(c) each pipeline and associated facilities designed for or capable of transporting gas *(except for natural gas)*, water, or liquid hydrocarbon products from or to a facility located within or without this state of the size indicated in subsection (7)(a) of this section;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy;

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(e) any underground in situ gasification of coal.

(8) "Municipality" means any county or municipality within this state.

(9) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 10, 1979.

CHAPTER NO. 528

AN ACT TO PROVIDE THAT JUDICIAL OFFICERS AND DISTRICT COURT REPORTERS SHALL RECEIVE THE SAME MILEAGE AND EXPENSES THAT STATE EMPLOYEES RECEIVE; EXEMPTING JUDICIAL OFFICERS DURING THEIR CURRENT TERMS OF OFFICE; AMENDING SECTIONS 3-2-104, 3-5-211, 3-5-213 THROUGH 3-5-216, 3-5-602, 3-6-203, 3-10-203, 3-10-209, 3-10-234, 3-11-202, 3-11-204, 3-11-205, AND 3-12-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-2-104, MCA, is amended to read:

"3-2-104. Salaries — affidavit required for payment — expenses. (1) The salaries of justices of the supreme court are provided for in 2-16-405.

(2) The state auditor shall not draw a warrant in payment of the services of any justice of the supreme court until such justice shall have filed with the auditor an affidavit that no cause, motion, or other proceeding in his court remains pending and undecided for a period of 90 days after the same shall have been submitted for decision unless casualty or sickness shall have intervened.

(3) Actual and necessary travel expenses of the justices of the supreme court shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of their official duties."

Section 2. Section 3-5-211, MCA, is amended to read:

"3-5-211. Salaries of district judges. The annual salary of each district judge is $35,000. *Actual and necessary expenses for each district judge shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties."*

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Section 3. Section 3-5-213, MCA, is amended to read:

"3-5-213. Expenses when out of district. A judge who sits in the place of another judge in the trial or hearing of an action or proceeding in a district other than his own or in the supreme court or who attends a conference of judges in Helena called by the chief justice of the supreme court shall be paid his actual and necessary travel expenses, *as defined and provided in 2-18-501 through 2-18-503,* while engaged in that service as follows:

(1) his travel expenses in going from the county seat which he makes his place of residence to the place of trial or conference and return; and

(2) his board and lodging while engaged in the trial, hearing, or conference."

Section 4. Section 3-5-214, MCA, is amended to read:

"3-5-214. Certification and filing of expense claim. As soon as his services in connection with the trial or hearing are concluded, the judge shall certify in detail his *actual and necessary travel* expenses as specified in 3-5-213, and shall file the claim with the state to be processed as provided by law."

Section 5. Section 3-5-215, MCA, is amended to read:

"3-5-215. Expenses when not in county of residence. A district judge of a judicial district composed of more than one county who, for the purpose of holding court and disposing of judicial business, goes to a county of his judicial district other than the county in which he resides and therein holds court or transacts judicial business shall be paid his actual and necessary *travel* expenses, *as defined and provided in 2-18-501 through 2-18-503,* incurred on account thereof from the time he leaves his place of residence until he returns thereto."

Section 6. Section 3-5-216, MCA, is amended to read:

"3-5-216. Itemized statements — verification — filing. (1) On the first of each month or within 3 days thereafter, such district judge who may desire to avail himself of the provisions of 3-5-215 shall make out an itemized claim against the state of Montana showing with dates and particulars *his actual and necessary travel expenses for* the preceding month.

(2) He shall verify such claim by certifying that the items of the claim are true and correct and are wholly unpaid and that the expenditures therein enumerated were made in the discharge of official business while away from home.

(3) He shall then file such claim with the state to be processed as provided by law."

Section 7. Section 3-5-602, MCA, is amended to read:

"3-5-602. Salary and expenses — apportionment. (1) Each reporter is entitled to receive an annual salary of not less than $12,500 or more than $16,000 and no other compensation except as provided in 3-5-604. The salary shall be set by the judge in the district in which the

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reporter works. It is payable in monthly installments out of the general funds of the counties comprising the district for which the reporter is appointed, in proportion to the number of civil and criminal actions commenced in the district court in and for each county in the preceding year. The judge of the district shall, on January 1 of each year or as soon thereafter as possible, apportion the amount of the salary to be paid by each county in his district on the basis prescribed in this subsection.

(2) In judicial districts comprising more than one county, the reporter is allowed, in addition to the salary and fees provided for in subsection (1), his actual and necessary *travel* expenses, *as defined and provided in 2-18-501 through 2-18-503,* when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto. The expenses shall be apportioned and payable in the same way as the salary."

Section 8. Section 3-6-203, MCA, is amended to read:

"**3-6-203. Salary.** The salary of the municipal court judge shall be set by city ordinance and shall be payable monthly by the city treasurer. *Actual and necessary expenses for the municipal court judge shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties.*"

Section 9. Section 3-10-203, MCA, is amended to read:

"**3-10-203. Orientation course — annual training.** (1) The university of Montana law school shall present a course of study as soon as is practical following each general election. *Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503,* shall be paid the elected or appointed justice of the peace for attending the course and shall be a proper charge against the county wherein the justice of the peace will hold court.

(2) There shall be an annual training session for all elected and appointed justices of the peace. This training session, which may be held in conjunction with the Montana magistrates' association convention, shall be supervised by the supreme court. *Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503,* shall be paid the elected or appointed justice of the peace for attending the course and shall be a proper charge against the county wherein the justice holds court."

Section 10. Section 3-10-209, MCA, is amended to read:

"**3-10-209. Expenses.** All actual and necessary *travel* expenses, *as defined and provided in 2-18-501 through 2-18-503,* incurred by the justice of the peace in the performance of his official duties are a legal charge against the county."

Section 11. Section 3-10-234, MCA, is amended to read:

"**3-10-234. Expenses of acting justice.** Whenever a justice of the peace or another person is called in to preside over the court of a justice under 3-10-231, the visiting justice or other person shall be paid *his actual and necessary travel* expenses, *as defined and provided in 2-18-501*

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through 2-18-503. If the acting justice is not a justice of the peace receiving a salary, he shall also receive such compensation as is proper for the time involved. The cost of implementing this section is a proper charge against the county where the court is held."

Section 12. Section 3-11-202, MCA, is amended to read:

"3-11-202. Salary. The annual salary and compensation of city judges must be fixed by ordinance. *Each city judge shall receive his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties.*"

Section 13. Section 3-11-204, MCA, is amended to read:

"3-11-204. Training session for judges. There shall be an annual training session for all elected and appointed judges. This training session, which may be held in conjunction with the Montana magistrates' association convention, shall be supervised by the supreme court. *Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503,* shall be paid the elected or appointed judge for attending the course and shall be a proper charge against the city wherein the judge holds court."

Section 14. Section 3-11-205, MCA, is amended to read:

"3-11-205. Justice of the peace acting as city judge. In towns, the council may designate a justice of the peace of the county in which the town is situated to act as city judge and may by ordinance fix his compensation for his services, and the justice of the peace so designated may act as a city judge in all cases arising out of a violation of ordinances where the town is a party. Where the justice of the peace must travel from his town of residence to hold court, he shall be paid *his actual and necessary travel expenses,* as *defined and* provided in *2-18-501 through* 2-18-503, by the town in which court is held."

Section 15. Section 3-12-201, MCA, is amended to read:

"3-12-201. Appointment — salary and expenses — qualifications. (1) The judges of the judicial district in which a small claims court has been created shall appoint a judge of the small claims court who shall:

(a) take the oath required of judges;

(b) serve at the pleasure of the district court judges;

(c) be paid a salary set by the district court judges *and actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503*; and

(d) be an attorney licensed to practice law in Montana.

(2) The judges of the district court may appoint more than one small claims court judge for any small claims court. The salary shall be prorated among the judges appointed."

Section 16. **Transition.** A judicial officer, as defined in 1-1-202, who is occupying his judicial office on the effective date of this act shall continue to be paid expenses on the same basis as he is receiving them on the

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effective date of this act until the expiration of his term of office. All judicial officers who take office or begin a new term of office after the effective date of this act shall receive expenses as provided in this act.

Section 17. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 10, 1979.

CHAPTER NO. 529

AN ACT TO PROVIDE FOR SEIZURE AND FORFEITURE OF CONTROLLED SUBSTANCES AND IMPLEMENTS AND CONVEYANCES USED IN DANGEROUS DRUG VIOLATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definition of controlled substance.** As used in [this act], "controlled substance" means any substance designated as a dangerous drug pursuant to [Title 50, chapter 32, parts 1 and 2].

Section 2. **Things that are subject to forfeiture.** (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9 except items used or intended for use in connection with quantities of marijuana in amounts less than 250 grams;

(c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels:

(i) which are used or intended for use in unlawfully transporting or in any manner facilitating the transportation of anything enumerated in subsection (1)(a) or (1)(b) for the purpose of sale or receipt of such thing;

(ii) in which a controlled substance is unlawfully kept, deposited, or concealed; or

(iii) in which a controlled substance is unlawfully possessed by an occupant; and

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(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9.

(2) (a) No conveyance used by a person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) No conveyance is subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without his knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(d) No conveyance or container is subject to forfeiture under this section if it was used or intended for use in transporting less than 250 grams of marijuana.

Section 3. **When property may be seized.** (1) A peace officer who has probable cause to make an arrest for a violation of Title 45, chapter 9, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a controlled substance, or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a controlled substance shall seize the conveyance so used or intended to be used or any conveyance in which a controlled substance is unlawfully possessed by an occupant. He shall immediately deliver a conveyance that he seizes to the sheriff of the county in which the seizure is made, to be held as evidence until forfeiture is declared or release ordered.

(2) All property subject to forfeiture under [section 1] may be seized by a peace officer under a search warrant issued by a district court having jurisdiction over the property. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal proceeding or a forfeiture proceeding based on [this act];

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property was used or is intended to be used in violation of Title 45, chapter 9.

Section 4. **Summary forfeiture of certain controlled substances.** Controlled substances that are possessed, transferred, offered for transfer, manufactured, prepared, cultivated, compounded, or processed in violation of Title 45, chapter 9, and that are seized under the provisions

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of [this act] are contraband and shall be summarily forfeited to the state. Controlled substances which are seized or come into the possession of the state and the owners of which are unknown are contraband and shall be summarily forfeited to the state.

Section 5. **Notice of seizure and intention to institute forfeiture proceedings.** A peace officer or an officer of the seizing agency who seizes any property other than controlled substances under the provisions of [this act] shall, within 45 days of the seizure, file a notice of the seizure and intention to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs, and the clerk shall serve notice thereof on all owners or claimants of the property by one of the following methods:

(1) upon an owner or claimant whose right, title, or interest is of record in the division of motor vehicles, by mailing a copy of the notice by certified or registered mail to the address on the records of the division;

(2) upon an owner or claimant whose name and address are known, by mailing a copy of the notice by certified or registered mail to his last-known address;

(3) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county.

Section 6. **Answer to allegations concerning use of property.** Within 20 days after the mailing or publication of the notice, the owner or claimant of the seized property shall file a verified answer to the allegations concerning the use of the property contained in the notice of seizure and intention to institute forfeiture proceedings. No extension of the time for filing the answer may be granted, and failure to answer within 20 days bars the owner or claimant from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.

Section 7. **Procedure following answer or expiration of time for answering.** (1) If a verified answer to the notice is not filed within 20 days after the mailing or publication of the notice, the court shall hear evidence on the charge of unlawful use of the property and upon motion may order the property forfeited to the state.

(2) If a verified answer is filed within 20 days, the forfeiture proceedings shall be set for hearing without a jury not less than 30 days after the answer is filed. Notice of the hearing shall be given in the manner provided for service of notice of seizure.

Section 8. **Proof required or permitted at hearing.** (1) At the hearing any owner or claimant who has a verified answer on file may show by competent evidence that the property was not used for the purpose charged.

(2) A claimant of a security interest in the property may prove that his security interest is bona fide and that it was created after a reasonable

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investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner, purchaser, or person in possession of the property when it was brought to such person.

Section 9. **Disposition of property following hearing.** (1) If the court finds that the property was not used for the purpose charged, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged, the property shall be disposed of as follows:

(a) If proper proof of his claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of [this act] to forfeit only the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property must be sold at public auction by the sheriff of the county in which the seizure was made in the same manner provided by law for the sale of property under execution or the state may return the property to the holder of the security interest without proceeding with an auction.

(b) If no claimant exists and the confiscating agency wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of his claim exists and the confiscating agency wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

Section 10. **Disposition of proceeds of sale.** Whenever property is seized, forfeited, and sold under the provisions of [this act], the net proceeds of the sale must be distributed as follows:

(1) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property;

(2) the remainder, if any, to the county treasurer of the county in which the property was seized, for deposit in the county general fund, except as provided in subsection (3);

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(3) if the property was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer for deposit in the city or town general fund.

Approved April 10, 1979.

CHAPTER NO. 530

AN ACT TO AMEND THE WHEAT RESEARCH AND MARKETING LAW; CHANGING THE ASSESSMENT LEVIED ON WHEAT AND BARLEY; AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO CONTRACT FOR RESEARCH AND DEVELOPMENT OF FUELS AND FOOD FROM WHEAT AND BARLEY; AMENDING SECTION 80-11-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-11-206, MCA, is amended to read:

"80-11-206. Annual assessment on wheat and barley grown. (1) There is hereby levied an annual assessment of 2 ½ *mills per bushel (except for the fiscal years ending on June 30, 1980 through 1983, when not more than 5* mills per bushel *may be levied)* upon all wheat grown and 5 *mills per hundredweight (except for the fiscal years ending on June 30, 1980 through 1983, when not more than 10* mills per hundredweight *may be levied)* on all barley grown in the state of Montana and sold through commercial channels. The assessment is hereby levied and imposed on each grower of wheat or barley in the state of Montana:

(a) in the case of sale of wheat or barley, at the time of any sale of wheat or barley by a grower, and shall be collected by the first purchaser of the wheat or barley from the grower at the time of each settlement for wheat or barley purchased; or

(b) in the case of a pledge or mortgage of wheat or barley as security for a loan under any federal price support program, the assessment shall be collected by deducting the amount thereof from the proceeds of such loan at the time the loan is made by the agency or person making the loan.

(2) The assessment levied under the provisions of this part shall be deducted and collected as provided by this part, whether such wheat or barley is stored in this or any other state. The assessment shall attach to each transaction, but no grower shall be subject to assessment more than once irrespective of the number of times it shall be the subject of a sale, pledge, mortgage, or other transaction, the assessment being imposed and attaching on the initial sale, pledge, mortgage, or other transaction in which the wheat or barley grower parts with title to the wheat or barley, or creates some interest therein in a pledgee, mortgagee, or other person."

Section 2. **Allocation of assessment.** For the fiscal years ending on June 30, 1980 through 1983, $200,000 a year of the assessment provided for

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in 80-11-206 is allocated to the department of agriculture to carry out the provisions of [section 3].

Section 3. **Powers of department.** The department may contract with both private and government organizations to provide for research, development, production, and marketing of fuels and foods derived from wheat and barley. This includes but is not limited to agreements with the department of natural resources and conservation to fund grants provided for in Title 90, chapter 4, part 1.

Section 4. **Allocation of unused money — determination of assessment.** (1) Any money allocated to the department under [section 2] remaining as of June 30 of each year shall revert to the wheat research and marketing account in the federal and private revenue fund.

(2) The wheat research and marketing committee shall set the amount of the assessment provided for in 80-11-206 each year to provide the funds necessary to carry out this part.

Section 5. **Codification.** Sections 2 through 4 are intended to be codified as an integral part of Title 80, chapter 11, part 2, and the provisions contained in Title 80, chapter 11, part 2, apply to sections 2 through 4.

Approved April 10, 1979.

CHAPTER NO. 531

AN ACT TO CREATE THE MONTANA FOLKLIFE PROJECT UNDER THE MONTANA ARTS COUNCIL; TO PRESERVE AND PRESENT MONTANA FOLKLIFE; TO PRESCRIBE POWERS AND DUTIES OF THE MONTANA FOLKLIFE PROJECT; AND PROVIDING AN EXPIRATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** This act may be cited as the "Montana Folklife Preservation Act".

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Montana folklife" means the traditional customs and culturally based expressions shared by peoples within any area of the state. Montana folklife includes community-based traditional arts such as folksongs and instrumental music, dance, storytelling, vernacular, architecture, handcrafts, skills, and other forms of community-based expressions which serve to identify and symbolize the cultural heritage of Montana.

(2) "Montana folklorist" means a professional folklorist having an advanced degree in folklore or related experience.

Section 3. **Montana folklife project created.** (1) There is created a Montana folklife project. It is the purpose of the project to identify, document, and preserve and make more accessible to the public the traditional folklife of Montana. Such areas of folklife heritage shall include but

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not be limited to the traditions of ranching and farming, logging, mining, trapping, exploration, Indian culture, and cowboy life.

(2) Montana folklife project shall be under the authority of the Montana arts council, which shall contract with a professional folklorist to carry out the project.

Section 4. **Powers of the Montana folklife project.** The Montana folklife project, with the approval of the Montana arts council, shall exercise the following powers:

(1) The Montana folklife project may accept gifts and grants for the support of this project; receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be for the purposes of this project; and use, sell, or otherwise dispose of such property for the purpose of carrying out the functions of the project.

(2) The Montana folklife project may enter into contracts with and award grants to individuals, groups, private radio and television broadcasters, museums, educational institutions, and corporations for the purpose of:

(a) supporting and promoting research, scholarship, and training in Montana folklife;

(b) sponsoring and promoting live performances, festivals, exhibits, media presentations, publications, and workshops related to Montana folklife;

(c) purchasing, producing, and supporting presentations and materials especially designed for classroom use representing or illustrating some aspect of Montana folklife;

(d) procuring, producing, and retaining, in an appropriate archive, audio and visual records, including still and motion picture film, records, audio and visual magnetic tape recordings, written records, and manuscripts that document some aspect of Montana folklife;

(e) establishing procedures for loaning or making available any item of the folklife collection of any individual or group; and

(f) developing and implementing other projects to identify, document, and preserve and make more accessible to the public Montana's folklife heritage.

Section 5. **Duties.** The Montana folklife project shall:

(1) cooperate with the Montana university system, the Montana historical society, and other agencies of this state that may have an interest in the folk cultural heritage of Montana;

(2) sponsor, encourage, direct, and engage in research into the folklife of this state;

(3) obtain for state documentation matters significant to the preservation and presentation of Montana folklife;

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(4) assist local communities who wish to carry out their own local folklife projects.

Section 6. **Expiration date.** This act expires on July 1, 1981.

Approved April 10, 1979.

CHAPTER NO. 532

AN ACT TO PROVIDE LIENS FOR PHYSICIANS, NURSES, AND HOSPITALS FOR SERVICES RENDERED; REPEALING SECTIONS 71-3-1101 THROUGH 71-3-1105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Physician, Nurse, and Hospital Lien Act of 1979".

Section 2. **Purpose.** The purpose of [this act] is to establish lien rights for physicians, nurses, and hospitals when a person receiving medical treatment:

(1) is injured through the fault or neglect of another; or

(2) is insured.

Section 3. **Definitions.** As used in [this act], the following definitions apply:

(1) "Beneficiary" means a person entitled to insurance benefits.

(2) "Insurance" means a contract whereby a person, the insurer, undertakes to indemnify another, the insured, or pay or provide a determinable amount or benefit upon determinable contingencies.

(3) "Person" means an individual, a corporation, an organization, or other legal entity.

Section 4. **Liens of physicians, nurses, and hospitals.** (1) Whenever a physician, nurse, or hospital renders services to a person injured through the fault or neglect of another, the physician, nurse, or hospital, upon giving the required notice of lien, has a lien for the value of services rendered on:

(a) any claim or cause of action the injured person, his estate, or successors may have for injury, disease, or death;

(b) any judgment the injured person, his estate, or successors may obtain for injury, disease, or death; and

(c) all money paid in satisfaction of such judgment or in settlement of the claim or cause of action.

(2) If a person is an insured or a beneficiary under insurance which provides coverage in the event of injury or disease, a physician, nurse, or

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hospital, upon giving the required notice of lien, has a lien for the value of services rendered on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) The lien is subject to the lien of an attorney provided in 37-61-420.

Section 5. **Notice of lien.** (1) A physician, nurse, or hospital claiming a lien shall serve written notice upon the person and upon his insurer, if any, against whom liability for injury, disease, or death is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

(2) A physician, nurse, or hospital claiming a lien upon proceeds or payments payable by an insurer shall serve written notice upon the insurer against whom the lien is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

Section 6. **Notice of lien — filing with clerk of court.** If an action is commenced for recovery for injury, disease, or death, a copy of the notice of lien may be filed in the office of the clerk of court in which the action is pending, and the filing is notice to all parties to the action.

Section 7. **Liability for failure to recognize lien.** If any insurer or person, after receiving notice of lien, makes payment on account of injury, disease, or death and the amount of the lien claimed by any physician, nurse, or hospital has not been paid, the insurer or person is liable to the physician, nurse, or hospital for the reasonable value of the services.

Section 8. **When law not applicable.** (1) [This act] does not apply to any injury, disease, or death for which compensation is awarded pursuant to the Workers' Compensation Act or the Occupational Disease Act of Montana.

(2) [This act] does not apply to any benefits payable under a policy of life insurance or group life insurance, a contract of disability insurance, or an annuity contract or to pension benefits payable under a qualified pension plan.

Section 9. **Repealer.** Sections 71-3-1101 through 71-3-1105, MCA, are repealed.

Approved April 10, 1979.

CHAPTER NO. 533

AN ACT TO AMEND LAWS PERTAINING TO CONSERVATION DISTRICTS TO PROVIDE FOR COUNTY ATTORNEY REPRESENTATION; AND TO PROVIDE COMPENSATION FOR SUPERVISORS ON SPECIAL PROJECTS; AMENDING SECTIONS 7-4-2711, 76-15-313, AND 76-15-319, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2711, MCA, is amended to read:

"7-4-2711. County attorney to be legal advisor of county and other subdivisions. (1) The county attorney is the legal adviser of the

board of county commissioners. He must attend their meetings when required and must attend and oppose all claims and accounts against the county which are unjust or illegal. He must defend all suits brought against his county.

(2) The county attorney must:

(a) give, when required and without fee, his opinion in writing to the county, district, and township officers on matters relating to the duties of their respective offices;

(b) act as counsel, without fee, for fire districts in unincorporated territories, towns, or villages within his county; *and*

(c) when requested by a conservation district pursuant to 76-15-319, act as counsel, without fee."

Section 2. Section 76-15-313, MCA, is amended to read:

"76-15-313. Operation of supervisors. (1) The supervisors shall annually elect a chairman from their members.

(2) A majority of the supervisors constitute a quorum, and the concurrence of a majority in any matter within their duties is required for its determination.

(3) *Except for special projects in which funds are available, a* supervisor may not receive compensation for his services, but he is entitled to expenses, including travel expenses as provided for in 2-18-501 through 2-18-503, incurred in the discharge of his duties."

Section 3. Section 76-15-319, MCA, is amended to read:

"76-15-319. Legal assistance. *(1)* The supervisors may call upon the *county attorney of the county in which the greatest portion of the district is located or the* attorney general of the state for such legal services as they may require or may employ their own counsel and legal staff.

(2) If the county attorney is unable to provide legal assistance because of lack of staff or conflict of interest, then the matter may be referred to the attorney general or the department of natural resources and conservation."

Approved April 10, 1979.

CHAPTER NO. 534

AN ACT DIRECTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO DISPOSE OF THE DALY DITCH WATER PROJECT; TO CANCEL AND WRITE OFF ACCOUNTS RECEIVABLE ON THE DALY DITCH WATER PROJECT; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Legislative finding.** (1) The legislature finds that the Daly ditch water project:

(a) would need extensive and costly repairs if operation of the project were to continue;

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(b) has been historically operating at a loss since the state has owned and operated the project;

(c) would require increasing subsidization from the general fund for future operation of the project; and

(d) is, therefore, financially unsound.

(2) The legislature finds further that:

(a) the useful life of the Daly ditch water project to the state of Montana is at an end; and

(b) the Daly ditch water project should be disposed of by the state of Montana.

(3) Therefore, the legislature directs the department to dispose of the project as provided in [section 3] and to cancel and write off accounts receivable carried on the books of the department. If the department is not able to dispose of the project as provided in [section 3], then the project shall be abandoned as provided in [section 4].

Section 2. **Definitions.** Unless the context requires otherwise, in this act the following definitions apply:

(1) "Daly ditch water project" or "project" means the irrigation water project located in Ravalli County, Montana, and owned and operated by the state of Montana.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(3) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

Section 3. **Disposition of project.** (1) Prior to July 1, 1982, the department may dispose of the Daly ditch water project by transfer, sale, or other legal conveyance to a person legally qualified to enter into contracts and operate and maintain the project. Preference shall be given to an organization of project water users formed to operate the project.

(2) Upon conveyance of the project, the department shall transfer all water rights, real property, personal property, equipment, fixtures, headgates, structures, canals, dikes, lateral ditches, dams, and reservoirs related to the project.

(3) If the department has entered into an agreement to transfer the project prior to July 1, 1982, but the actual transfer has not been effectuated prior to July 1, 1982, the department shall not abandon the project as provided in [section 4] until December 31, 1982.

Section 4. **Abandonment of project.** (1) If the project is not disposed of as provided in [section 3], the department shall abandon the project no later than December 31, 1982.

(2) The department shall publish notification of intent to abandon the project once a week for 2 consecutive weeks in a newspaper of general circulation in the Hamilton, Montana, area.

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(3) A person to whom project properties revert, if any, may notify the department that he desires to take possession of the abandoned property in its present condition within 30 days after the last date of publication.

(4) The department shall not publish notification of intent to abandon until it has attempted to dispose of the project by transfer, sale, or other legal conveyance.

Section 5. **Operation and maintenance.** The department shall operate and maintain the project until July 1, 1982, or until the project is disposed of or abandoned as provided in this act.

Section 6. **Entry on land.** Any employee or agent of the department authorized by the director may enter upon any land to carry out the purposes of this act, including but not limited to entry to make inspections the department considers necessary of the project, entry to salvage or remove project property, and entry to make physical alterations to project property. The department shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to any property.

Section 7. **Writeoff accounts receivable.** Upon abandonment or disposition of the project, the department shall cancel and write off accounts receivable carried on the books of the department. The department shall establish procedures for canceling and writing off accounts receivable, and the procedures shall include the reporting of the canceling and writing off of the accounts receivable to the next session of the legislature.

Section 8. **Other laws and rules superseded.** This act supersedes other laws and rules. If any provision of this act is in conflict with any other law of this state or any rule adopted thereunder, this act governs and controls and the other law or rule is superseded for the purpose of this act.

Section 9. **Advisory council.** (1) The department shall appoint an advisory council comprised of three legislators from Ravalli County and three representatives of the Daly ditch water users. In addition, the department may appoint one additional legislator to serve on the advisory council.

(2) The advisory council shall make recommendations concerning the disposition of the project pursuant to the provisions of this act, repair of the project, and all questions of operation and maintenance.

(3) The advisory council shall be created as provided in 2-15-122.

(4) The advisory council terminates no later than December 31, 1982.

Section 10. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains

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in effect in all valid applications that are severable from the invalid applications.

Section 11. **Effective date.** This act is effective on passage and approval.

Approved April 10, 1979.

CHAPTER NO. 535

AN ACT TO REQUIRE THE DEPARTMENT OF AGRICULTURE TO ESTABLISH RULES FOR THE APPROVAL OF DUTCH ELM DISEASE CONTROL PROGRAMS OF LOCAL GOVERNMENTS AND ESTABLISH THE ELIGIBILITY OF LOCAL GOVERNMENTS WITH APPROVED PROGRAMS FOR FINANCIAL ASSISTANCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The legislature finds that an epidemic of Dutch elm disease is occurring in Montana which threatens the natural environment. Immediate action is therefore necessary to provide funds to assist local governments in the implementation of Dutch elm disease control programs by conducting reforestation, sanitation, and wood utilization or disposal systems, increasing public awareness of Dutch elm disease, accelerating training of tree inspectors and research for disease prevention, and subsidizing private property owners for the removal of diseased elm trees.

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Department" means the department of agriculture.

(2) "Local government" means any political subdivision, including any city or town, whether exercising self-government powers or general government powers, county, or any combination formed under the Interlocal Cooperation Act.

(3) "Reforestation" means the replacement of elm trees removed from public property as part of an approved disease control program.

(4) "Public property" includes private property within 5 feet of the boulevard or street terrace in any city which has enacted an ordinance on or before July 1, 1981, that prohibits or requires a permit for the planting of trees in the public right-of-way.

(5) "Sanitation" means the identification, inspection, or disruption of a common root system and girdling, trimming, removal, and disposal of dead or diseased wood of elm or oak shade trees.

(6) "Wood utilization or disposal system" means facilities, equipment, or systems used for the removal and disposal of diseased trees.

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Section 3. **Department to adopt rules.** (1) The department shall adopt rules that will apply to local governments. A rule will not apply to a local government if an ordinance is adopted which is more stringent as determined by the department.

(2) The rules shall prescribe control measures to be used to prevent the spread of Dutch elm disease and shall include the following:

(a) qualifications for tree inspectors;

(b) methods to be used for identifying diseased shade trees;

(c) procedures for giving reasonable notice of inspection of private real property;

(d) measures for the removal of any elm tree that may contribute to the spread of Dutch elm disease;

(e) methods of reforestation in areas under an approved Dutch elm disease control program; and

(f) any other rule considered by the department as necessary to insure that approved disease control programs will prevent the spread of Dutch elm disease.

Section 4. **Authority of local government to require removal or to remove diseased elm trees — assessment of costs.** (1) Local governments with Dutch elm disease control programs approved by the department may inspect private real property after giving reasonable notice for the presence of Dutch elm disease.

(2) An owner of the real property on which a diseased elm tree is located may be required to remove or treat the tree within the period of time and in the manner established by the department.

(3) Diseased elm trees that are not removed or treated by approved methods by the department, after issuance of an order to that effect by the local government, may be declared a public nuisance and removed or treated by the local government. The local government may assess an amount up to the actual expense upon the landowner, and the assessment shall be a lien on the property. In addition a local government may assess to the abutting properties up to 50% of the actual expenses of treating or removing with approved methods diseased elm trees located on street terraces or boulevards, and the assessment constitutes a lien on the property.

Section 5. **Approval of disease control programs — eligibility for grants.** The department, after notice and an opportunity for a hearing, shall approve any program for the control of Dutch elm disease submitted to the department that complies with the rules adopted by the department pursuant to [section 3] and that is determined to be an effective program for preventing the spread of Dutch elm disease. A disease control program must be approved before the local government is eligible for grants available in [section 6]. A local government may make application for a grant at the same time approval of a disease control program is sought.

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Section 6. **Grants to local governments — administration — limitations on grants.** (1) The department may, within the limit of appropriations provided, make grants to local governments with approved disease control programs for the partial funding of sanitation and reforestation programs.

(2) The department shall make rules for the administration of grants authorized by this section. The rules shall establish and contain as a minimum:

(a) procedures for grant applications;

(b) conditions and procedures for the administration of grants; and

(c) such other matters as the director may find necessary for the proper administration of the grant program.

(3) Grant payments for wood utilization and disposal systems made by the department pursuant to this section may not exceed 50% of the total cost of the system.

(4) Grants to any local government for sanitation may not exceed 45% of sanitation costs approved by the department, including any amount of sanitation costs paid by special assessments, ad valorem taxes, federal grants, or other funds. A local government may not specially assess a property owner any amount greater than the amount of the tree's sanitation cost minus the amount of the tree's sanitation cost reimbursed by the department.

(5) Grants to local governments for reforestation may not exceed the lesser of 50% of the cost or $40 multiplied by the number of trees planted pursuant to the reforestation program and are limited for any local government in any year to grants for not more than the number of trees removed on public property in the sanitation program in the previous year, except during the first year of any approved disease control program.

(6) Based on estimates of the costs for the succeeding quarter under an approved program of wood utilization and disposal systems, sanitation, and reforestation submitted by a local government, the department shall direct quarterly advance payments to be made by the state to the local government. The department shall direct adjustment of any overestimate in a succeeding quarter. A local government may elect to receive the proceeds of its sanitation and reforestation grants on a periodic cost reimbursement basis.

Section 7. **Subsidies to certain owners.** A local government may provide subsidies to nonprofit organizations, to owners of private residential property of 5 acres or less, to owners of property used for a homestead of more than 5 acres but less than 20 acres, and to nonprofit cemeteries for the approved treatment or removal of diseased elm trees. An owner of property on which elm trees are located may contract with a local government to provide protection against the cost of approved treatment or removal of diseased elm trees or elm trees that will contribute to the spread of elm tree diseases. Under such contracts, the local government shall pay for the removal or approved treatment under such terms and

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conditions as may be determined by the governing body of the local government.

Section 8. **Appointment of tree inspector — certification by the department — provision for decertification.** (1) Each local government with an approved disease control program shall appoint a qualified person to be known as the tree inspector to administer the rules of the department or the more stringent local ordinances concerning elm tree disease in that disease control area. Two or more local governments may jointly appoint a tree inspector.

(2) Upon a determination by the department that a candidate for the position of the inspector is qualified, it shall issue a certificate to the tree inspector that he is so qualified. Any person certified as a tree inspector by the department is authorized to enter and inspect any public or private property in that disease control area that might harbor diseased elm trees, provided prior notice is given as required by rules of the department made pursuant to [section 3].

(3) The department may upon notice and an opportunity for a hearing decertify any tree inspector when it appears that the tree inspector has failed to act competently or in the public interest in the performance of his duties. Nothing in this subsection limits or otherwise affects the authority of the department to dismiss or suspend a tree inspector at its discretion, except as otherwise provided by law.

Section 9. **Financing.** (1) A local government may collect the amount assessed against the property under [section 4] as a special assessment.

(2) After a contract for the sanitation or approved treatment of trees on private property has been let or the work commenced, the local government may issue bonds financed by special assessments imposed upon the private property to defray the expense of the work.

Section 10. **Deposit of proceeds in a separate fund.** The proceeds of any tax levied, assessments and interest collected, or any bonds issued under [section 9] and any grants received under [section 6] must be deposited by the local government in a separate fund and expended only for the purposes authorized in [this act].

Section 11. **Experimental programs.** The department may establish experimental programs for sanitation or treatment of elm tree diseases. The department may make grants to local governments or enter into contracts with municipal, state, or federal agencies in connection with experimental elm tree disease control programs.

Section 12. **Reports to the legislature.** On or before January 31 of each year, the department shall report to the legislature on the preceding year's approved disease control programs and any experimental programs conducted pursuant to [section 12].

Section 13. **Department to accept funds — responsibility and liability limited.** The department is authorized to accept funds from any

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source available for use in this program. The responsibility and liability of the department to conduct or participate in this program shall be limited to the amount of funds available.

Approved April 10, 1979.

CHAPTER NO. 536

AN ACT TO REQUIRE SALARIES OF COUNTY JUSTICES NOT TO BE LESS THAN SALARIES FOR THE CLERK OF COURT; AMENDING SECTION 3-10-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-207, MCA, is amended to read:

"3-10-207. Salaries. *(1)* The board of county commissioners shall set salaries for justices of the peace by resolution. *Salaries must meet the minimum requirements established by this section.*

(2) If the salary of the justice of the peace was determined on a fee basis for the years 1971 and 1972, he shall receive a monthly salary of not less than one-eighteenth of the total fees, civil and criminal, collected by the justice or his predecessor in office during the 2 years 1971 and 1972.

(3) If the salary of the justice of the peace was determined on a nonfee basis for the years 1971 and 1972, the justice shall be paid not less than the highest salary earned by the justice or his predecessor for the years 1971 and 1972.

(4) The salary of the justice of the peace may not be less than the salary for the district clerk of the court in that county, except as provided for in subsection (5).

(5) In the event his court is not open for business full time, the justice's salary shall be commensurate to the workload and office hours of the court."

Approved April 11, 1979.

CHAPTER NO. 537

AN ACT TO CHANGE THE USE OF THE STATE-OWNED NURSING HOME AT GLENDIVE FROM THE CARE AND TREATMENT OF GERIATRIC PERSONS TO THE CARE AND TREATMENT OF ANY PATIENT POPULATION SERVED BY THE DEPARTMENT OF INSTITUTIONS OR THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Glendive nursing home facility.** The state-owned nursing home facility located at Glendive is to be used to provide services to any patient population served by the department of institutions or the department of social and rehabilitation services.

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Section 2. **Powers and duties of the department of institutions, the department of social and rehabilitation services, and state-owned nursing homes.** The department of institutions and the department of social and rehabilitation services:

(1) may operate or contract with a nonprofit corporation that demonstrates expertise in and the capability of providing programs for the patient population to be served by the facility and for the operation and management of nursing homes;

(2) shall ensure that any state-owned nursing homes are in compliance with federal and state regulations;

(3) shall adopt rules for staffing requirements and the admission of patients;

(4) may accept grants, gifts, bequests, and contributions in money or property or any other form from individuals, corporations, associations, or federal, state, and local government agencies for the purposes of establishing and operating nursing homes.

Section 3. **Disposition of facility.** Nothing in [this act] prohibits the disposition of the facility as provided in 77-2-302 if an appropriate use for the facility cannot be found by the department of institutions or the department of social and rehabilitation services.

Section 4. **Codification.** It is intended that sections 1 and 2 be codified as an integral part of Title 53, chapter 20, part 5, and the provisions of Title 53, chapter 20, part 5, apply to sections 1 and 2.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 11, 1979.

CHAPTER NO. 538

AN ACT TO STAGGER ELECTIONS AND TERMS OF OFFICE OF DIRECTORS OF COUNTY WATER AND SEWER DISTRICTS; AMENDING SECTION 7-13-2234; AND REPEALING SECTION 7-13-2224, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-2234, MCA, is amended to read:

"7-13-2234. Term of office. (1) All directors, elected or appointed, shall hold office until the election and qualification or appointment and qualification of their successors.

(2) *Except as otherwise provided the* term of office of directors elected under the provisions of this part and part 23 shall be 4 years from and after the date of their election.

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(3) Directors elected at the first regular election under this part and part 23 after July 1, 1979, shall serve as follows:

(a) In districts requiring the election of five elected directors, three directors shall serve for a term of 2 years and two for a term of 4 years.

(b) In districts requiring the election of three elected directors, one director shall serve for a term of 2 years and two for a term of 4 years.

(c) At their first meeting, the directors shall determine by lot which of them shall serve the term or terms less than 4 years. Every term thereafter shall be for a period of 4 years.

(4) The term of office of directors appointed by said mayor or mayors or by said board of county commissioners shall be 6 years from and after the date of appointment. Directors to be first appointed under the provisions of this part and part 23 shall be appointed within 90 days after the formation of the district."

Section 2. **Repealer.** Section 7-13-2224, MCA, is repealed.

Approved April 11, 1979.

CHAPTER NO. 539

AN ACT TO PROHIBIT CERTAIN ELECTIONEERING PRACTICES AND TO PROVIDE PENALTIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Solicitation of votes on election day.** (1) It is unlawful for a person or a political committee to place an advertisement supporting or opposing a candidate or a ballot issue for use on election day. Failure to remove billboards, yard signs, or posters on election day is not considered a violation.

(2) A person convicted of solicitation of votes on election day is guilty of a misdemeanor and shall be imprisoned in the county jail for a term not to exceed 6 months or be fined not to exceed $1,000, or both.

Section 2. **Political criminal libel.** (1) It is unlawful for any person to make or publish any false statement or charge reflecting on any candidate's character or morality. A person making such a statement with knowledge of its falsity or with a reckless disregard as to whether it is true or not is guilty of a misdemeanor.

(2) In addition to the misdemeanor penalty of subsection (1), a successful candidate who is adjudicated guilty of violating this section may be removed from office as provided in 13-35-106 and 13-35-107.

Approved April 11, 1979.

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CHAPTER NO. 540

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS CONCERNING STATE FINANCE; REPEALING SECTION 17-2-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-2-101, MCA, is amended to read:

"17-2-101. Title and purpose. Sections 17-2-101 through 17-2-107 may be cited as the "Treasury Fund Structure Act". The purpose of *these sections* is to simplify the accounting system and treasury fund structure of the state, to make possible the full utilization of modern accounting methods, to provide the legislature with a greater measure of control over public moneys, and to enable the financial records of the state to accurately reflect governmental costs and revenues."

Section 2. Section 17-2-102, MCA, is amended to read:

"17-2-102. Fund structure. There are in the state treasury only the following funds:

(1) General fund. The general fund consists of all moneys deposited in the state treasury which are available to defray the general costs of state government and which do not fall into one of the categories enumerated below.

(2) Earmarked revenue fund. The earmarked revenue fund consists of moneys from state sources deposited in the state treasury which are specifically earmarked by law for the purpose of defraying the costs of a particular agency, program, or function of state government.

(3) Sinking fund. The sinking fund consists of moneys deposited in the state treasury for the payment of principal and interest and the accumulation of reserves for bonded or other indebtedness.

(4) Federal and private revenue fund. The federal and private revenue fund consists of all expendable moneys deposited in the state treasury from federal or private sources, including trust income, which are to be used for the operation of state government.

(5) Federal and private grant clearance fund. The federal and private grant clearance fund consists of all expendable moneys deposited in the state treasury from federal or private sources, including trust income, which the state disburses to persons, associations, or units of local government. When the final disposition of expendable federal or private moneys is unknown at the time of receipt, they shall be deposited in the federal and private grant clearance fund, but those moneys to be used for the operation of state government shall be transferred to the federal and private revenue fund prior to disbursement.

(6) Bond proceeds and insurance clearance fund. The bond proceeds and insurance clearance fund consists of:

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(a) moneys deposited in the state treasury obtained from the sale of bonds, certificates of indebtedness, or similar obligations;

(b) moneys indemnifying the state for loss or damage of property.

(7) Revolving fund. The revolving fund consists of moneys used to:

(a) defray reimbursable expenditures; and

(b) supply working capital for enterprise-type operations.

(8) Trust and legacy fund. The trust and legacy fund consists of moneys deposited in the state treasury which the state administers as a trustee pursuant to a law or a trust agreement restricting the use of the money for a specified purpose and prohibiting the expenditure of the principal for a period of at least 5 years.

(9) Agency fund. The agency fund consists of moneys deposited in the state treasury which are held and disbursed by the state as a custodian or agent and includes but *is* not limited to moneys held for the purpose of paying insurance or retirement benefits, moneys arising from lost or unclaimed property, and other moneys of a similar nature.

(10) University current fund. The university current fund consists of moneys deposited in the state treasury which are used to pay current operating costs relating to instruction, research, public service, and allied support operations and programs conducted within the Montana university system. The financial activities of the university current fund shall be subdivided, for operation purposes, into the four following subfunds to serve the purpose indicated:

(a) The unrestricted subfund segregates that portion of the university current fund's financial resources that can be expended for general operations and is free of externally imposed restrictions, except those imposed by the legislature.

(b) The restricted subfund segregates that portion of the university current fund's financial resources that can be expended for general operations but only for purposes imposed by sources external to the board of regents and the legislature.

(c) The designated subfund segregates that portion of the university current fund's financial resources that is associated with general operations but is separately classified in order to accumulate costs that are to be recharged as allocated to other funds or subfunds; identifies financial activities related to special organized activities of educational departments wherein the activity is fully supported by supplemental assessments; and identifies special supply and facility fees that are approved for collections beyond normal course fees and their disposition.

(d) The auxiliary subfund segregates that portion of the university current fund's financial resources that is devoted to providing essential on-campus services primarily to students, faculty, or staff wherein a fee, which is directly related to but does not necessarily equal the cost of the service provided, is charged to the consumer.

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(11) University student loan fund. The university student loan fund consists of moneys deposited in the state treasury which may be loaned to students, faculty, or staff for purposes related to education, organized research, or public services by the Montana university system.

(12) University endowment fund. The university endowment fund consists of moneys deposited in the state treasury by the Montana university system wherein the principal portion of the amount received is nonexpendable but is available for investment, thus producing consumable income. Expendable earnings on endowment funds are to be transferred to appropriate operating funds pursuant to prevailing administrative requirements.

(13) University annuity and life income fund. The annuity and life income fund consists of moneys deposited in the state treasury by the Montana university system under an agreement whereby the moneys are made available on condition that the receiving unit of the Montana university system binds itself to pay stipulated amounts periodically to the donor or others designated by the donor over a specified period of time.

(14) University plant fund. The university plant fund consists of those financial resources allocated to or received by the Montana university system for capital outlay purposes or to retire long-term debts associated with construction or acquisition of fixed assets and the net accumulative results of these activities.

(15) University agency fund. The university agency fund consists of moneys deposited in the state treasury wherein the Montana university system acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff, and qualified organizations."

Section 3. Section 17-3-1001, MCA, is amended to read:

"17-3-1001. State institutions which may take by gift, bequest, or grant. (1) The state of Montana, units of the *Montana* university *system*, the *Montana* school for the deaf and blind, all institutions in the department of institutions, and any institutions now created or established or which may hereafter be created or established and supported in whole or in part by the state for any purpose *may* accept gifts, donations, grants, devises, or bequests of real or personal property from any source. Gifts, donations, grants, bequests, or devises may be made directly to the state, in the name of any of *the* institutions, to any officer or board of *the* institutions, or to any person in trust for *the* institutions.

(2) In the event *it is* made directly to any institution or to any officer or board of any institution, *the* gift, donation, grant, devise, or bequest *is* a gift, donation, grant, devise, or bequest to the state and shall be administered and used by the state for the particular purpose for which *it* was given, donated, granted, bequeathed, or devised. In the event no particular purpose is mentioned in *the* gift, grant, devise, or bequest, then *it* shall be used for the general support, maintenance, or improvement of such institution by the state."

Section 4. Section 17-5-1001, MCA, is amened to read:

"17-5-1001. Action to restrain bond issues. (1) No action *may* be brought for the purpose of restraining the issuance and sale of bonds

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or other obligations by the state of Montana or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations after the expiration of 60 days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of 60 days from the date of the order, resolution, or ordinance authorizing the issuance thereof, on account of any defect, irregularity, or informality in giving notice of or *in* holding the election. *No* defense based upon any such defect, irregularity, or informality *may* be interposed in any action unless brought within this period.

(2) This section applies but is not limited to any action *or* defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon."

Section 5. Section 17-6-103, MCA, is amended to read:

"17-6-103. Security for deposits of public funds. The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:

(1) direct obligations of the United States;

(2) securities as to which the payment of principal and interest is guaranteed by the United States;

(3) securities issued or fully guaranteed by the following agencies of the United States *or their successors*, whether or not guaranteed by the United States:

(a) commodity credit corporation;

(b) federal intermediate credit banks;

(c) federal land bank;

(d) bank for cooperatives;

(e) federal home loan banks;

(f) federal national mortgage association;

(g) government national mortgage association;

(h) small business administration; and

(i) federal housing administration (not including insured mortgages);

(4) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;

(5) revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faith and credit of such subdivision;

(6) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state issued in evidence of claims in an amount which, with all other claims on the same fund, do not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;

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(7) obligations of housing authorities of the state secured by a pledge of annual contributions or by a loan agreement made by the United States or any agency thereof providing for contributions or a loan sufficient with other funds pledged to pay the principal of and interest on the obligations when due. Subject to rules prescribed by the department of community affairs, the bonds and other obligations made eligible for investment in 32-1-424(3) and 7-15-4505 may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required or may by law be deposited as security.

(8) general obligation bonds of other states and of municipalities and counties of other states; and

(9) undertaking or guarantees issued by a surety company authorized to do business in the state."

Section 6. Section 17-6-104, MCA, is amended to read:

"17-6-104. Interest on deposits — conformity with federal law. (1) The board of investments may require the payment of quarter annual interest on daily balances of collected funds at a rate to be agreed upon between the depository banks, building and loan associations, and savings and loan associations and the board of investments, which rate shall be fixed semiannually during the months of July and January of each year.

(2) The interest requirements on deposits of public funds *made* under the laws of the state of Montana or otherwise by county *or* city *treasurers or* town *clerks may* not at any time be in violation of any act of the congress of the United States or of any rule or regulation of the federal reserve system, federal home loan bank system, or the federal deposit insurance corporation, federal savings and loan insurance corporation, or any other fiscal agency of the United States of which the banks, building and loan associations, or savings and loan associations of this state may be members or debtors."

Section 7. **Repealer.** Section 17-2-203, MCA, is repealed.

Approved April 12, 1979.

CHAPTER NO. 541

AN ACT TO PROVIDE PROPERTY TAX RELIEF FOR OWNERS OF CERTAIN REAL PROPERTY DESTROYED BY NATURAL DISASTER; PROVIDING THAT THE DEPARTMENT OF REVENUE SHALL ADJUST THE TAX ON DESTROYED PROPERTY ON THE BASIS OF THE NUMBER OF DAYS THE PROPERTY EXISTED BEFORE ITS DESTRUCTION; AMENDING SECTION 15-16-601, MCA, AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reduction of property tax for property destroyed by natural disaster.** (1) The department of revenue shall, upon showing by a taxpayer that some or all of the improvements on his real property

have been destroyed to such an extent that such improvements have been rendered unsuitable for their previous use by natural disaster, adjust the tax due and payable for the current year on the property under 15-16-102 as provided in subsection (2) of this section.

(2) To determine the amount of tax due for destroyed property, the county treasurer shall multiply the amount of tax levied and assessed on the property for the year by the ratio that the number of days in the year that the property existed before destruction bears to 365.

(3) This section does not apply to delinquent taxes owed on the destroyed property for a year prior to the year in which the property was destroyed.

(4) For the purposes of this section, "natural disaster" includes but is not limited to fire, flood, earthquake, or wind.

Section 2. **Refund of tax paid.** (1) If the property is destroyed after the property taxes have been paid for the current year, the taxpayer is entitled to a refund of the amount of tax paid in excess of the adjusted amount required by [section 1].

(2) A refund shall be made as provided for in 15-16-601.

Section 3. Section 15-16-601, MCA, is amended to read:

"15-16-601. Taxes or penalties illegally collected to be refunded. (1) Any taxes, per centum, and costs paid more than once or erroneously or illegally collected *or any amount of tax paid for which a taxpayer is entitled to a refund under [section 2] or* any part or portion of taxes paid which were mistakenly computed on government bonus or subsidy received by the taxpayer may, by order of the board of county commissioners, be refunded by the county treasurer. Whenever any payment shall have been made to the state treasurer as provided in 15-1-504 and it shall afterwards appear to the satisfaction of the board of county commissioners that a portion of the money so paid should be refunded as herein provided, said board of county commissioners may refund such portion of said taxes, penalties, and costs so paid to the state treasurer, and upon the rendering of the report required by 15-1-505 the county clerk and recorder shall certify to the state auditor, in such form as the state auditor may prescribe, all amounts so refunded, and in the next settlement of the county treasurer with the state, the state auditor shall give the county treasurer credit for the state's portion of the amounts so refunded.

(2) When any part of the taxes, penalties, or costs hereinbefore referred to were levied in behalf of any school district or municipal or other public corporation and collected by the county treasurer, the same may be refunded upon the order of the board of county commissioners.

(3) No order for the refund of any taxes, per centum, or costs under this section shall be made except upon a claim therefor, verified by the person who has paid such tax, penalty, or costs or his guardian or, in case of his death, by his executor or administrator, which claim must be filed within 10 years after the date when the second half of such taxes would have become delinquent if the same had not been paid.

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(4) All refunds ordered to be paid by the board of county commissioners shall be paid by the county treasurer out of the general fund of the county, and the county treasurer shall then make such transfers from other county funds and from state, school district, and other public corporation funds in his possession as may be necessary to reimburse the county general fund for payments made therefrom on account of such other funds."

Section 4. **Effective date.** This act is effective on passage and approval and applies to all taxable years beginning after December 31, 1978.

Approved April 12, 1979.

CHAPTER NO. 542

AN ACT TO PROVIDE FOR A FOURTH DISTRICT COURT JUDGE IN THE FOURTH JUDICIAL DISTRICT; AMENDING SECTION 3-5-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-102, MCA, is amended to read:

"3-5-102. Number of judges. In each judicial district there must be the following number of judges of the district court:

(1) in the 1st, 2nd, 11th, 16th, and 18th districts, two judges each;

(2) in the 8th *district*, three judges;

(3) in the *4th and* 13th *districts*, four judges *each*;

(4) in all other districts, one judge each."

Section 2. **New judge — how selected.** The judgeship created by this act shall be filled initially at the 1980 general election, and the individual elected shall take office on the first Monday of January, 1981.

Section 3. **Location of principal office.** The principal office of the judgeship created by [this act] shall be in Lake County. The chief judge of the district shall have authority to assign a judge to such office.

Approved April 12, 1979.

CHAPTER NO. 543

AN ACT TO GENERALLY REVISE THE STATE LAWS RELATING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-104, 41-3-201 THROUGH 41-3-205, 41-3-301, 41-3-302, 41-3-404, AND 41-4-102, MCA.

WHEREAS, Governor Judge appointed a task force to recommend ways in which services to families in which abuse and neglect are occurring could be improved; and

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WHEREAS, the task force recognizes that the most crucial actions toward improving services to families must be taken by the local community; and

WHEREAS, the task force recognizes that child abuse and neglect is a multifaceted problem and that no one agency or discipline, by itself, has the resources or perspective to resolve or contain the problem; and

WHEREAS, the task force has heard testimony from numerous individuals, legislative staff, and other persons who deal with abused and neglected children and their families; and

WHEREAS, existing child abuse and neglect laws do not meet requirements allowing Montana to qualify for federal grants under Public Law 93-247.

THEREFORE, it is the intent of this bill to address the problems facing the children, families, and communities of this state regarding child abuse and neglect.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-101, MCA, is amended to read:

"41-3-101. Declaration of policy. (1) It is hereby declared to be the policy of the state of Montana to:

(a) insure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible; and

(d) preserve the unity and welfare of the family whenever possible.

(2) It is the policy of this state to provide for the protection of children whose health and welfare are *or may be* adversely affected and further threatened by the conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life wherever *appropriate.*"

Section 2. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. *As used in this chapter, the following definitions apply:*

(1) "Child" or "youth" means any person under 18 years of age.

(2) *An "abused or neglected child" means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare.*

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(3) *"Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:*

(a) inflicts or allows to be inflicted upon the child physical or mental injury, including injuries sustained as a result of excessive corporal punishment;

(b) commits or allows to be committed a sexual assault against the child or exploits the child or allows the child to be exploited for sexual purposes;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or health care, though financially able to do so or offered financial or other reasonable means to do so; or

(d) abandons the child by leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future.

(4) *"Adequate health care" means any medical or nonmedical remedial health care permitted or authorized under state law.*

(5) "Threatened harm" means imminent risk of harm.

(6) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(7) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(8) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(9) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for his necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody of the child and whose legal custody has been transferred to a licensed agency.

(10) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section."

Section 3. Section 41-3-104, MCA, is amended to read:

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"41-3-104. Payment for support of youth in need of care — reimbursement by county. (1) Whenever agreements are entered into by the department of social and rehabilitation services for placing *a youth in need of care* in *a licensed* family foster *home, child care agency, group home, or private treatment facility*, the department shall pay by its check or draft each month from any funds appropriated for that purpose the entire amount agreed upon for board, clothing, personal needs, and room of such children.

(2) On or before the 20th of each month the department shall present a claim to the county of residence of such children for one-half the payments so made during the month. The county must make reimbursement to the department within 20 days after such claim is presented."

Section 4. **Interagency cooperation.** To effectuate the purposes of this chapter, the county welfare department shall cooperate with and shall seek the cooperation and involvement of all appropriate public and private agencies, including health, education, social services, and law enforcement agencies; juvenile courts; and any other agency, organization, or program providing or concerned with human services related to the prevention, identification, or treatment of child abuse or neglect. Such cooperation and involvement may not include joint case management but may include joint policy planning, public education, information services, staff development, and other training.

Section 5. **Child protection teams.** The county attorney or the county welfare department may convene one or more temporary or permanent interdisciplinary child protective teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to the child and his family. The supervisor of child protective services of the county welfare department or his designee shall serve as the team's coordinator. Members shall include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney.

Section 6. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) *When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect that a child known to them in their professional or official capacity is an abused or neglected child, they shall report the matter promptly to the department of social and rehabilitation services or its local affiliate, which then shall notify the county attorney of the county where the child resides.*

(2) Professionals and officials required to report are:

(a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

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(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, licensed day-care center, or any other licensed child-care facility;

(f) foster care, residential, or institutional worker; or

(g) a peace officer or other law enforcement official.

(3) Any person may make a report under this section if he knows or has reasonable cause to suspect that a child is abused or neglected.

(4) No person listed in subsection (2) may refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege if the person came into possession of such information as a result of his treatment of the child.

(5) The reports referred to under this section shall contain:

(a) the names and addresses of the child and his or her parents or other persons responsible for his or her care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible therefor; and

(d) the facts which led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

Section 7. **Procedure in case of child's death.** (1) Any person or official required to report by law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall report his suspicion to the appropriate medical examiner or law enforcement officer. Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or neglect may report his suspicion to the appropriate medical examiner or law enforcement officer.

(2) The medical examiner or coroner shall investigate the report and submit his findings, in writing, to the local law enforcement agency, the appropriate county attorney, the local child protective service, and, if the person making the report is a physician, the physician.

Section 8. Section 41-3-202, MCA, is amended to read:

"41-3-202. Action on reporting. (1) *Upon receipt of a report as required by 41-3-201 that a* child *is or has been abused or neglected, a* social worker *or the county attorney or a peace officer* shall *promptly* conduct a thorough investigation into the home of the child involved *or any other place where the child is present* and into the circumstances surrounding the injury of the child and into all other matters which in the discretion of the *investigator are* relevant to the investigation.

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(2) *The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer shall, consistent with reasonable medical practice, have the right of access to the child for interviews, photographs, and securing physical evidence and have the right of access to relevant hospital and medical records pertaining to the child.*

(3) If from the investigation it appears that the child suffered abuse or neglect, the department shall provide protective services to the child and may provide protective services to any other child under the same care. The department will advise the county attorney of its investigation.

(4) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department. The department shall maintain a record system containing child abuse and neglect cases.

(5) Any person reporting abuse or neglect which involves acts or omissions on the part of a public or private residential institution, home, facility, or agency shall be responsible for ensuring that the report is made to the department of social and rehabilitation services, its local affiliate, and the county attorney of the county in which the facility is located."

Section 9. Section 41-3-203, MCA, is amended to read:

"41-3-203. Immunity from liability. Anyone *investigating or reporting any incident of child abuse or neglect,* participating in *resulting* judicial proceedings, *or furnishing hospital or medical records as required by 41-3-202 is* immune from any liability, civil or criminal, that might otherwise be incurred or imposed, unless the person acted in bad faith or with malicious purpose."

Section 10. Section 41-3-204, MCA, is amended to read:

"41-3-204. Admissibility and preservation of evidence. *(1)* In any proceeding resulting from a report made pursuant to the provisions of this chapter or in any proceeding where *the* report or *its* contents are sought to be introduced into evidence, *the* report or *its* contents or any other fact related *to the report* or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a privilege *related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.*

(2) Any person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section shall be paid by the county child protective service agency.

(3) When any person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, he must include in his report either a written description or photographs of the evidence.

(4) A physician, either in the course of his providing medical care to a minor or after consultation with child protective services, the county

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attorney, or a law enforcement officer may require x-rays to be taken when in his professional opinion there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section shall be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section shall be sent to the local child protective services agency at the time the written confirmation report is sent or as soon thereafter as is possible."

Section 11. Section 41-3-205, MCA, is amended to read:

"**41-3-205. Confidentiality.** *(1)* The case records of the department of social and rehabilitation services *and* its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter *and all records concerning reports of child abuse and neglect* shall be kept confidential *except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.*

(2) Records may be used by interagency interdisciplinary child protection teams as authorized under [section 6] for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan. Members of the team are required to keep information about the subject individuals confidential.

(3) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds such disclosure to be necessary for the fair resolution of an issue before it.

(4) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies."

Section 12. Section 41-3-301, MCA, is amended to read:

"**41-3-301. Emergency protective service.** (1) Any *child protective* social worker of the department of social and rehabilitation services, the county welfare department, a peace officer, or *the* county attorney who has reason to believe any youth is in immediate or apparent danger of *harm* may immediately remove the youth and place him in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate *legal action.*

(2) *No child who has been removed from his home or any other place for his protection or care may be placed in a jail.*

(3) *A petition shall be filed within 48 hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.*

(4) The department of social and rehabilitation services and the county welfare department shall make such necessary arrangements for the youth's well-being as are required prior to the court hearing."

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Section 13. Section 41-3-302, MCA, is amended to read:

"41-3-302. Responsibility of providing protective services. *(1)* The department of social and rehabilitation services and the county welfare department shall have the primary responsibility to provide the protective services authorized by this chapter and shall have the authority pursuant to this chapter to take temporary, limited, or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The county welfare department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week."

Section 14. **Guardian ad litem.** In every judicial proceeding the court shall appoint for any child alleged to be abused or neglected a guardian ad litem who, whenever possible, shall be an attorney. When necessary the guardian ad litem may serve at public expense.

Section 15. **Penalty for failure to report.** Any person, official, or institution required by law to report known or suspected child abuse or neglect or required to perform any other act who fails to do so or who prevents another person from reasonably doing so is civilly liable for the damages proximately caused by such failure or prevention.

Section 16. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 17. **Codification.** (1) It is intended that sections 5 and 6 of this act be codified as an integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, apply to sections 5 and 6 of this act.

(2) It is intended that section 8 of this act be codified as an integral part of Title 41, chapter 3, part 2, and the provisions of Title 41, chapter 3, apply to section 8 of this act.

(3) It is intended that sections 15 and 16 of this act be codified as an integral part of Title 41, chapter 3, part 3, and the provisions of Title 41, chapter 3, apply to sections 15 and 16 of this act.

Section 18. Section 41-4-102, MCA, is amended to read:

"41-4-102. Financial responsibility. Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of Title 40, chapter 5 (Revised Uniform Reciprocal Enforcement of Support Act) and 41-3-104, 41-3-404, and 41-3-405 also may be invoked."

Section 19. Section 41-3-404, MCA, is amended to read:

"41-3-404. Hearing. (1) In a hearing on a petition under 41-3-401 *or 41-3-402*, the court shall determine whether said youth is *a youth in need of care* and ascertain, as far as possible, the cause.

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(2) The court shall hear evidence regarding the residence of the child, whereabouts of the parents, guardian, or nearest adult relative, the financial ability of *the* parents or parent to pay the cost of care of the child, whether or how long the child has been maintained in whole or in part by public or private charity, and may take into consideration the report of the county welfare department filed with the clerk of the court, pursuant to 41-3-405.

(3) In all civil and criminal proceedings relating to abuse, neglect, or dependency, *none of the privileges related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803,* apply."

Approved April 12, 1979.

CHAPTER NO. 544

AN ACT TO INCLUDE VALID WRITTEN INTERAGENCY OR INTRA-AGENCY SERVICE AGREEMENTS FOR SYSTEMS DEVELOPMENT IN FISCAL YEAREND OBLIGATIONS; AMENDING SECTION 17-7-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-302, MCA, is amended to read:

"17-7-302. Encumbrance of fiscal yearend obligations. Any valid obligation not paid within the fiscal year, *including valid written interagency or intra-agency service agreements for systems development,* shall be encumbered for payment thereof at the end of each fiscal year in the department of administration's accounts. An appropriation shall be deemed to be encumbered at the time and to the extent that a valid obligation against the appropriation is created, except construction contracts which, upon approval of the department of administration, may be encumbered for only that portion of the contract for which services or materials have been received by the fiscal year's end."

Approved April 12, 1979.

CHAPTER NO. 545

AN ACT TO ESTABLISH A COUNTY COMPENSATION BOARD WHICH SHALL DEVELOP A COMPENSATION SCHEDULE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **County compensation board.** (1) There is a state board of county elected officials' compensation. The board is composed of eight members, who are appointed by the governor in the following manner:

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(a) one member who must be a county commissioner recommended by the Montana association of counties;

(b) one member who must be a county attorney, recommended by the Montana county attorneys' association;

(c) one member who must be a county superintendent of schools, recommended by the Montana association of county superintendents;

(d) one member who must be a clerk of the district court, recommended by the Montana clerk of courts association;

(e) one member who must be an assessor, recommended by the Montana association of county assessors;

(f) one member who must be a county treasurer, recommended by the Montana county treasurers association;

(g) one member who must be a county clerk and recorder, recommended by the Montana clerk and recorders association; and

(h) one member who must be a sheriff, recommended by the Montana sheriffs and peace officers association.

(2) The board is allocated to the department of community affairs for administrative purposes only, as provided in 2-15-121.

Section 2. **Meetings of the board — officers.** (1) The day of the first meeting of the board shall be designated by the governor.

(2) The governor shall call a meeting of the board on or before the second Monday of November, 1979. The board may meet as many times thereafter as necessary to conduct the business of the board.

(3) The board shall elect a chairman and a vice-chairman at the first meeting.

Section 3. **Board administration.** The department of community affairs shall provide services necessary for the board's business.

Section 4. **Board term of office — vacancies.** (1) Members of the board shall serve until the final day of the regular session of the 47th legislature.

(2) A vacancy shall be filled in the same manner as the original appointment.

Section 5. **Duties.** The board shall:

(1) review the compensation paid county elected officials in Montana; in reviewing compensation, the board shall consider the salaries paid in Montana, other states, and private enterprise and such other factors as may be pertinent to the board's duties;

(2) recommend to the 47th legislature, equitable statewide salaries for the various elected county officials, taking into consideration the duties, responsibilities, personal inconveniences, and other such factors the board considers to be pertinent; and

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(3) recommend to the 47th legislature at least one plan for compensating elected county officials that would provide continuing, proper salaries and that would take into consideration cost-of-living factors or other significant factors the board feels may reduce the need for regular legislation setting the salaries of locally elected county officials.

Approved April 12, 1979.

CHAPTER NO. 546

AN ACT PROVIDING FOR THE REGULATION OF THE ELECTRICAL PROFESSION BY REESTABLISHING THE STATE ELECTRICAL BOARD IN THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING UNDER EXISTING STATUTORY AUTHORITY AND RULES; REVISING THE LICENSURE PROVISIONS; PERMITTING THE BOARD TO SET FEES; CREATING A CLASS OF RESIDENTIAL ELECTRICIANS; AMENDING SECTIONS 2-8-103, 2-15-1654, 37-68-102, 37-68-103, 37-68-301, 37-68-302, 37-68-305 THROUGH 37-68-308, 37-68-310 THROUGH 37-68-313, 37-68-321, AND 50-60-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Board reestablishment.** The state electrical board created by 2-15-1654 is reestablished for a period of 6 years pursuant to 2-8-122.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of public accountants, department of professional and occupational licensing, created by 2-15-1641;

(c) board of architects, department of professional and occupational licensing, created by 2-15-1651;

(d) state banking board, department of business regulation, created by 2-15-1803;

(e) board of professional engineers and land surveyors, department of professional and occupational licensing, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the investment commissioner, state auditor's office, created by 2-15-1901;

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(h) board of landscape architects, department of professional and occupational licensing, created by 2-15-1652;

(i) board of county printing, department of community affairs, created by 2-15-1102;

(j) board of plumbers, department of professional and occupational licensing, created by 2-15-1655;

(k) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(l) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(m) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

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(n) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(t) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(u) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish and game, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631;

(j) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(k) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632."

Section 3. Section 2-15-1654, MCA, is amended to read:

"2-15-1654. State electrical board. (1) There is a state electrical board.

(2) The board consists of five members appointed by the governor with the consent of the senate, who shall be residents of this state. *Two members* of the board shall represent the public. *Two members of the board shall be licensed electricians. One member shall be a master licensed electrical contractor.*

(3) The members of the board shall serve for a term of 5 years with their terms of office so arranged that one term expires on July 1 of each year.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 37-68-102, MCA, is amended to read:

"37-68-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the state electrical board provided for in 2-15-1654.

(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(3) "Electrical contractor" means a person, firm, partnership, corporation, association, or combination of these who undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power. A registered electrical engineer who plans or designs electrical installations is not an electrical contractor.

(4) "Journeyman electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes under the rules governing this work.

(5) "Master electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, power, and other purposes under the rules governing this work.

(6) "Residential electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes in residential construction consisting of less than five living units in a single structure under the rules governing this work."

Section 5. Section 37-68-103, MCA, is amended to read:

"37-68-103. Exemptions. (1) Nothing in this chapter shall be deemed to apply to the installation, alteration, or repair of electrical signal

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or communications equipment owned or operated by a public utility or a city.

(2) The licensing or inspection provisions of this chapter do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer, nor do they apply to line work on the business premises of the employer or to ordinary and customary in-plant or on-site installations, modifications, additions, or repairs.

(3) Nothing in this chapter shall be construed to require an individual to hold a license while or for doing electrical work on his own property or residence provided that said property or residence is maintained for his own use.

(4) An individual, firm, partnership, or corporation may engage in business as an electrical contractor without an electrician's license if all electrical work performed by such individual, firm, partnership, or corporation is under the direction, control, and supervision of a licensed master electrician *or under the direction, control, and supervision of a journeyman electrician for residential construction consisting of less than five living units in a single structure.*

(5) Any person who plugs in an electrical appliance where an approved electrical outlet is already installed shall not be considered as an installer.

(6) No provisions of this chapter shall in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected."

Section 6. Section 37-68-301, MCA, is amended to read:

"37-68-301. License required to engage in electrical work. A person may not engage in or work at the business, trade, or calling of electrical contractor, *residential electrician,* journeyman electrician, or master electrician in this state until he has received from the department a license or permit to work as an electrical contractor, *residential electrician,* journeyman electrician, or master electrician."

Section 7. Section 37-68-302, MCA, is amended to read:

"37-68-302. Unauthorized use of title. No person, firm, partnership, corporation, or association shall assume or use the title or designation of licensed master electrician, licensed journeyman electrician, *or residential electrician* unless qualified and licensed under this chapter."

Section 8. Section 37-68-305, MCA, is amended to read:

"37-68-305. Journeyman and residential electricians — application — qualifications — contents of examination. (1) An applicant for a journeyman electrician's license shall furnish written evidence that he has had at least 4 years' apprenticeship in the electrical trade or 4 years' practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power. Applications for license and notice to the applicant shall be made and

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given as in the case of master electricians' licenses. The written examination for a journeyman's license shall consist of at least 30 questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(a) the Ohm's law;

(b) the national electrical code;

(c) layout and practical installation of electrical circuits.

(2) An applicant for a residential electrician's license shall furnish written evidence that he has had at least 2 years' apprenticeship in the electrical trade or 2 years' practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power in residential construction consisting of less than five living units in a single structure. Application for license and notice to the applicant is made and given as in the case of master electricians' licenses. The written examination for a residential electrician's license consists of at least 30 questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(a) the Ohm's law;

(b) the national electrical code;

(c) layout and practical installation of electrical circuits in residential construction consisting of less than five living units in a single structure."

Section 9. Section 37-68-306, MCA, is amended to read:

"**37-68-306. Temporary permits pending examination.** The board may authorize the department to issue a temporary permit to engage in the work of a master electrician, journeyman electrician, *or residential electrician* to an applicant who furnishes evidence satisfactory to the board that he has the required experience to qualify for the examination and who pays the fee. A temporary permit continues in effect only until the next examination is given and may be revoked by the board at any time. If the applicant is granted a license, a fee paid for the temporary permit shall be applied to the fee required for a license."

Section 10. Section 37-68-307, MCA, is amended to read:

"**37-68-307. Examination procedure — issuance of master, journeyman, or residential electrician's license — expiration.** (1) To insure impartiality, the examination for either the master's or journeyman's license shall be by numbers drawn by lot. A paper may not be marked with the name of an applicant, but shall be anonymously graded by the department. The examination passing grade is 75%.

(2) If it is determined that the applicant has passed the examination, the department, on payment by the applicant of the fee, shall issue to the applicant a license which authorizes him to engage in the business, trade, or calling of a *residential electrician,* journeyman electrician, or master electrician.

(3) Each original license expires on the July 15 which is at least 1 year but not more than 2 years subsequent to the date of issuance."

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Section 11. Section 37-68-308, MCA, is amended to read:

"37-68-308. Licensure without examination of persons licensed locally. The board may authorize the department to issue a license as a master electrician, journeyman electrician, *or residential electrician* to an applicant without written examination on satisfactory proof that the applicant has the qualifications to apply for a license under this chapter and is the holder of a valid license issued by a city or other political subdivision of this state which provides for the examination and licensing of electricians."

Section 12. Section 37-68-310, MCA, is amended to read:

"37-68-310. Annual renewal. Licenses of *residential electricians,* journeyman electricians, or master electricians, unless they have been suspended or revoked by the board, shall be renewed for a period of 1 year by the department on application for renewal made to the department prior to July 15 of the year in which the prior license expired and on the payment of an annual renewal fee. If application for renewal is not made prior to July 15, an additional fee of $5 shall be paid on account of the delinquency in renewal. All applications for renewal must be made prior to August 15 of that year, otherwise the license is forfeited and the applicant is required to pass the examination and pay the fees required of applicants for original licenses."

Section 13. Section 37-68-311, MCA, is amended to read:

"37-68-311. Examination fee — annual fee — specific exemption for apprentices. (1) Master electricians who are not electrical contractors and journeyman *or residential* electricians installing or intending to install for hire electric wiring or equipment to convey electric current or apparatus to be operated by this current shall make application for a license to the department. The application shall be on a form furnished by the department and accompanied by an examination fee *set by the board.* The forms shall state the applicant's full name, his address, the extent of his experience, and other information required by the board. If the applicant has complied with the rules adopted by the board and, being qualified, has successfully completed the examination, he shall pay to the department an annual license fee *set by the board* for a master electrician's license or for a journeyman *or a residential* electrician's license, and upon receipt of *the* fee the department shall issue the proper license to the applicant.

(2) A person serving a 4-year electrician apprenticeship under the supervision of a licensed electrician is exempt from the licensing provision of this section during training. Credit for the time spent in an electrical school shall be given to the master electrician, journeyman electrician, *residential electrician,* or apprentice, up to a total of 2 years, on the 4-year requirement."

Section 14. Section 37-68-312, MCA, is amended to read:

"37-68-312. Electrical contractor's license — application — issuance — fees — renewal. Each electrical contractor shall, before July 1 of each year, file with the department an application in writing for

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each firm operated by him in this state to obtain a license. A license may not be issued until the applicant meets the requirements and has paid to the department a license fee *set by the board* for each firm operated by him. Licenses shall bear the date of issue and expire on July 1 following the date of issue. An electrical contractor licensed under this chapter is entitled to have his license renewed for the ensuing year by payment to the department of *the license* fee before the date of expiration of the license."

Section 15. Section 37-68-313, MCA, is amended to read:

"37-68-313. Reasonable fees — deposit of money collected. *All fees established by the board under this chapter must be reasonably related to the respective program costs.* Money collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board."

Section 16. Section 37-68-321, MCA, is amended to read:

"37-68-321. Suspension or revocation of license. The board may suspend or revoke a license granted under this chapter for any of the following reasons:

(1) violation of this chapter, the national electrical code, or the rules of the board;

(2) any cause for which issuance of the license could have been denied had it existed and been known to the board;

(3) commission of any act of gross negligence, incompetency, or misconduct as may be determined by the board in the practice of a master, journeyman, *or residential* electrician or the business of an electrical contractor; or

(4) making a material misstatement, misrepresentation, or fraud in obtaining a license."

Section 17. Section 50-60-204, MCA, is amended to read:

"50-60-204. Public hearing required. (1) Except as provided in subsection (2) of this section, no rule, amendment, or repeal of the state building code may take effect until after a public hearing by the department.

(2) If a hearing has been held by the state fire marshal with respect to his duties contained in chapter 3 of this title or by the board of plumbers, the department of health and environmental sciences, the board of warm air heating, ventilation, and air conditioning, or the state electrical board on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required."

Section 18. **Effective date.** This act is effective on passage and approval.

Approved April 12, 1979.

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CHAPTER NO. 547

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE TREATMENT OF THE MENTALLY ILL; AMENDING SECTIONS 53-21-102, 53-21-103, 53-21-111, 53-21-112, 53-21-115, 53-21-119, 53-21-120, 53-21-126 THROUGH 53-21-128, 53-21-141, 53-21-165, AND 53-21-188, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(6) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. No correctional institution or facility or jail is a mental health facility within the meaning of this part.

(7) "Next of kin" shall include but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(8) "Patient" means a person committed by the court for treatment for any period of time *or who is voluntarily admitted for treatment for any period of time.*

(9) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

(10) "Professional person" means:

(a) a medical doctor; or

(b) a person trained in the field of mental health and certified by the department in accordance with standards of professional licensing boards, federal regulations, and the joint commission on accreditation of hospitals.

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(11) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(12) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously mentally ill.

(13) "*Friend of respondent*" means any person willing and able to *assist* a seriously mentally ill person or person alleged to be seriously mentally ill *in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the* next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a *friend of respondent* set out in this part. Only one person may at any one time be the *friend of respondent* within the meaning of this part. In appointing a *friend of respondent*, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the *friend of respondent.*

(14) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health. *For this purpose, injury means physical injury.* No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this part.

(15) "State hospital" means the Warm Springs state hospital."

Section 2. Section 53-21-103, MCA, is amended to read:

"53-21-103. Court records to be kept separate. Records and papers in proceedings under this part shall be maintained separately by the clerks of the several courts. Five days prior to the release of a respondent or patient *committed to a mental health facility,* the facility shall notify the clerk of the court, and the clerk shall immediately seal the record in the case and omit the name of the respondent or patient from the index or indexes of cases in the court unless the court orders the record opened for good cause shown."

Section 3. Section 53-21-111, MCA, is amended to read:

"53-21-111. Voluntary admission. (1) Nothing in this part may be construed in any way as limiting the right of any person to make voluntary application for admission at any time to any mental health facility or professional person. An application for admission to a mental health facility shall be in writing on a form prescribed by the facility and approved by the department. It is not valid unless it is approved by a professional person and a copy is given to the person voluntarily admitting himself. *A* statement of the rights of the person voluntarily applying for admission, as set out in this part, including the right to release *shall be furnished to the patient within 12 hours.*

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(2) Any applicant who wishes to voluntarily apply for admission to the state hospital shall first obtain certification from a professional person that the applicant is suffering from a mental disorder and that the facilities available to the mental health region in which the applicant resides are unable to provide adequate evaluation and treatment, *except such certification is not necessary if the applicant obtains certification from the regional mental health director of his mental health region that the applicant is financially unable to receive evaluation and treatment from the facilities available to the mental health region.*

(3) An application for voluntary admission shall give the facility the right to detain the applicant for no more than 5 days, excluding weekends and holidays, past his written request for release. *A mental health facility may adopt rules providing for detention of the applicant for less than 5 days. The facility must notify all applicants of such rules and post such rules as provided in 53-21-168.*

(4) Any person voluntarily entering or remaining in any mental health facility shall enjoy all the rights secured to a person involuntarily committed to the facility."

Section 4. Section 53-21-112, MCA, is amended to read:

"53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a minor who is 16 years of age or older may consent to receive mental health services to be rendered by a facility or a person licensed to practice medicine or psychology in this state.

(2) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment shall be for the same period of time as that for an adult. A minor voluntarily admitted shall have the right to be released within 5 days of his request as provided in 53-21-111(3). The minor himself may make such request. Unless there has been a periodic review and a voluntary readmission consented to by the minor patient and his counsel, voluntary admission terminates at the expiration of 1 year. Counsel shall be appointed for the minor *at the minor's request or at any time he is faced with potential legal proceedings.*

(3) If, in any voluntary admission for any period of time to a mental health facility, a minor fails to join in the consent of his parents or guardian to the voluntary admission, then the admission shall be treated as an involuntary commitment. Notice of the substance of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary admission of a minor to a mental health facility. The notice shall be explained to the minor."

Section 5. Section 53-21-115, MCA, is amended to read:

"53-21-115. Procedural rights. In addition to any other rights which may be guaranteed by the constitution of the United States and of this state, by the laws of this state, or by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has the following rights:

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(1) the right to notice reasonably in advance of any hearing or other court proceeding concerning him;

(2) the right in any hearing to be present, to offer evidence, and to present witnesses in any proceeding concerning him;

(3) the right in any hearing to cross-examine witnesses;

(4) the right to be represented by counsel;

(5) the right to remain silent;

(6) the right in any hearing to be proceeded against according to the rules of evidence applicable to civil matters generally;

(7) the right to view and copy all petitions on file with the court concerning him;

(8) the right to be examined by a professional person of his choice when such professional person is *willing and* reasonably available;

(9) the right to be dressed in his own clothes at any hearing held pursuant to this part; and

(10) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing held pursuant to this part."

Section 6. Section 53-21-119, MCA, is amended to read:

"53-21-119. Waiver of rights. (1) A person may waive his rights, or *if the person is not capable of making an intentional and knowing decision, these* rights may be waived by his counsel and responsible person acting together if a record is made of the reasons for the waiver. The right to counsel may not be waived. The right to treatment provided for in this part may not be waived.

(2) The right of the respondent to be physically present at a hearing may also be waived by his attorney and the responsible person with the concurrence of the professional person and the judge upon a finding supported by facts that:

(a) the presence of the respondent at the hearing would be likely to seriously adversely affect his mental condition; and

(b) an alternative location for the hearing in surroundings familiar to the respondent would not prevent such adverse effects on his mental condition.

(3) (a) In the case of a minor, provided that a record is made of the reasons for the waiver, his rights may be waived by the mutual consent of his counsel and parents or guardian or guardian ad litem if there are no parents or guardian.

(b) If there is an apparent conflict of interest between a minor and his parents or guardian, the court shall appoint a guardian ad litem for him."

Section 7. Section 53-21-120, MCA, is amended to read:

"53-21-120. Detention to be in least restrictive environment — preference for mental health facility — court relief. (1) A

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person detained pursuant to this part shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; *in this respect, prevention of significant injury to property may be considered.*

(2) Whenever possible, a person detained pursuant to this part shall be detained in a mental health facility and in the county of residence. *If the person detained demands a jury trial and trial cannot be held within 7 days, the individual may be sent to the state hospital until time of trial if arrangements can be made to return him to trial. Such trial must be held within 30 days. The county of residence shall pay the cost of travel and professional services associated with the trial.* No person may be detained in any hospital or other medical facility which is not a mental health facility unless such hospital or facility has agreed in writing to admit the person.

(3) A person may be detained in a jail or other correctional facility only if no mental health facility is available or if the available mental health facilities are inadequate to protect the person detained and the public. As soon as a mental health facility becomes available or the situation has changed sufficiently that an available mental health facility is adequate for the protection of the person detained and the public, then the detained person shall be transferred from the jail or correctional facility to the mental health facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain."

Section 8. Section 53-21-126, MCA, is amended to read:

"53-21-126. Trial or hearing on petition. (1) The respondent shall be present unless his presence has been waived as provided in 53-21-119(2), and he shall be represented by counsel at all stages of the trial. The trial shall be limited to the determination of whether or not the respondent is seriously mentally ill within the meaning set forth in this part.

(2) The standard of proof in any hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters, except that mental disorders shall be evidenced to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others shall be evidenced by overt acts, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court shall be present for the trial and subject to cross-examination. The trial shall be governed by the Montana Rules of Civil Procedure except that, if tried by a jury, at least two-thirds of the jurors must concur on a finding that the *respondent* is seriously mentally ill. *The written report of the professional person that indicates the professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely because it is contained in the report.* The court

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may order the trial closed to the public for the protection of the respondent.

(4) The professional person may testify as to the ultimate issue of whether the respondent is seriously mentally ill. This testimony is insufficient unless accompanied by evidence from the professional person or others that:

(a) the respondent is suffering from a mental disorder; and

(b) the mental disorder has resulted in self-inflicted injury or injury to others or the imminent threat thereof or has deprived the person afflicted of the ability to protect his life or health.

(5) The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue."

Section 9. Section 53-21-127, MCA, is amended to read:

"53-21-127. Posttrial disposition. (1) If, upon trial, it is determined that the *respondent* is not seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed.

(2) (a) If it is determined that the respondent is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of his relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a period of more than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill."

Section 10. Section 53-21-128, MCA, is amended to read:

"53-21-128. Petition for extension of commitment period. (1) (a) Not less than 2 calendar weeks prior to the end of the 3-month

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period of detention provided for in 53-21-127(2), the professional person in charge of the patient at the place of detention may petition the court for extension of the detention period. The petition shall be accompanied by a written report and evaluation of the patient's mental and physical condition. The report shall describe any tests and evaluation devices which have been employed in evaluating the patient, the course of treatment which has been undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, his next of kin, if reasonably available, the responsible person appointed by the court, and the patient's counsel. If any person so notified requests a hearing prior to the termination of the previous detention authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) Procedure on the petition for extension when a hearing has been requested shall be the same in all respects as the procedure on the petition for the original 3-month commitment except the patient is not entitled to trial by jury. The hearing shall be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. *Court costs and witness fees, if any, shall be paid by the county that paid the same costs in the initial commitment proceedings.*

(d) If upon the hearing the court finds the patient not seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed. If the court finds that the patient continues to suffer from serious mental illness, the court shall order commitment, custody in relatives, outpatient therapy, or other order as set forth in 53-21-127(2) except that no order may affect his custody for more than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall not order continuation of an alternative which does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative shall include a specific finding that a comprehensive, individualized plan of treatment exists.

(2) Further extensions may be obtained under the same procedure described in subsection (1) of this section except that the patient's custody may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1) of this section, including a statement of the findings required by subsection (1)."

Section 11. Section 53-21-141, MCA, is amended to read:

"53-21-141. Civil and legal rights of person committed. (1) Unless specifically stated in an order by the court, a person involuntarily committed to a facility for a period of evaluation or treatment does not

forfeit any legal right or suffer any legal disability by reason of the provisions of this part except insofar as it may be necessary to detain the person for treatment, evaluation, or care. *All communication between an alleged mentally ill person and a professional person is privileged under normal privileged communication rules unless it is clearly explained to the person in advance that the purpose of an interview is for evaluation and not treatment.*

(2) Whenever a person is committed to a mental health facility for a period of 3 months or longer, the court ordering the commitment may make an order stating specifically any legal rights which are denied the respondent and any legal disabilities which are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion of the involuntary commitment if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of involuntary commitment may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) A person who has been committed to a mental health facility pursuant to this part is automatically restored upon the termination of the commitment to all of his civil and legal rights which may have been lost when he was committed. This subsection does not affect, however, a guardianship or conservatorship created independently of the commitment proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. A person who leaves a mental health facility following a period of evaluation and treatment shall be given a written statement setting forth the substance of this subsection.

(4) A person committed to a mental health facility prior to July 1, 1975, enjoys all the rights and privileges of a person committed after that date."

Section 12. Section 53-21-165, MCA, is amended to read:

"53-21-165. Records to be maintained. Complete patient records shall be kept by the mental health facility and shall be available to any person authorized by the patient *in writing to receive these records* and *upon approval of the authorization by* the board. The records shall also be made available to any attorney charged with representing the patient or any professional person charged with evaluating or treating the patient. These records shall include:

(1) identification data, including the patient's legal status;

(2) a patient history, including but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior hospitalization;

(3) the chief complaints of the patient and the chief complaints of others regarding the patient;

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(4) an evaluation which notes the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in descriptive rather than interpretative fashion;

(5) a summary of each physical examination which describes the results of the examination;

(6) a copy of the individual treatment plan and any modifications thereto;

(7) a detailed summary of the findings made by the reviewing professional person after each periodic review of the treatment plan which analyzes the successes and failures of the treatment program and directs whatever modifications are necessary;

(8) a copy of the individualized after-care plan and any modifications thereto and a summary of the steps that have been taken to implement that plan;

(9) a medication history and status which includes the signed orders of the prescribing physician. The staff person administering the medication shall indicate by signature that orders have been carried out.

(10) a detailed summary of each significant contact by a professional person with the patient;

(11) a detailed summary, on at least a weekly basis, by a professional person involved in the patient's treatment, of the patient's progress along the treatment plan;

(12) a weekly summary of the extent and nature of the patient's work activities and the effect of such activity upon the patient's progress along the treatment plan;

(13) a signed order by a professional person for any restrictions on visitations and communications;

(14) a signed order by a professional person for any physical restraints and isolation;

(15) a detailed summary of any extraordinary incident in the facility involving the patient, to be entered by a staff member noting that he has personal knowledge of the incident or specifying his other source of information and initialed within 24 hours by a professional person; and

(16) a summary by the professional person in charge of the facility or his appointed agent of his findings after the 30-day review provided for in 53-21-163."

Section 13. Section 53-21-188, MCA, is amended to read:

"53-21-188. Maintenance of indigent patients on discharge. Prior to the discharge of a *committed* patient from a mental health facility, the professional person in charge of the facility shall notify the welfare department of the county from which the patient was committed. The county welfare department shall at once ascertain whether the discharged patient is in financial need. If the patient is found to be in financial need, the county welfare department shall properly care for and maintain the

discharged patient under the laws of this state relating to public assistance until the patient is able to care for himself or until another provision has been made for care of the patient."

Section 14. **Instructions to the code commissioner.** All references to "responsible person" in Title 53, chapter 21, shall be changed to "friend of respondent" by the code commissioner.

Approved April 12, 1979.

CHAPTER NO. 548

AN ACT TO AMEND SECTION 2-18-617, MCA, RELATING TO ACCUMULATION OF VACATION TIME FOR PUBLIC EMPLOYEES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-617, MCA, is amended to read:

"2-18-617. Accumulation of leave — cash for unused — transfer. (1) Annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the last day of any calendar year. *Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.*

(2) An employee who terminates his employment with the state or any county or city thereof for reason not reflecting discredit on himself shall be entitled upon the date of such termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in 2-18-611.

(3) However, if an employee transfers between agencies of the same state, county, or city jurisdiction, there shall be no cash compensation paid for unused vacation leave. In such a transfer the receiving agency assumes the liability for the accrued vacation credits transferred with the employee."

Approved April 12, 1979.

CHAPTER NO. 549

AN ACT TO REESTABLISH THE BOARD OF PLUMBERS; REVISING BOARD MEMBERSHIP; TO DEFINE "DRAINAGE SYSTEM" AND "PLUMBING SYSTEM"; TO ALLOW A MASTER PLUMBER TO WORK AS A JOURNEYMAN; TO ALLOW THE BOARD TO PRESCRIBE REASONABLE FEES; AMENDING SECTIONS 2-8-103, 2-15-1655, 37-69-101, 37-69-305, AND 37-69-307, MCA; AND PROVIDING AN EFFECTIVE DATE FOR CERTAIN SECTIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Board reestablished.** The board of plumbers created by 2-15-1655 is reestablished for a period of 6 years pursuant to 2-8-122.

Section 2. Section 2-8-103, MCA, is amended to read:

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"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of public accountants, department of professional and occupational licensing, created by 2-15-1641;

(c) board of architects, department of professional and occupational licensing, created by 2-15-1651;

(d) state banking board, department of business regulation, created by 2-15-1803;

(e) state electrical board, department of professional and occupational licensing, created by 2-15-1654;

(f) board of professional engineers and land surveyors, department of professional and occupational licensing, created by 2-15-1653;

(g) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(h) office of the investment commissioner, state auditor's office, created by 2-15-1901;

(i) board of landscape architects, department of professional and occupational licensing, created by 2-15-1652;

(j) board of county printing, department of community affairs, created by 2-15-1102;

(k) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(l) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(m) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

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(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(n) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(t) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(u) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish and game, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631;

(j) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(k) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agency terminates on July 1, 1985: the board of plumbers created by 2-15-1655."

Section 3. Section 2-15-1655, MCA, is amended to read:

"2-15-1655. Board of plumbers. (1) There is a board of plumbers.

(2) The board consists of *nine* members appointed by the governor. The members are:

(a) two master plumbers and two journeyman plumbers who are at least 18 years old, who have been residents of this state for more than 1 year, and who have been duly licensed master or journeyman plumbers at least 5 out of the last 8 years immediately preceding their appointment;

(b) one registered professional engineer qualified in mechanical engineering;

(c) *three representatives* of the public who *are* not engaged in the business of installing or selling plumbing equipment;

(d) one appointed representative of the department of health and environmental sciences, who shall be a sanitary engineer and who is secretary of the board.

(3) The appointed members of the board shall serve for a term of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 37-69-101, MCA, is amended to read:

"37-69-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of plumbers provided for in 2-15-1655.

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(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(3) "Drainage system" means all the piping inside the walls of a building that conveys sewage or other liquid wastes outside the building to the building sewer but that does not extend more than 2 feet outside the building way.

(4) "Field of plumbing" means the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof.

(5) "Journeyman plumber" means a person who is authorized to make installation of all sanitary plumbing and potable water supply piping and appliances connected thereto.

(6) "Master plumber" means a person who is authorized by this chapter to plan, estimate, bid, contract for, and supervise plumbing work *and who may do the work of a journeyman plumber.*

(7) "Plumbing system" means all potable water supply and distribution pipes, plumbing fixtures and traps, drainage and vent pipes, and building drains, including their respective joints and connections, devices, receptacles, and appurtenances within the property lines of any premises and includes potable water piping, water heaters, and vents for the premises.

(8) "Public sewer system" means any common sewer carrying liquid wastes from two or more dwellings or any other facility that serves the public.

(9) "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons on a regular and continuous basis."

Section 5. Section 37-69-305, MCA, is amended to read:

"37-69-305. Qualifications of applicants for master plumber's license — restriction on authority. (1) The following requirements shall be met by an applicant for a master plumbers' license:

(a) evidence of 4 years' experience as a journeyman plumber in the field of plumbing of a character satisfactory to the board;

(b) evidence of 3 years' experience in supervisory capacities in the field of plumbing, which may run concurrently with the requirement in subsection (1)(a);

(c) satisfactory completion of an examination for master plumbers testing his knowledge of the field of plumbing and demonstrating his skill and ability in the field of plumbing.

(2) A master plumber shall not allow his license to be used by any person or firm, corporation, or business other than his own for the purpose of obtaining permits or for doing plumbing work under his license."

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Section 6. Section 37-69-307, MCA, is amended to read:

"37-69-307. Examination fee and annual renewal fee. (1) No applicant for a master plumber's license may submit to the examinations prescribed by the board until he has deposited with the department an examination fee *prescribed by the board,* and no applicant for a journeyman plumber's license may submit to the examination prescribed by the board until he has deposited with the department an examination fee *as prescribed by the board.*

(2) A license when issued expires 1 year from the date of issuance. A license issued to a master plumber or a journeyman plumber may be renewed annually without examination, at any time prior to its expiration, by a written request for its renewal directed to the department and the payment of *a fee* as set by the board for renewal of a master plumber's license *or a fee* as set by the board for *renewal of* a journeyman plumber's license. Renewal is for the period of 1 year.

(3) Fees prescribed by the board pursuant to this section must be reasonably related to the costs incurred by the board in carrying out its respective functions."

Section 7. **Effective date.** Sections 1 and 2 are effective on passage and approval.

Approved April 12, 1979.

CHAPTER NO. 550

AN ACT TO MAKE ONLY THOSE AMENDMENTS NECESSARY TO BRING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT INTO COMPLIANCE WITH PUBLIC LAW 95-87, THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977; TO REPEAL THE STRIP-MINED COAL CONSERVATION ACT; AMENDING SECTIONS 70-30-102, 82-4-202 THROUGH 82-4-205, 82-4-221 THROUGH 82-4-223, 82-4-225, 82-4-227, 82-4-228, 82-4-231, 82-4-232, 82-4-235, 82-4-239, 82-4-251, 82-4-252, AND 82-4-254; AND REPEALING SECTIONS 82-3-101 THROUGH 82-3-110, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-202, MCA, is amended to read:

"82-4-202. Policy — findings. (1) It is the declared policy of this state and its people to:

(a) maintain and improve the state's clean and healthful environment for present and future generations;

(b) protect its environmental life-support system from degradation;

(c) prevent unreasonable degradation of its natural resources;

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(d) restore, enhance, and preserve its scenic, historic, archeologic, scientific, cultural, and recreational sites;

(e) demand effective reclamation of all lands disturbed by the taking of natural resources and *maintain state administration of the reclamation program;*

(f) require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards (especially as to reclamation of disturbed lands) in order to achieve the aforementioned objectives*; and*

(g) provide for the orderly development of coal resources through strip or underground mining to assure the wise use of these resources and prevent the failure to conserve coal.

(2) The legislature hereby finds and declares that:

(a) in order to achieve the aforementioned policy objectives, promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and assure a long-range dependable tax base, it is reasonably necessary to require, after March 16, 1973, that all strip-mining and underground-mining operations be limited to those for which *5-year* permits are granted, that no permit be issued until the operator presents a comprehensive plan for reclamation and restoration *and a coal conservation plan*, together with an adequate performance bond, and the plan is approved, that certain other things must be done, that certain remedies are available, that certain lands because of their unique or unusual characteristics may not be strip-mined or underground-mined under any circumstances, all as more particularly appears in the remaining provisions of this part*, and that the department be given authority to administer and enforce a reclamation program that complies with Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977, as amended*;

(b) this part be deemed to be an exercise of the authority granted in the Montana constitution, as adopted June 6, 1972, and, in particular, a response to the mandate expressed in Article IX thereof and also be deemed to be an exercise of the general police power to provide for the health and welfare of the people."

Section 2. Section 82-4-203, MCA, is amended to read:

"82-4-203. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume.

(2) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities; but the term does not include upland areas which are generally overlain by a thin veneer

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of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(3) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities which permit or have the potential to permit economic development as a water source.

(4) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all land overlying any tunnels, shafts, or other excavations used to extract the mineral, lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral, processing *facilities at or near the mine site* or other mine associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining, *and all activities necessary and incident to the reclamation of such operations.*

(5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(6) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.

(7) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation to include plans for the removal and utilization of minable and marketable coal located within the area planned to be mined.

(8) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

(9) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(10) "Degree" means from the horizontal and in each case is subject to a tolerance of 5% error.

(11) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(12) "Failure to conserve coal" means the nonremoval or nonutilization of strippable and marketable coal by an operation, provided that the nonremoval or nonutilization of minable and marketable coal in accordance with reclamation standards established by the department shall not be considered failure to conserve coal.

(13) "Fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

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(14) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

(15) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(16) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

(17) "Minable coal" means that coal which can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

(18) "Mineral" means coal and uranium.

(19) "Operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from *and reclaiming* a designated strip-mine or underground-mine area *and all activities, including excavation incident thereto,* or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

(20) "Operator" means a person engaged in strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden *or a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location.*

(21) "Overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of mining.

(22) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state *or federal government.*

(23) "Prime farmland" means that land previously prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface-layer composition, susceptibility to flooding, and erosion characteristics and which historically has been used for intensive agricultural purposes and as defined in the Federal Register.

(24) "Prospecting" means the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose

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of determining the location, quantity, or quality of a natural mineral deposit.

(25) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining or underground mining under a plan approved by the department.

(26) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(27) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

(28) "Surface owner" means a person who holds legal or equitable title to the land surface and whose principal place of residence is on the land or who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of his income, if any, from such farming or ranching operations or the state of Montana where the state owns the surface.

(29) "Topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macro- and micro-organisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

(30) "Underground mining" means any part of the process followed in the production of a mineral such that vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata are utilized *and includes mining by in situ methods.*

(31) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this part due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or this part due to indifference, lack of diligence, or lack of reasonable care.

(32) "Waiver" means any document which demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

(33) "Written consent" means such written statement as is executed by the owner of the surface estate, upon a form approved by the department, demonstrating that such owner consents to entry of an operator for the purpose of conducting strip-mining operations and that such consent is given only to such strip-mining and reclamation operations which fully comply with the terms and requirements of this part."

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Section 3. Section 82-4-204, MCA, is amended to read:

"82-4-204. Board orders, rules, and hearings. The board shall:

(1) issue orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;

(2) issue, after an opportunity for a hearing, a final order directing the department to revoke a permit when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;

(3) adopt, after an opportunity for a hearing, general rules pertaining to strip mining and to underground mining to accomplish the purposes of this part;

(4) conduct hearings under provisions of this part or rules adopted by the board."

Section 4. Section 82-4-205, MCA, is amended to read:

"82-4-205. Administration by department of state lands. The department:

(1) shall exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(2) shall examine and pass upon all plans and specifications submitted by the operator for the method of operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, topsoiling, and for the reclamation of the area of land affected by his operation;

(3) shall order the suspension of any permit for failure to comply with this part or any rule adopted under this part;

(4) shall order the halting of any operation that is started without first having secured a permit as required by this part *or order the cessation of operations not in compliance with this part in accordance with 82-4-251*;

(5) shall make investigations and inspections necessary to insure compliance with this part;

(6) may encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to strip mining and to underground mining and reclamation of lands and waters affected by strip mining and underground mining;

(7) may adopt rules with respect to the filing of reports, the issuance of permits, *monitoring,* and other matters of procedure and administration;

(8) may conduct hearings under the provisions of this part."

Section 5. Section 82-4-221, MCA, is amended to read:

"82-4-221. Mining permit required. *(1)* An operator may not engage in strip or underground mining without having first obtained from the department a permit designating the area of land affected by the operation, which designation shall include all lands reasonably anticipated to

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be mined or otherwise affected during the applicable 5-year period. The permit shall authorize the operator to engage in strip or underground mining upon the area of land described in his application and designated in the permit for a period of 5 years from the date of its issuance. Such permit shall be renewable upon each 5-year anniversary thereafter upon application to the department at least 30 but not more than 60 days prior to the renewal date so long as the operator is in compliance with the requirements of this part, the rules hereunder, and the reclamation plan provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at the time of renewal. Such renewal shall further be subject to the denial provisions of 82-4-227, 82-4-234, and 82-4-251. *On application for renewal, the burden shall be on the opponents of renewal to demonstrate that the permit should not be renewed. A permit shall terminate if the permittee has not commenced strip- or underground-mining operations pursuant to the permit within 3 years of the issuance of the permit. However, the department may grant reasonable extensions of time upon a showing that such extensions are necessary by reason of litigation precluding the commencement or threatening substantial economic loss to the permittee or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee is considered to have commenced strip- or underground-mining operations at such time as the construction of the synthetic or generating facility is initiated.*

(2) As a condition to the issuance of every permit issued under this part, an authorized representative of the department shall, without advance notice, have the right of entry to, upon, or through a strip- or underground-mining operation or any premises in which any records required to be maintained under this part are located and may, at reasonable times and without delay, have access to copy any records and inspect any monitoring equipment or method of operation required under this part. When an inspection results from information provided to the department by any person, the department shall notify that person when the inspection is proposed to be made and that person shall be allowed to accompany the inspector during the inspection.

(3) During the term of the permit, the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the department. The department may not approve the application unless it finds that reclamation in accordance with this part would be accomplished. Application for minor revision shall be approved or disapproved within a reasonable time, depending on the scope and complexity, but in no case longer than 120 days. Applications for major revisions are subject to all the permit application requirements and procedures."

Section 6. Section 82-4-222, MCA, is amended to read:

"**82-4-222. Permit application.** (1) An operator desiring a permit shall file an application which shall contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. Such plan shall reflect thorough

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advance investigation and study by the operator and shall include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of such use and shall state:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record of the surface of the area of land to be affected by the permit and the owners of record of all surface area within one-half mile of any part of the affected area;

(c) the names and addresses of the present owners of record of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this part and an identification of those permits;

(g) whether the applicant is in compliance with 82-4-251 and, if known, whether every officer, partner, director, or any individual owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant is subject to any of the provisions of 82-4-251 and he shall so certify and whether any of the foregoing parties or persons have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond and, if so, a detailed explanation of the facts involved in each case must be attached;

(h) the names and addresses of any persons who are engaged in strip or underground mining activities on behalf of the applicant;

(i) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(j) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of such seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall depict subsurface conditions at 500-foot intervals across the surface and shall run at a 90-degree angle to the other set unless the department determines that closer intervals are required. Each cross section shall depict the thickness and geologic character of all known strata beginning

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with the topsoil. In addition, each application for an underground mining permit shall be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit year. These cross sections shall also include all existing shafts, entries, and haulageways.

(k) the name and date of a daily newspaper of general circulation within the county in which the applicant *will* prominently *publish at least once a week for 4 successive weeks after submission of the application* an announcement of his application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected should a permit be granted;

(l) a determination of the probable hydrologic consequences of coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface- and ground-water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made. However, this determination is not required until such time as hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit may not be approved until such information is available and is incorporated into the application;

(m) a coal conservation plan; and

(n) such other or further information as the department may require.

(2) The application for a permit shall be accompanied by two copies of all maps meeting the requirements of the subsections below. The maps shall:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining and the boundaries of surface properties and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of such area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan shall indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

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(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the location of test boring holes;

(j) show the surface location lines of any geologic cross sections which have been submitted;

(k) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs, and trees;

(l) be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification shall be signed and notarized. The department may reject a map as incomplete if its accuracy is not so attested.

(m) contain such other or further information as the department may require.

(3) If the department finds that the probable total annual production at all locations of any strip- or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic consequences that the department requires and the statement of result of test borings or core samplings shall, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received federal funds for this purpose.

(4) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, revegetating, and a reclamation plan for the area affected by the operation, which proposals shall meet the requirements of this part and rules adopted under this part. *The reclamation plan shall address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.*

(5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by an insurance company authorized to do business in the state certifying that the applicant has in force for the strip- or underground-mining and reclamation operations for which the permit is sought a public liability insurance policy, or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip- or underground-coal-mining and reclamation operations, including use of explosives, and entitled to compensation under

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applicable provisions of state law. The permittee must maintain the policy in full force and effect during the term of the permit and any renewal until all reclamation operations have been completed.

(6) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of his application for public inspection with the clerk and recorder at the courthouse of the county where the major portion of mining is proposed to occur."

Section 7. Section 82-4-223, MCA, is amended to read:

"82-4-223. Permit fee and surety bond. (1) An application fee of $50 shall be paid before the permit required in this part shall be issued.

(2) *Before a permit may be issued, the* operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board, on the recommendation of the commissioner, of not less than $200 for each acre or fraction thereof of the area of land affected, with a minimum bond of *$10,000*, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board. *The operator may elect to deposit cash, negotiable bonds, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.* The level of bonding shall be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond unless required to do so by the board. The board *shall adjust the amount of bond required if the cost of reclamation changes.*

(3) In determining the amount of the bond, the board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but in no event shall the bond be less *than* the total estimated cost to the state of completing the work described in the reclamation plan."

Section 8. Section 82-4-225, MCA, is amended to read:

"82-4-225. Application for increase or reduction in permit area. The department may increase or reduce the area of land affected by an operation under a permit on application by an operator, but an increase may not extend the period for which an original permit was issued. An operator may, at any time, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same content as required for an original application under this part and shall pay an application fee of $50 and shall file with the department a supplemental bond in the amount to be determined under 82-4-223 for each acre or fraction of an acre of the increase approved. *All procedures of this part pertaining to original applications apply to applications for the increase of the area of land affected, except for incidental*

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boundary revisions. If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced, but in no case shall the bond be reduced below *$10,000*, except as provided in 82-4-223."

Section 9. Section 82-4-227, MCA, is amended to read:

"82-4-227. Refusal of permit. (1) An application for a prospecting, strip-mining, or underground-mining permit *or major revision* shall not be approved by the department *unless,* on the basis of the information set forth in the application, an on-site inspection, and an evaluation of the operation by the department, *the applicant has affirmatively demonstrated* that the requirements of *this* part *and* rules will be observed *and* that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area *can* be carried out consistently with the purpose of this part. *The applicant for a permit or major revision has the burden of establishing that his application is in compliance with this part and the rules adopted under it.*

(2) The department shall not approve the application for a prospecting, strip-mining, or underground-mining permit where the area of land described in the application includes land having special, exceptional, critical, or unique characteristics or that mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land having special, exceptional, critical, or unique characteristics. For the purposes of this part, land is defined as having such characteristics if it possesses special, exceptional, critical, or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonable foreseeable future;

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a system-wide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. (In applying this subsection, particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.)

(3) The department may not approve an application for a strip- or underground-coal-mining permit or major revision unless the application affirmatively demonstrates that:

(a) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the department and the proposed operation thereof has been designed to prevent material damage to the hydrologic balance outside the permit area; and

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(b) the proposed strip- or underground-coal-mining operation would not:

(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and those lands as to which the regulatory authority finds that if the farming that will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(ii) materially damage the quantity or quality of water in surface-water or underground-water systems that supply these valley floors in subsection (3)(b)(i).

(4) Subsection (3)(b) does not affect those strip- or underground-coal-mining operations that in the year preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct strip- or underground-coal-mining operations within alluvial valley floors. If coal deposits are precluded from being mined under this subsection, the commissioner shall certify to the secretary of interior that the mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law 95-87.

(5) If the area proposed to be mined contains prime farmland, the department may not grant a permit to mine coal on the prime farmland unless it finds in writing that the applicant has the technological capability to restore the mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards of 82-4-232(3). Nothing in this subsection applies to any permit issued prior to August 3, 1977, or to any revisions or renewals thereof, or to any existing strip- or underground-mining operations for which a permit was issued prior to August 3, 1977.

(6) If the department finds that the overburden on any part of the area of land described in the application for a prospecting, strip-mining, or underground-mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists. *The burden is on the applicant to demonstrate that any area should not be deleted under this subsection.*

(7) If the department finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip-mining, or underground-mining permit application before it can be approved. *In no case may strip- or underground-coal-mining be allowed within 300 feet of any occupied dwelling, unless waived by the owner, nor*

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within 300 feet of any public building, school, church, community, or institutional building, or public park; nor within 100 feet of a cemetery; nor within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line. The department may permit such roads to be relocated or the area affected to lie within 100 feet of the road, if after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected will be protected.

(8) No strip- or underground-mining may be conducted within 500 feet of active or abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners. The department shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:

(a) the nature, timing, and sequencing of specific strip-mine activities and specific underground-mine activities are jointly approved by the department and the regulatory authority concerned with the health and safety of underground miners; and

(b) such operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(9) The department may not approve an application for a strip- or underground-coal-mining operation if the area proposed to be mined is included within an area designated unsuitable for strip or underground coal mining or within an area under review for this designation under an administrative proceeding, unless in such an area as to which an administrative proceeding has commenced pursuant to this part, the operator making the permit application demonstrates that prior to January 1, 1977, he made substantial legal and financial commitments in relation to the operation for which he is applying for a permit.

(10) No permit or major permit revision for a strip- or underground-coal-mining operation may be issued unless the applicant has affirmatively demonstrated by its coal conservation plan that no failure to conserve coal will occur. The department may require the applicant to submit any information it considers necessary for review of the coal conservation plan.

(11) Whenever information available to the department indicates that any strip- or underground-coal-mining operation owned or controlled by the applicant is currently in violation of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection, the department shall not issue a strip- or underground-coal-mining permit or major revision until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the administering agency.

(12) The department may not issue a strip- or underground-coal-mining permit or major revision to any applicant which it finds, after an

opportunity for hearing, owns or controls any strip- or underground-coal-mining operation which has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, of such a nature and duration and with such resulting irreparable damage to the environment to indicate an intent not to comply with the provisions of this part.

(13) Subject to valid existing rights, no strip- or underground-coal-mining operations except those which existed as of August 3, 1977, may be conducted on private lands within the boundaries of units of the national park system, the national wildlife refuge systems, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, or national recreation areas designated by act of congress."

Section 10. **Designation of land unsuitable for coal mining.** (1) Any person having an interest that is or may be adversely affected may petition the department to have an area designated as unsuitable for strip- or underground-coal-mining operations, or to have a designation terminated. The petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within 10 months after receipt of the petition, the department shall hold a public hearing in the locality of the affected area after giving appropriate notice and publication of the date, time, and location thereof. Before the hearing, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within 60 days after the hearing, the department shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition and the reasons therefor. The hearing need not be held if all petitioners reach agreement prior to the requested hearing and withdraw their request.

(2) If petitioned, the department shall review the area petitioned for pursuant to this section, and:

(a) shall designate it as an area unsuitable for all or certain types of strip- or underground-coal-mining operations if it is determined that reclamation pursuant to the requirements of this part is not technologically and economically feasible; and

(b) may designate it as an area unsuitable for all or certain types of strip or underground coal mining if the proposed coal mining operations will:

(i) be incompatible with existing state or local land-use plans or programs to the extent they affect mining in the area; or

(ii) affect fragile or historic lands in which these operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; or

(iii) affect renewable resource lands in which these operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, these lands to include aquifers and aquifer recharge areas; or

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(iv) affect natural hazard lands in which these operations could substantially endanger life and property, these lands to include areas subject to frequent flooding and areas of unstable geology.

(3) Prior to designating any land areas as unsuitable for strip- or underground-coal-mining operations, the department shall prepare a detailed statement on:

(a) the potential coal resources of the area;

(b) the demand for coal resources; and

(c) the impact of this designation on the environment, economy, and supply of coal.

(4) A designation does not prevent mineral exploration pursuant to this act of any area so designated.

(5) The requirements of this section do not apply to lands on which strip- or underground-coal-mining operations are being conducted pursuant to a permit issued under this part or where substantial legal and financial commitments in these operations were in existence prior to January 4, 1977.

Section 11. Section 82-4-231, MCA, is amended to read:

"82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by his operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and a reclamation plan for the area of land affected by his operation. In developing a method of operation and plans of backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, and reclamation, all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and 82-4-232 through 82-4-234, as amended, *and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.* The *application for permit or major revision of a permit, which shall contain the reclamation plan,* shall be submitted to the department. *The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest which is or may be adversely affected or the officer or head of any federal, state, or local*

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governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation after adequate public notice. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding. The department shall notify the applicant by certified or registered mail within 120 days after receipt of the complete application if it is or is not acceptable. The department may extend the 120 days an additional 120 days upon notification of the operator in writing. *The department shall make written findings granting or denying the permit or revision application in whole or in part.* If the *application* is not acceptable, the department shall set forth the reasons why *it* is not acceptable, and it may propose modifications, delete areas, or reject the entire *application.* A landowner, operator, or any person *with an interest that is or may be adversely affected* may by written notice request a hearing by the board. *The hearing shall be held within 30 days of the request. No person who presided at the informal conference may either preside at the hearing or participate in the decision thereon. For purposes of the hearing, the board may order site inspections of the area pertinent to the application.* The board shall notify the person by certified or registered mail *and all other persons by regular mail* within 20 days after the hearing of its decision. Every reclamation plan shall be subject to annual review and modification.

(3) In addition to the method of operation, grading, backfilling, subsidence stabilization, water control, highwall reduction, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1) of this section, shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the board approves a plan for inducing subsidence into an abandoned operation in

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a predictable and controlled manner with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant must show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health, or constitute a hazard to domestic livestock or to a viable agricultural operation, or violate any other restrictions the board may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in such manner as to prevent or minimize land subsidence. The remaining waste material shall be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings *when no longer needed;*

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of such resources where practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface-water and ground-water systems both during and after strip- or underground-coal-mining operations and during reclamation by:

(i) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area but in no event shall contributions be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to (ii)(A) of this subsection prior to commencement of strip- or underground-mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

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(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegatated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(vii) such other actions as the department may prescribe;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the department determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water;

(q) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(4) An operator may not throw, dump, pile, or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under 82-4-223, as amended, or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. *An operator shall conduct the strip- or underground-mining operation in such a manner as to protect areas outside the permit area.*"

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Section 12. Section 82-4-232, MCA, is amended to read:

"82-4-232. Area mining required — bond — alternative plan. (1) Area strip mining, a method of operation which does not produce a bench or fill bench, is required where strip mining is proposed. All highwalls must be reduced and the steepest slope of the reduced highwall shall be no greater than 20 degrees from the horizontal. Highwall reduction shall be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading shall eliminate all highwalls and spoil peaks. The area of land affected shall be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading such diversion ditches, depressions, or terraces as will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure whatsoever to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator shall as a minimum be required to:

(a) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil; and if not utilized immediately stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in (b) above with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in (a) above.

(4) All available topsoil shall be removed in a separate layer, guarded from erosion and pollution, *and* kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as

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well as the present topsoil. *After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material which is best able to support vegetation shall be returned as the top layer.*

(5) As determined by rules of the board, time limits shall be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling shall be completed before necessary equipment is moved from the operation.

(6) When the backfilling, grading, subsidence stabilization, water controls, and topsoiling have been completed and approved by the department, the commissioner, *after public notice and opportunity for hearing,* may release so much of the bond which was filed for that portion of the operation as the commissioner may determine, provided that no less than $200 per acre shall be retained by the department until such time as the planting and revegetation is done according to law and approved by the department, at which time the commissioner shall release the bond in the remaining amount. *No part of the bond or deposit may be released under this subsection so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by this part or until soil productivity for prime farmlands mined for coal has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to this part. Where a silt dam is to be retained as a permanent impoundment, the portion of bond pertaining thereto may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the department. Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to such operations shall have the right to file written objections to the proposed release with the department within 30 days of public notice. The hearing shall be held at the state capital or, if an objector so requests, in the locality of the proposed bond release. For purposes of the hearing, the board may order site inspections of the area for which bond release is sought and other strip- or underground-mining operations carried on by the applicant in the area. Without prejudice to the rights of the objectors or the applicant or to the responsibilities of the department, the department may establish an informal conference to resolve written objections.*

(7) An operator may propose alternative plans other than backfilling, grading, highwall reduction, or topsoiling if the restoration will be consistent with the purpose of this part. These plans shall be submitted to the department, and after consultation with the landowner, if the plans are approved by the board and complied with within the time limits as may be determined by the board as being reasonable for carrying out the plans,

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the backfilling, grading, highwall reduction, or topsoiling requirements of this part may be modified by the board. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of 82-4-222(1)(k)."

Section 13. Section 82-4-235, MCA, is amended to read:

"82-4-235. Planting report. (1) At least 60 days prior to the date of each permit expiration, the operator shall file a planting report with the department on a form to be prescribed and furnished by the department, giving the following information:

(a) identification of the operation;

(b) the type of planting or seeding, including mixtures and amounts;

(c) the date of planting or seeding;

(d) the area of land planted;

(e) any other relevant information the department requires.

(2) All planting reports shall be certified by the operator.

(3) Inspection and evaluation for permanent diverse vegetative cover shall be made as soon as it is possible to determine if a satisfactory stand has been established. If the department determines that a satisfactory permanent diverse vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for a hearing *as provided in 82-4-232(6).* In no event shall such remaining bond be released prior to a period of *10* years *after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after February 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.*"

Section 14. Section 82-4-239, MCA, is amended to read:

"82-4-239. Reclamation by board. (1) The board may have reclamation work done by its own employees or by employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons. *The board may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.*

(2) Any funds or any public works programs available to the board shall be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining that have not been reclaimed and rehabilitated in accordance with the standards of this part. *The board shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.*

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether such land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements

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of this part and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the commissioner, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection.

(4) If the department makes a finding of fact that:

(a) land or water resources have been adversely affected by past coal-mining practices; and

(b) the adverse effects are at a stage where in the public interest action to restore, reclaim, abate, control, or prevent should be taken; and

(c) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available; or the owners will not give permission for the department or its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices;

then agents, employees, or contractors of the department, after giving notice by mail to the owner, if known, or, if not known, by posting notice upon the premises and advertising in a newspaper of general circulation in the county in which the land lies, may enter upon property adversely affected by past coal-mining practices and any other property necessary for access to such mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices. This act is not an act of condemnation of property or of trespass but rather an exercise of the power granted by sections 1 and 2, Article IX of the Montana constitution.

(5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money so expended and may file a statement thereof in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money so expended shall result in a significant increase in property value. Such statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. No lien may be filed against the property of any person, in accordance with this subsection, who owned the surface prior to May 2, 1977, and who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be

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the increase in value of the premises constitutes the amount of the lien and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section shall be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The board may acquire the necessary property by gift or purchase or, if the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, part 1, against all nonaccepting landholders if:

(a) the property is necessary for successful reclamation;

(b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; and

(c) permanent facilities such as treatment plants or relocated stream channels will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of [this part] in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices."

Section 15. Section 82-4-251, MCA, is amended to read:

"82-4-251. Noncompliance — suspension of permits. (1) *The commissioner or an authorized representative of the department shall, if he determines on the basis of an inspection that any condition or practices exist or that the permittee is in violation of any requirement of this part or any permit condition required by the part that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, immediately order cessation of strip- or underground-coal-mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. The cessation order remains in effect until the commissioner or his authorized representative determines that the condition, practice, or violation has been abated or until modified, vacated, or terminated by the commissioner or his authorized representative pursuant to subsection (5). If the commissioner or his authorized representative finds that the ordered cessation of strip- or underground-coal-mining and reclamation operations, or any portion thereof, will not completely abate the imminent danger to the health or safety of the public or the significant and imminent environmental harm to land, air, or water resources, he shall in addition to the cessation order impose affirmative obligations on the operator requiring him to take whatever steps the commissioner or his authorized representative considers necessary to abate the imminent danger or the significant environmental harm.*

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(2) When, on the basis of an inspection, the department determines that any permittee is in violation of any requirement of this part or any permit condition required by this part which does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent environmental harm to land, air, or water resources, the commissioner or authorized representative shall issue a notice to the permittee or his agent fixing a reasonable time not exceeding 90 days, for the abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the commissioner or his authorized representative, the commissioner or his authorized representative finds that the violation has not been abated, he shall immediately order a cessation of strip- or underground-mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order remains in effect until the commissioner or his authorized representative determines that the violation has been abated or until modified, vacated, or terminated by the commissioner or his authorized representative pursuant to subsection (5). In the order of cessation issued under this subsection, the commissioner shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.

(3) When, on the basis of an inspection, the commissioner or his authorized representative determines that a pattern of violations of any requirements of this part or any permit conditions required by this part exists or has existed and if the commissioner or his authorized representative also finds that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions or that such violations are willfully caused by the permittee, the commissioner or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested the commissioner shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the commissioner or his authorized representative shall forthwith suspend or the board shall revoke the permit. When a permit has been revoked, the board may order the performance bond forfeited.

(4) Any additional permits held by an operator whose mining permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this part in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part.

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(5) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the strip- or underground-mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the department or the commissioner or his authorized representative who issues the notice or order. All such notices and orders must be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the commissioner or his authorized representative, provided that any notice or order issued pursuant to this section that requires cessation of mining by the operator expires within 30 days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

(6) An operator issued a notice or an order of abatement pursuant to this section or any person having an interest that is or may be adversely affected by an order or by modification, vacation, or termination of an order, may apply to the department for review of that order within 30 days of its issuance or within 30 days of its modification, vacation, or termination. Upon receipt of the application, the department shall make an investigation. The investigation shall provide an opportunity for public hearing at the request of the applicant or the person having an interest who is or may be adversely affected, to enable the applicant or the person to present information relating to the issuance and continuance of the notice, order, or the modification, vacation, or termination of it. The filing of an application for review under this subsection may not operate as a stay of any order or notice. The department shall make findings of fact and issue a written decision incorporating an order vacating, affirming, modifying, or terminating the order.

(7) Whenever an order is issued under this section or as the result of any administrative proceeding under [this part], at the request of any person a sum equal to the aggregate amount of all costs, expenses, and attorney fees as determined by the department to have been reasonably incurred by such person for or in connection with his participation in such proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the department, resulting from administrative proceedings, considers proper.

(8) In order to protect the stability of the land, the commissioner or his authorized representative shall order cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities."

Section 16. Section 82-4-252, MCA, is amended to read:

"82-4-252. Mandamus. (1) A resident of this state *or any person having an interest which is or may be adversely affected,* with knowledge

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that a requirement of this part or a rule adopted under this part is not being enforced *or implemented* by a public officer or employee whose duty it is to enforce *or implement* the requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce *or implement* the requirement or rule, the resident *or person having an interest which is or may be adversely affected* may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this part or a rule adopted under this part is not being enforced, shall order the public officer or employee whose duty it is to enforce the requirement or rule to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) Any person having an interest that is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this part against any person for the violation of this part or any rule, order, or permit issued hereunder. However, no such action may commence:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part in any rule, order, or permit issued hereunder. Any person may intervene as a matter of right in any such civil action. Nothing in this section restricts any right that any person may have under any statute or common law to seek enforcement of this part or the rules adopted hereunder or to seek any other relief.

(4) Any person who is injured in his person or property through the violation by any operator of any rule, order, or permit issued pursuant to this part may bring an action for damages (including reasonable attorney and expert witness fees) only in the county in which the strip- or underground-coal-mining operation complained of is located. Nothing in this subsection affects the rights established by or limits imposed under chapter 71 of Title 39.

(5) The court, in issuing any final order in any action brought pursuant to subsection (3), may award costs of litigation (including attorney and expert witness fees) to any party whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Montana Rules of Civil Procedure."

Section 17. Section 82-4-254, MCA, is amended to read:

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"82-4-254. Violation — penalty. (1) A person or operator who violates any of the provisions of this part, rules or orders adopted under this part, *or permit, term, or condition, and any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation,* shall pay a civil penalty of not less than $100 or more than *$5,000* for the violation and an additional civil penalty of not less than $100 or more than *$5,000* for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. *Any person or operator who fails to correct a violation within the period permitted by law, rule of the board or department, or order of the commissioner shall be assessed a penalty of not less than $750 for each day during which such failure or violation continues. The period permitted for correction of a violation shall not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements.*

(2) *The department shall notify the person or operator of the violation. The person or operator shall by filing a written request within 20 days of receipt of the notice of violation be entitled to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the board shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of penalty warranted and shall order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, he shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits his right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or the district having jurisdiction over the defendant.*

(3) *The attorney general shall, upon request of the commissioner, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:*

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of the part;

(c) refuses to admit an authorized representative of the department to the permit area;

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(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part;

(f) refuses to permit access to, and copying of, such records as the department determines to be necessary in carrying out the provisions of this part.

(4) Any relief granted by a court under subsection (3)(a) continues in effect until the completion or final termination of all proceedings for review of such under this part unless, prior thereto, the district court granting the relief sets it aside or modifies it.

(5) A person who violates any of the provisions of this part, any determination or order adopted under this part, or who willfully violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined not less than $500 and not more than $10,000 or imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(6) Any person who knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 1 year, or both.

(7) Any person who except as permitted by law willfully resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 1 year, or both.

(8) No employee of the department performing any function or duty under this part shall have a direct or indirect financial interest in any strip- or underground-coal-mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than $2,500 or by imprisonment of not more than 1 year, or both."

Section 18. Section 70-30-102, MCA, is amended to read:

"70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

(1) all public uses authorized by the government of the United States;

(2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;

(3) public buildings and grounds for the use of any county, city or town, or school district; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county,

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city, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys and all other public uses for the benefit of any county, city, or town or the inhabitants thereof, which may be authorized by the legislature; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized;

(4) wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, mills, and smelters for the reduction of ores and farming neighborhoods with water and drainage and reclaiming lands and for floating logs and lumber on streams not navigable and sites for reservoirs necessary for collecting and storing water. However, such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(5) roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, mills, or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores; also an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water. However, such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(6) private roads leading from highways to residences or farms;

(7) telephone or electric light lines;

(8) telegraph lines;

(9) sewerage of any city, county, or town or any subdivision thereof, whether incorporated or unincorporated, or of any settlement consisting of not less than 10 families or of any public buildings belonging to the state or to any college or university;

(10) tramway lines;

(11) electric power lines;

(12) logging railways;

(13) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for such time as the court or judge may determine; provided, the grounds of state institutions be excepted;

(14) underground reservoirs suitable for storage of natural gas;

(15) to mine and extract ores, metals, or minerals owned by the plaintiff located beneath or upon the surface of property where the title to said surface vests in others. However, the use of the surface for strip mining or open pit mining of coal (i.e., any mining method or process in which the

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strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose;

(16) to restore and reclaim lands strip- or underground-mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse affects of strip or underground mining on those lands."

Section 19. **Applicability.** (1) This act does not become effective until the secretary of interior has conditionally or finally approved the state's permanent regulatory program under Public Law 95-87; however, rules pursuant to this act may be adopted pursuant to Title 2, chapter 4, prior to the effective date of this act and shall become effective only on the effective date of this act.

(2) Within 2 months of the secretary of interior's approval of the state's permanent regulatory program pursuant to section 503 of Public Law 95-87, as amended, each operator shall submit to the department a permit revision application to bring its permit into compliance with this act. The burden shall be on the applicant to demonstrate that the application complies with all the requirements of this act. The department shall make a written finding granting or denying the application within 5 months of its submittal. Eight months after the secretary of interior's approval of the state's permanent regulatory program, no operator may conduct strip- or underground-mining operations unless the operator's permit has been revised to conform to the requirements of this act and approved by the department. Eight months after the secretary of interior's approval of the state's regulatory program, all strip- or underground-mining operations must be conducted in accordance with Title 82, chapter 2, part 4, as amended by this act.

Section 20. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. **Repealer.** Sections 82-3-101 through 82-3-110, MCA, are repealed.

Approved April 12, 1979.

CHAPTER NO. 551

AN ACT TO AUTHORIZE PRESESSION ORGANIZATIONAL ACTIVITIES AND PROVIDE COMPENSATION AND EXPENSES FOR LEGISLATORS INVOLVED; AMENDING SECTIONS 5-2-202 AND 5-2-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-202, MCA, is amended to read:

"**5-2-202. Presession activity.** *(1) Members of the legislature elected to leadership positions during the presession caucus and members*

appointed to the legislative administration committees, committee on committees, and rules committees may meet and perform necessary organizational tasks prior to the session, including but not limited to appointing committees, hiring staff, and assigning space and seating.

(2) Members of the house appropriations committee and of the senate finance and claims committee named at the presession caucus may begin reviewing requests for appropriations immediately and may visit state agencies and institutions to discuss requests."

Section 2. Section 5-2-203, MCA, is amended to read:

"5-2-203. Compensation and expenses. (1) Members of the legislature attending the presession caucus are entitled to receive compensation and expenses as provided in 5-2-302.

(2) While engaged in presession business, *members elected to leadership positions and* members of the committees named in 5-2-202 are entitled to receive compensation and expenses as provided in 5-2-302."

Approved April 12, 1979.

CHAPTER NO. 552

AN ACT TO PROVIDE THAT THE SLURRY TRANSPORT OF COAL IS NOT A BENEFICIAL USE OF WATER; AMENDING SECTION 85-2-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", *unless otherwise provided,* means a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means the certificate of water right issued by the department under 85-2-210, subsections (1) and (2) of 85-2-306, and 85-2-315.

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(5) "Declaration" means the declaration of an existing right filed with the department under 85-2-203.

(6) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(7) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(8) "Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(9) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(10) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

(11) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(12) "Slurry" means a mixture of water and insoluble material.

(13) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(14) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including geothermal water and diffuse surface water.

(15) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. **Slurry transport of coal.** (1) The legislature finds that the use of water for the slurry transport of coal is detrimental to the conservation and protection of the water resources of the state.

(2) The use of water for the slurry transport of coal is not a beneficial use of water.

Section 3. **Codification.** It is intended that section 2 be codified as an integral part of Title 85, chapter 2, part 1, and the provisions of Title 85, chapter 2, apply to section 2.

Approved April 12, 1979.

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CHAPTER NO. 553

AN ACT AMENDING THE MONTANA MAJOR FACILITY SITING ACT; REQUIRING LOCAL GOVERNMENTS ENTITLED TO PARTICIPATE IN A CERTIFICATION PROCEEDING TO FILE A STATEMENT OF INTENT TO PARTICIPATE; INVOLVING LOCAL GOVERNMENTS IN THE LONG-RANGE PLANNING PROCESS; AMENDING SECTIONS 75-20-211, 75-20-221, AND 75-20-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-211, MCA, is amended to read:

"75-20-211. Application — filing and contents — proof of service and notice. (1) (a) An applicant for a certificate shall file with the department a verified application, in such form as the board by rule or the department by order prescribes, containing the following information:

(i) a description of the location and of the facility to be built thereon;

(ii) a summary of any studies which have been made of the environmental impact of the facility;

(iii) a statement explaining the need for the facility;

(iv) a description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility; and

(v) such other information as the applicant considers relevant or as the board by rule or the department by order requires.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) above shall be filed with the department, if ordered, and shall be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination which are physically and directly attached to each other and are operationally a single operating entity.

(3) An application shall be accompanied by proof of service of a copy of the application on the chief executive officer of each *unit of local government* and the head of each government agency charged with the duty of protecting the environment or of planning land use in the area in which any portion of the facility is to be located, both as primarily and as alternatively proposed.

(4) The copy of the application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(5) An application shall also be accompanied by proof that public notice thereof was given to persons residing in the *units of local government* entitled to receive notice under subsection (3) of this section by the publication of a summary of the application and the date on or about

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which it is to be filed in those newspapers as will serve substantially to inform those persons of the application."

Section 2. Section 75-20-221, MCA, is amended to read:

"75-20-221. Parties to certification proceeding — waiver — statement of intent to participate. (1) The parties to a certification proceeding include:

(a) the applicant;

(b) each *unit of local* government *and government* agency entitled to receive service of a copy of the application under 75-20-211(3);

(c) any person residing in a municipality entitled to receive service of a copy of the application under 75-20-211(5);

(d) any nonprofit organization formed in whole or in part to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent commercial and industrial groups; or to promote the orderly development of the areas in which the facility is to be located; or

(e) any other interested person; and

(f) the department.

(2) Any party identified in (b), (c), (d), and (e) of subsection (1) waives his right to be a party if he does not participate orally at the hearing before the board.

(3) Each unit of local government entitled to receive service of a copy of the application under 75-20-211(3) shall file with the board a statement showing whether the unit of local government intends to participate in the certification proceeding. If the unit of local government does not intend to participate, it shall list in this statement its reasons for failing to do so. This statement of intent shall be published before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable unit of local government."

Section 3. Section 75-20-501, MCA, is amended to read:

"75-20-501. Annual long-range plan submitted — contents — available to public. (1) Each utility and each person contemplating the construction of a facility within this state in the ensuing 10 years shall furnish annually to the department for its review a long-range plan for the construction and operation of facilities.

(2) The plan shall be submitted on April 1 of each year and shall include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the utility or person whose construction is projected to commence during the ensuing 10 years, as well as those facilities to be removed from service during the planning period;

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(b) in the case of utility facilities, a description of efforts by the utility or person to coordinate the plan with other utilities or persons so as to provide a coordinated regional plan for meeting the energy needs of the region;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility or person and explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the board by rule or the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this chapter.

(3) The plan shall be *furnished to the governing body of each county in which any facility included in the plan under (2)(a) of this section is proposed to be located and* made available to the public by the department. The utility or person shall give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of health and environmental sciences, the department of highways, the department of public service regulation, the department of state lands, and the department of community affairs. Citizen environmental protection and resource planning groups and other interested persons may obtain a plan by written request and payment therefor to the department."

Approved April 12, 1979.

CHAPTER NO. 554

AN ACT TO INCREASE THE HOSPITAL DISTRICT MILL LEVY AUTHORIZATION AND TO CLARIFY THAT AN ELECTION MUST BE HELD BEFORE SPECIAL ADDITIONAL MILLS MAY BE LEVIED; AMENDING SECTIONS 7-34-2134 AND 7-34-2135, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-34-2134, MCA, is amended to read:

"7-34-2134. Special additional mill levy authorized. If the maximum levy of 3 mills on each dollar of taxable valuation of property within the hospital district is inadequate to raise the amount of money certified as necessary and proper by the board of hospital trustees as provided in 7-34-2132, the board of county commissioners may make an additional levy *for 2 years* upon the taxable property within said hospital district of *6* mills or less sufficient to raise the amount certified by the board of hospital trustees."

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Section 2. Section 7-34-2135, MCA, is amended to read:

"7-34-2135. Election required to impose special additional mill levy. (1) Before *each* additional levy provided for in 7-34-2134 may be made, the question shall be submitted to a vote of the people at *a primary* election *held in an even-numbered year* in the following form:

"Shall there be an additional levy of (specify number) mills upon the taxable property of the (specify hospital district) *for 2 years* necessary to raise the sum of (specify the *approximate* amount to be raised by the additional tax levy) for the purpose of (specify purpose for which the additional levy is made)?

☐ FOR an additional levy to raise the sum of (state the *approximate* amount to be raised by the additional tax levy), and being (give number) mills.

☐ AGAINST an additional tax levy to raise the sum of (state *approximate* amount to be raised by the additional tax levy), and being (give number) mills."

(2) Notice of the election, clearly stating the amount and the purpose of the additional levy, must be given and the election held and conducted and the returns made in all respects in the manner prescribed by law with regard to the submission of questions to the electors under the general election laws."

Section 3. **Effective date.** This act is effective upon passage and approval.

Approved April 12, 1979.

CHAPTER NO. 555

AN ACT TO ESTABLISH A PROGRAM UNDER WHICH THE STATE OF MONTANA MAY PROVIDE ITS EMPLOYEES WITH ADEQUATE GROUP HOSPITALIZATION, HEALTH, MEDICAL, DISABILITY, LIFE, AND OTHER RELATED GROUP BENEFITS IN AN EFFICIENT MANNER AND AT AN AFFORDABLE COST; AMENDING SECTIONS 2-18-702 AND 5-2-303, MCA; REPEALING SECTIONS 2-15-1012 AND 2-18-801 THROUGH 2-18-807, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purpose of [this act] is to establish a program under which the state may provide state employees with adequate group hospitalization, health, medical, disability, life, and other related group benefits in an efficient manner and at an affordable cost.

Section 2. **Definitions.** As used in [this act], the following definitions apply:

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(1) "Advisory council" means the state employee group benefits advisory council provided for in [section 3 of this act].

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "State employee" means an employee of the state, specifically including a member or employee of the legislative branch of state government. The term "state employee" does not include employees of counties, cities, towns, school districts, or the Montana university system.

(4) "Group benefits" means group hospitalization, health, medical, surgical, disability, life, and other similar and related group benefits provided to officers and employees of the state. The term "group benefits" does not include casualty insurance, defined in 33-1-206; marine insurance defined in 33-1-209; property insurance defined in 33-1-210; surety insurance defined in 33-1-211; and title insurance defined in 33-1-212.

Section 3. **State employee group benefit advisory council to be created — composition.** (1) The department shall create a state employee group benefits advisory council under 2-15-122.

(2) The members of the advisory council shall be selected from a diverse group in order to adequately represent the interests of state employees.

Section 4. **Functions of advisory council.** (1) The department shall meet and consult with the advisory council before negotiating, contracting, or otherwise modifying state employee group benefit plans.

(2) The advisory council shall meet quarterly to review the existing state employee group benefit plans, to review claims problems, and to advise the department on state employee group benefit matters.

Section 5. **General duties of the department.** The department shall:

(1) adopt rules for the conduct of its business under [this act] and to carry out the purposes of [this act];

(2) negotiate and administer contracts for state employee group benefit plans;

(3) design state employee group benefit plans, establish specifications for bids, and make recommendations for acceptance or rejection of bids;

(4) prepare an annual report which describes the state employee group benefit plans being administered, details the historical and projected program costs and the status of reserve funds, and makes recommendations, if any, for change in existing state employee group benefit plans; and

(5) prior to each legislative session, perform or obtain an analysis of rate adequacy of all state employee group benefit plans administered under [this act]. The department shall make copies of the report available to the legislature.

Section 6. **Alternatives to conventional insurance for providing state employee group benefits authorized — requirements.**

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The department may establish alternatives to conventional insurance for providing state employee group benefits. The requirements for providing alternatives to conventional insurance are as follows:

(1) The department must maintain state employee group benefit plans on an actuarially sound basis.

(2) The department must maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of state employee group benefit plans.

(3) The department must deposit all reserve funds and premiums paid to a state employee group benefit plan.

(4) The department must deposit income earned from the investment of a state employee group benefit plan's reserve fund into the account established under subsection (3) of this section in order to offset the costs of administering the plan.

(5) The department shall, prior to implementation of any alternative to conventional insurance, present to the advisory council the evidence upon which the department has concluded that the alternative method will be more efficient, less costly, or otherwise superior to contracting for conventional insurance. The department may not implement any full self insurance alternative prior to July 1, 1981.

(6) The provisions of Title 33 shall not apply to the department when exercising the powers and duties provided for in this section.

Section 7. **Combining existing employee groups authorized.** The department may combine existing state employee groups into larger groups for the purpose of establishing state employee group benefit plans on behalf of the combined groups. The department may also combine state employees into a single group for purposes of state employee group benefits under [this act].

Section 8. **Administrative costs.** The department shall include the costs of administering and negotiating state employee group benefit plans established under [this act], as well as the costs of hiring necessary consultants, actuaries, and auditors under [this act], as part of the cost for state employee group benefits.

Section 9. **Transfer of authority of board of regents authorized.** (1) The board of regents of higher education may transfer its authority for providing group benefits for employees of the Montana university system to the department.

(2) Upon transfer of the board of regents' authority as provided in (1) of this section, group benefit plans for employees of the Montana university system are subject to the provisions of [this act].

Section 10. **Annual audits of group benefit plans required.** The department shall have the state employee group benefit plans established under [this act], whether established on a self-funded basis or not, audited annually by either the legislative auditor or an independent certified public accountant.

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Section 11. Section 2-18-702, MCA, is amended to read:

"2-18-702. Group insurance for public employees and officers. (1) All counties, cities, towns, *school districts, and the board of regents* shall upon approval by two-thirds vote of *their respective* officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents.

(2) State employees, as defined in [section 2 of this act], may participate in such state employee group benefit plans as are provided for under part 8 of this chapter.

(3) The premiums required from time to time to maintain such insurance in force shall be paid by the insured officers and employees, and the auditor shall deduct said premiums from the salary or wages of each officer or employee who elects to become insured, on the officer or employee's written order, and issue his warrant therefor to the insurer.

(4) For the purpose of [40-3905.1, R.C.M. 1947], the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health, or the services of hospitals, clinics or sanitariums, or both professional and hospital services, shall be construed as group insurance, and the dues payable under such plans shall be construed as premiums therefor."

Section 12. Section 5-2-303, MCA, is amended to read:

"5-2-303. Participation in state benefits group. *Individual members* of the senate and the house of representatives may enroll in the state employees *benefits* group during the terms to which they have been elected. The *provider of benefits* shall enroll and collect employee contributions directly from such legislators. The employer contribution shall be paid from funds appropriated for that purpose."

Section 13. **Codification.** (1) Sections 1, 2, and 4 through 10 of this act are intended to be codified as an integral part of Title 2, chapter 18, part 8, and the provisions contained in Title 2, chapter 18, part 8, apply to sections 1, 2, and 4 through 10.

(2) Section 3 of this act is intended to be codified in Title 2, chapter 15, part 10.

Section 14. **Repealer.** Sections 2-15-1012 and 2-18-801 through 2-18-807, MCA, are repealed.

Section 15. **Effective date.** This act shall be effective immediately on passage and approval.

Approved April 12, 1979.

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CHAPTER NO. 556

AN ACT TO GENERALLY REVISE, CLARIFY, AND AMEND THE LAWS RELATING TO PUBLIC WATER SUPPLIES; AMENDING SECTIONS 75-6-102 THROUGH 75-6-104, 75-6-106, 75-6-107, AND 75-6-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6-102, MCA, is amended to read:

"75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Drainage" means rainfall, surface, and subsoil water.

(5) "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations at Title 40, CFR, Parts 141 and 142.

(6) "Industrial waste" means any waste substance from the processes of business or industry or from the development of any natural resource, together with any sewage that may be present.

(7) "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water supply system.

(8) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(9) "Person" means any individual, corporation, *association, partnership,* municipality, other political subdivision of the state, *or federal agency.*

(10) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge which is authorized under

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the pollution discharge permit rules of the board is not pollution under this chapter.

(11) "Public water supply *system*" means *a system for* the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families, 25 or more persons *daily, or has at least 10 service connections* at least 60 days out of the calendar year.

(12) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with groundwater infiltration and surface water present.

(13) "State waters" means any body of water, irrigation system, or drainage system, either surface or underground."

Section 2. Section 75-6-103, MCA, is amended to read:

"75-6-103. Duties of the board. (1) The board has general supervision over all state waters which are directly or indirectly being used by a person for a public water supply *system* or domestic purposes or as a source of ice.

(2) The board shall adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used *for* a public water supply *system*;

(b) fees for services rendered by the department in analyzing water and conducting inspections;

(c) monitoring, recordkeeping, and reporting by persons who own or operate a public water supply *system*;

(d) requiring public notice to all users of a public water supply *system* when a person has been granted a variance *or exemption* or is in violation of this part or a rule or order issued pursuant to this part;

(e) the issuance of licenses by the department to laboratories that conduct analysis of public water *supply systems*;

(f) the siting, construction, operation, and modification of a public water supply *system*;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

(h) the issuance of variances *and exemptions* as authorized by *the federal Safe Drinking Water Act and* this part; and

(i) any other requirement necessary for the protection of public health as described in this part.

(3) The board may issue orders necessary to fully implement the provisions of this part."

Section 3. Section 75-6-104, MCA, is amended to read:

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"75-6-104. Duties of department. The department shall:

(1) upon its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply *system* and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) have waters examined to determine their *quality* and the possibility that they may endanger public health;

(3) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of assuring its *quality*;

(4) advise persons as to the best method of *treating* and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

(5) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(6) collect fees for services rendered in analyzing water and conducting inspections to cover costs of the service and deposit the fees collected in an earmarked revenue fund for use by the department;

(7) establish and maintain experiment stations and conduct experiments to study the best methods of *treating* water, drainage, wastewater, sewage, and industrial waste to prevent pollution, including investigation of methods used in other states;

(8) enter on premises at reasonable times to determine sources of pollution or danger to water *supply systems* and whether rules and standards of the board are being obeyed;

(9) enforce and administer the provisions of this part;

(10) establish a plan for the provision of safe drinking water under emergency circumstances;

(11) maintain an inventory of public water *supply systems* and establish a program for conducting sanitary surveys; and

(12) enter into agreements with local boards of health wherever appropriate for the performance of surveys and inspections under the provisions of this part."

Section 4. Section 75-6-106, MCA, is amended to read:

"75-6-106. Licensing of laboratories. (1) No laboratory analysis of water taken from a public water supply *system* or any report of such an analysis required by this part or a rule adopted under this part may be accepted by the department or board unless the analysis or report is made by the laboratory of the department or by a laboratory licensed by the department for such purposes. The department shall issue a license to

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any laboratory that can meet criteria for licensing established in the rules adopted by the board.

(2) An application for a license under this section shall be made on forms furnished by the department.

(3) A person aggrieved by a decision of the department to grant, deny, or revoke a license may appeal the department's decision to the board as provided in the Montana Administrative Procedure Act."

Section 5. Section 75-6-107, MCA, is amended to read:

"75-6-107. Variances and exemptions. The department may grant a variance *or exemption* from the requirements of this part or the rules adopted under this part pursuant to the terms and conditions of the variance *and exemption* rules adopted by the board. A variance *or exemption* granted pursuant to this section shall be accompanied by a compliance plan specifying a time schedule for compliance. A person aggrieved by a decision of the department to grant, deny, revoke, or modify a variance *or exemption* may appeal the department's decision to the board as provided in the Montana Administrative Procedure Act."

Section 6. Section 75-6-112, MCA, is amended to read:

"75-6-112. Prohibited acts. A person shall not:

(1) discharge *sewage, drainage, industrial waste, or other wastes* that will *cause pollution* of state waters used by a person for domestic use or as a source *for a public water* supply *system* or water or ice company;

(2) discharge sewage, drainage, *industrial waste, or other waste* into any state waters or on the banks of any state waters or into any abandoned or operating water well unless the sewage, drainage, *industrial waste, or other waste* is *treated* as prescribed by the board;

(3) build or operate any railroad, logging road, logging camp, or electric or manufacturing plant of any kind on any watershed of a public water supply system unless:

(a) the water supply is protected from pollution by sanitary precautions prescribed by the board; and

(b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;

(4) construct, alter, or extend any system of water supply, water distribution, sewer, drainage, wastewater, or sewage disposal without first submitting necessary maps, plans, and specifications to the department for its *review* and approval;

(5) operate or maintain any public water supply system which exceeds a maximum contaminant level established by the board unless he has been granted or has an application pending for a variance or exemption pursuant to this part."

Section 7. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

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Section 8. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 12, 1979.

CHAPTER NO. 557

AN ACT TO REQUIRE THAT NEW MOTOR VEHICLE DEALERS BE LICENSED ALSO WITH THE DEPARTMENT OF BUSINESS REGULATION; PROVIDING FOR AN EARMARKED REVENUE ACCOUNT; AND AMENDING SECTION 61-4-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-202, MCA, is amended to read:

"61-4-202. License requirements. (1) No *new motor vehicle dealer,* manufacturer, distributor, factory branch, or distributor branch may engage in business in Montana except in accordance with the requirements of this part. The provisions of this part do not apply to a public officer engaged in the discharge of his official duties or to a trustee, receiver, or other officer acting under the jurisdiction of a court; to financial institutions disposing of repossessed vehicles; or to a person disposing of his personal vehicle. The provisions of this part regulating and licensing *new motor vehicle dealers,* manufacturers, distributors, factory branches, distributor branches, and franchisors apply only to those *new motor vehicle dealers,* manufacturers, distributors, factory branches, distributor branches, and franchisors of motor vehicles as defined by this part.

(2) A *new motor vehicle dealer or a* manufacturer, distributor, factory branch, distributor branch, importer, or franchisor transacting business within Montana by offering, selling, trading, consigning, or otherwise transferring a new motor vehicle to a new motor vehicle dealer must be licensed by the state of Montana. The department shall issue licenses to qualified applicants upon receipt of a license fee in the amount of $15 accompanied by the information required in this section.

(3) The following information *if applicable* shall be submitted by an applicant upon forms supplied by the department:

(a) the name and address of the applicant;

(b) the make and model of each new motor vehicle to be franchised;

(c) the name and address of each of the applicant's franchisees within the state; and

(d) the name and address of each factory branch, distributor branch, agent, or representative within the state.

(4) The license may be renewed each year if the applicant is in compliance with the provisions of this part, remits a renewal fee in the amount

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of $15, and notifies the department of any changes in the information previously supplied.

(5) No new motor vehicle may be sold in this state unless either the manufacturer on direct dealership of domestic vehicles, the importer of foreign manufactured vehicles on direct dealership, or the distributor on indirect dealerships of either domestic or foreign vehicles is licensed as provided in this part. *Notwithstanding any other licensing provision contained in Montana law, every new motor vehicle dealer must also obtain a license under this part.* The obtaining of a license under this part conclusively establishes that a *new motor vehicle dealer,* manufacturer, distributor, or importer is subject to the laws of this state regulating *new motor vehicle dealers,* manufacturers, importers, and distributors."

Section 2. **Earmarked revenue account.** All license fees collected under this part by the department must be deposited in an earmarked revenue account established for the use of the department in the administration of this part.

Section 3. **Codification.** (1) Section 2 is intended to be codified as an integral part of Title 61, chapter 4, part 2, and the provisions contained in Title 61, chapter 4, part 2, apply to section 2.

(2) If section 2 is not codified in Title 61, chapter 4, part 2, the code commissioner shall add to the MCA, if necessary, statutory language to convey the intent of this section.

Approved April 12, 1979.

CHAPTER NO. 558

AN ACT TO REVISE THE LAWS RELATING TO SPECIAL EDUCATION; CHANGING AGE REQUIREMENTS FOR ADMISSION AND ACCEPTANCE OF CERTAIN PUPILS TO SCHOOL; MAKING SCHOOL DISTRICT PROVISION OF SPECIAL EDUCATION PROGRAMS PERMISSIVE IN CERTAIN CASES; AND AMENDING SECTIONS 20-1-101, 20-5-101, 20-7-411, AND 20-7-412, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-1-101, MCA, is amended to read:

"20-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Agricultural experiment station" means the agricultural experiment station established at Montana state university.

(2) "Average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district.

(3) "The board of public education" is the board created by Article X, section 9, subsection (3) of the 1972 Montana constitution and 2-15-1507.

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(4) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2) of the 1972 Montana constitution and 2-15-1505.

(5) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2) of the 1972 Montana constitution and 2-15-1506.

(6) "County superintendent" means the county government official who is the school officer of the county.

(7) "District superintendent" means any person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(8) "Postsecondary vocational-technical center" means a school used principally for the provision of postsecondary vocational-technical education to persons who qualify as postsecondary vocational-technical pupils. These centers are designated by the board of public education upon direction by the legislature. All other public or private schools are hereby prohibited from using this title.

(9) "Postsecondary vocational-technical education" means vocational-technical education of postsecondary vocational-technical pupils which is conducted by a postsecondary vocational-technical center or other programs as designated by the board of public education. Postsecondary vocational-technical education shall include the 13th and 14th year and beyond but will not include work toward a baccalaureate degree.

(10) "Postsecondary vocational-technical pupil" means a person who has completed or left school, is at least 16 years of age, and is available for study in preparation for entering the labor market, for reentering the labor market, or for employment stability or advancement in employment.

(11) "Principal" means any person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher shall be construed as including a principal, as herein defined.

(12) "Pupil" means any child who is 6 years of age or older but has not yet reached his *19th* birthday and who is enrolled in a school established and maintained under the laws of the state of Montana at public expense.

(13) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

(14) "Regents" means the board of regents of higher education.

(15) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and shall include any food service

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financially assisted through funds or commodities provided by the United States government.

(16) "The state board of education" is the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1) of the 1972 Montana constitution.

(17) "State university" means the Montana state university, located at Bozeman.

(18) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the constitution of Montana.

(19) "System" means the Montana university system.

(20) "Teacher" means any person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher shall also include any person for whom an emergency authorization of employment of such person has been issued under the provisions of 20-4-111.

(21) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

(22) "Textbook dealer" means any party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state of Montana.

(23) "Trustees" means the governing board of a district.

(24) "University" means the university of Montana, located at Missoula.

(25) "Vocational education" means the instruction to prepare or improve the pupil for gainful employment that does not require a baccalaureate or higher degree. This definition of vocational education shall include guidance and prevocational, related, or technical instruction necessary to prepare the pupil for further vocational education or for entry into employment."

Section 2. Section 20-5-101, MCA, is amended to read:

"20-5-101. Admittance of child to school. (1) The trustees shall assign and admit any child to a school in the district when the child is:

(a) 6 years of age or older but has not yet reached his *19th* birthday;

(b) a resident of the district; and

(c) otherwise qualified under the provisions of this title to be admitted to such school.

(2) In complying with subsection (1)(a) above, the trustees shall have the authority to establish reasonable age requirements for entry into the

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1st grade so long as an otherwise qualified child is permitted to enter the 1st grade sometime during his seventh year or earlier.

(3) The trustees may, at their discretion, assign and admit a child to a school in the district who is under 6 years of age or an adult who is 19 years of age or older.

(4) The trustees of any district shall have the authority to assign and admit any nonresident child to a school in the district under the tuition provisions of this title."

Section 3. Section 20-7-411, MCA, is amended to read:

"20-7-411. Regular classes preferred — obligation to establish special education program. (1) All handicapped children in Montana are entitled to a free appropriate public education provided in the least restrictive alternative setting. To the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, shall be educated with children who are not handicapped. Separate schooling or other removal of handicapped children from the regular educational environment may occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) After September 1, 1977, the board of trustees of every school district must provide or establish and maintain a special education program for every handicapped person as herein defined between the ages of 6 and 18, inclusive.

(3) The board of trustees of any school district may meet its obligation to serve handicapped persons by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program."

Section 4. Section 20-7-412, MCA, is amended to read:

"20-7-412. Establishment of individual district special education program. (1) The trustees of any district, upon obtaining the approval of the superintendent of public instruction, shall establish and maintain a special education program whenever, in the judgment of the trustees and the superintendent of public instruction:

(a) there are sufficient numbers of handicapped children in the district to justify the establishment of a program; or

(b) an individual child requires special education services such as home or hospital tutoring, school-to-home telephone communication, or other individual programs.

(2) *Programs* may be established for handicapped *persons between the* ages *of* 0 *and 21* when the superintendent of public instruction and the trustees have determined that such programs will:

(a) assist a *person* to achieve levels of competence that will enable him to participate in the regular instruction of the district when he could not participate without special education;

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(b) permit the conservation or early acquisition of skills which will provide the *person* with an equal opportunity to participate in the regular instruction of the district; or

(c) provide other demonstrated educational advantages which will materially benefit the *person.*

(3) *Approval and operation of programs established pursuant to subsection (2) do not obligate the state or a school district to offer regular educational programs to a similiar age group unless specifically provided by law.*

(4) When an agency which has responsibility for a handicapped person over 21 but not more than 25, inclusive, cannot provide appropriate services to that person, the agency may contract with the local school district to provide such services."

Approved April 12, 1979.

CHAPTER NO. 559

AN ACT TO CLARIFY THE ALLOCATION OF STATE FUNDS FOR PUBLIC TRANSPORTATION AND TO REVISE THE ALLOCATION FORMULA; AMENDING SECTION 7-14-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-102, MCA, is amended to read:

"7-14-102. Allocation of state funds for public transportation. (1) (a) The department of community affairs shall allocate each year one-half of the funds appropriated for the purposes of this section among the cities *and urban transportation districts* of the state which operate or contract for the operation of *general* public transportation systems.

(b) (i) A city *or urban transportation district* is eligible for an allocation based upon the *ratio of its local financial support for public transportation to the total local financial support for all general public transportation systems in the state. Local financial support shall be determined by dividing the city's or district's expenditure of local revenues for public transportation operations during the fiscal year by the mill value of the city or urban transportation district.* Each applicant city *and urban transportation district* shall compute its *expenditure of local revenues for public transportation operations* for a fiscal year immediately following the end of such year and shall apply allocations received against that deficit.

(ii) A city *or urban transportation district* may not receive more than 50% of any year's *expenditure of local revenues for public transportation operations* as an allocation under this section.

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(2) One-half of the funds appropriated for the purposes of this section shall be paid by the state treasurer to the counties of the state in the manner provided in 15-70-101(1)(a). Money distributed to counties under this section shall be used by the counties for highway or other transportation purposes.

(3) The department of community affairs may make rules for the keeping of accounts for and otherwise implementing this section."

Section 2. **Distribution of funds in excess of those appropriated.** Nothing in [this act] shall commit the state to distribute funds in excess of those specifically appropriated for this purpose.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 12, 1979.

CHAPTER NO. 560

AN ACT TO AMEND THE CLEAN AIR ACT OF MONTANA TO GRANT THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES AUTHORITY TO ADOPT RULES REQUIRED BY FEDERAL LAW; TO ISSUE ORDERS PROVIDED FOR BY FEDERAL LAW; TO PERMIT FEES TO BE ASSESSED FOR ENVIRONMENTAL IMPACT ANALYSIS; TO PROVIDE NOTICE AND HEARING IN ACCORDANCE WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT AND REDUCE TIME REQUIRED FOR NOTIFICATION TO THE AIR POLLUTION ADVISORY COUNCIL; TO CLARIFY THE BOARD'S AUTHORITY TO ADOPT BY RULE A SIMPLIFIED PERMIT SYSTEM FOR AIR CONTAMINANT SOURCES; TO PERMIT FEES TO BE ASSESSED FOR REVIEWING PERMIT APPLICATIONS AND IMPLEMENTING AND ENFORCING PERMIT REQUIREMENTS; TO PROVIDE THAT NOTICE MAY BE GIVEN PERSONALLY OR BY MAIL; TO ESTABLISH NONCOMPLIANCE PENALTY FEES; AND TO INCREASE THE MAXIMUM CIVIL PENALTY FROM $1,000 TO $25,000; AMENDING SECTIONS 75-2-111, 75-2-112, 75-2-205, 75-2-211, 75-2-301, 75-2-401, AND 75-2-413, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-111, MCA, is amended to read:

"75-2-111. Powers of board. The board shall:

(1) adopt, amend, and repeal rules *for the administration, implementation, and enforcement of* this chapter, *for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant thereto*;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may

compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits under this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419."

Section 2. Section 75-2-112, MCA, is amended to read:

"75-2-112. Powers and responsibilities of department. (1) The department is responsible for the administration of this chapter.

(2) The department shall:

(a) by appropriate administrative and judicial proceedings, enforce orders issued by the board;

(b) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(c) prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;

(d) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(e) encourage local units of government to handle air pollution problems within their respective jurisdictions on a cooperative basis and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local government to share the cost of the program. However, the state share may not exceed 30% of the total cost.

(f) encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(g) determine, by means of field studies and sampling, the degree of air contamination and air pollution in the state;

(h) make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and private bodies with respect to this;

(i) collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(j) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

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(k) consult, on request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof concerning the efficacy of this device or system or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this chapter, rules in force under it, or any other provision of law.

(l) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received under this section shall be deposited in the state treasury to the account of the department.

(3) The department may assess fees to the applicant for the analysis of the environmental impact of an application to redesignate the classification of any area, except those areas within the exterior boundaries of a reservation of a federally recognized Indian tribe, under the classifications established by 42 U.S.C. 7470 through 7479 (prevention of significant deterioration of air quality). The determination of whether or not a fee will be assessed is to be on a case-by-case basis."

Section 3. Section 75-2-205, MCA, is amended to read:

"75-2-205. Public hearings on rules. No rule and no amendment or repeal thereof may take effect except after public hearing on due notice and after the advisory council has been given, at *the time of* publication, the proposed text to comment thereon. *Such* notice shall be given *and any hearing conducted in accordance with the provisions of the Montana Administrative Procedure Act and rules made pursuant thereto."*

Section 4. Section 75-2-211, MCA, is amended to read:

"75-2-211. Permits for construction, installation, alteration, or use. (1) The department shall provide for the issuance, suspension, revocation, and renewal of a permit issued under this section.

(2) Not later than 180 days before construction begins of any machine, equipment, device, or facility which the board finds may directly or indirectly cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants and not later than 120 days before installation, alteration, or use begins, the owner or operator shall file with the department the appropriate permit application on forms available from the department *and pay to the department a fee sufficient to cover:*

(a) the reasonable costs of reviewing and acting upon the application for such permit; and

(b) the reasonable costs of implementing and enforcing the terms and conditions of such permit if the permit is granted (not including any court costs or other costs associated with any enforcement action). The fee shall be deposited in an earmarked revenue fund to be used by the department for administration of this section.

(3) Nothing in this section shall restrict the board's authority to adopt regulations providing for a single air quality permit system.

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(4) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(5) The department shall require that applications for permits be accompanied by any plans, specifications, and other information it considers necessary.

(6) An application is not considered filed until the applicant has submitted all information and completed all application forms required by subsections (2), (3), and (4). However, if the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(7) Where an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the department shall notify the applicant in writing within 180 days of the receipt of a filed application, as defined in subsection (5), of the approval or denial of the application. However, where an application does not require the compilation of an environmental impact statement, the department shall notify the applicant in writing within 60 days of the receipt of a filed application, as defined in subsection (5), of the approval or denial of the application. *Notification of approval or denial may be served personally or by registered or certified mail on the applicant or his agent.*

(8) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, a hearing before the board. A hearing shall be held under the provisions of the Montana Administrative Procedure Act.

(9) The department's decision on the application is not final unless 15 days have elapsed and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board."

Section 5. Section 75-2-301, MCA, is amended to read:

"75-2-301. Local air pollution control programs. (1) A municipality or county may establish a local air pollution control program on being petitioned by 15% of the qualified electors in its jurisdiction and, if the program is consistent with this chapter and is approved by the board after a public hearing conducted under 75-2-111, may thereafter administer in its jurisdiction the air pollution control program which:

(a) provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by 75-2-203, 75-2-212, and 75-2-402 and rules issued under these sections;

(b) provides for the enforcement of these requirements by appropriate administrative and judicial process; and

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(c) provides for administrative organization, staff, financial, and other resources necessary to effectively and efficiently carry out its program.

(2) If the board finds that the location, character, or extent of particular concentrations of population, air contaminant sources, or geographic, topographic, or meteorological considerations or any combination of these are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(3) If the board has reason to believe that an air pollution control program in force under this section is inadequate to prevent and control air pollution in the jurisdiction to which the program relates or that the program is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing on the matter.

(4) If, after the hearing, the board determines that the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(5) If the jurisdiction fails to take these measures within the time required, the department shall administer within such jurisdiction all of the provisions of this chapter. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the program shall be a charge on the municipality or county.

(6) If the board finds that the control of a particular air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may direct the department to assume and retain control over that air contaminant source. No charge may be assessed against the jurisdiction therefor. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(7) A jurisdiction in which the department administers its air pollution control program under subsection (5) of this section may, with the approval of the board, establish or resume an air pollution control program which meets the requirements of subsection (1) of this section.

(8) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states."

Section 6. Section 75-2-401, MCA, is amended to read:

"75-2-401. Enforcement. (1) When the department believes that a violation of this chapter or a rule made under it has occurred, it may cause written notice to be served *personally or by registered or certified mail* on the alleged violator *or his agent*. The notice shall specify the provision of

this chapter or rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall *schedule* a hearing.

(2) If, after a hearing held under subsection (1) of this section, the board finds that violations have occurred, it shall either affirm or modify an order previously issued or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. An order issued as part of a notice or after a hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order.

(3) Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-2-412 or 75-2-413.

(4) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(5) In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties."

Section 7. **Persons subject to noncompliance penalties — exemptions.** (1) Except as provided in subsection (2), the department shall assess and collect a noncompliance penalty from any person who owns or operates:

(a) a stationary source (other than a primary nonferrous smelter which has received a nonferrous smelter order under 42 U.S.C. 7419) which is not in compliance with any emission limitation specified in an order of the board, emission standard, or compliance schedule under the state implementation plan approved by the federal environmental protection agency;

(b) a stationary source which is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement under 42 U.S.C. 7411 or 42 U.S.C. 7412; or

(c) any source referred to in subsections (1)(a) or (1)(b) which has been granted an exemption, extension, or suspension under subsection (2) or which is covered by a compliance order, or a primary nonferrous smelter which has received a primary nonferrous smelter order under 42 U.S.C. 7419, if such source is not in compliance with any interim emission control

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requirement or schedule of compliance under such extension, order, or suspension.

(2) Notwithstanding the requirements of subsection (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of [sections 7 through 15] with respect to a particular instance of noncompliance which:

(a) the department finds is de minimus in nature and in duration;

(b) is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or

(c) is exempt under 42 U.S.C. 7420(a)(2)(B) of the federal Clean Air Act.

(3) Any person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, a hearing before the board. A hearing shall be held under the provisions of the Montana Administrative Procedure Act.

Section 8. **Amount of noncompliance penalty — late charge.** (1) The amount of the penalty which shall be assessed and collected with respect to any source under [sections 7 through 15] shall be equal to:

(a) the amount determined in accordance with the rules adopted by the board, which shall be no less than the economic value which a delay in compliance after July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source; minus

(b) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into and maintaining compliance with such requirement, to the extent that such expenditures have not been taken into account in the calculation of the penalty under subsection (1)(a).

(2) To the extent that any expenditure under subsection (1)(b) made during any quarter is not subtracted for such quarter from the costs under subsection (1)(a), such expenditure may be subtracted for any subsequent quarter from such costs. In no event may the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(3) If the owner or operator of any stationary source to whom notice is issued under [section 11] does not submit a timely petition under [subsection (2)(b) of section 11] or submits a petition which is denied and if the owner or operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the department may enter into a contract with any person who has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment schedule

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with respect to such source. The cost of carrying out such contract may be added to the penalty to be assessed against the owner or operator of such source.

(4) Any person who fails to pay the amount of any penalty with respect to any source under [sections 7 through 15] on a timely basis shall be required to pay in addition a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be equal to 20% of the aggregate amount of such person's penalties and nonpayment penalties with respect to such source which are unpaid as of the beginning of such quarter.

Section 9. **Manner of making payment.** (1) The assessed penalty required under [sections 7 through 15] shall be paid in quarterly installments for the period of covered noncompliance. All quarterly payments, determined without regard to any adjustment or any subtraction under [subsection (1)(b) of section 8], after the first payment shall be equal.

(2) The first payment shall be due on the date 6 months after the date of issuance of the notice of noncompliance under [section 11] with respect to any source. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for any preceding period within the period of covered noncompliance for such source.

(3) For the purpose of this section, the term "period of covered noncompliance" means the period which begins on the date of issuance of the notice of noncompliance under [section 11] and ends on the date on which such source comes into or, for the purpose of establishing the schedule of payments, is estimated to come into compliance with such requirement.

Section 10. **Adjustment of fee.** (1) The department shall adjust from time to time the amount of the penalty assessment calculated or the payment schedule proposed by such owner or operator under [subsection (2)(a) of section 11], if the department finds after notice and opportunity for a hearing on the record that the penalty or schedule does not meet the requirements of [sections 7 through 15].

(2) Upon making a determination that a source with respect to which a penalty has been paid under [sections 7 through 15] is in compliance and is maintaining compliance with the applicable requirement, the department shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance and shall make a final adjustment within 180 days after such source comes into compliance and:

(a) provide reimbursement with interest to be paid by the state at appropriate prevailing rates for overpayment by such person; or

(b) assess and collect an additional payment with interest at appropriate prevailing rates for any underpayment by such person.

Section 11. **Notice of noncompliance — challenge.** (1) The department shall give a brief but reasonably specific notice of noncompliance to each person who owns or operates a source subject to [subsection

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(1) of section 7] which is not in compliance as provided in that subsection, within 30 days after the department has discovered the noncompliance.

(2) Each person to whom notice has been given pursuant to subsection (1) shall:

(a) calculate the amount of penalty owed (determined in accordance with [subsection (1) of section 8]) and the schedule of payments (determined in accordance with [section 9]) for each source and, within 45 days after issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the department; or

(b) submit to the board a petition within 45 days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under [subsection (2) of section 7] with respect to a particular source.

(3) Each person to whom notice of noncompliance is given shall pay the department the amount determined under [section 8] as the appropriate penalty unless there has been a final determination granting a petition filed pursuant to subsection (2)(b).

Section 12. **Hearing on challenge.** (1) The board shall provide a hearing on the record and make a decision (including findings of fact and conclusions of law) not later than 90 days after the receipt of any petition under [subsection (2)(b) of section 11] with respect to such source.

(2) If the petition is denied, the petitioner shall submit the material required by [subsection (2)(a) of section 11] to the department within 45 days of the date of decision.

Section 13. **Deposit of noncompliance penalty fees.** All noncompliance penalties collected by the department pursuant to [sections 7 through 15] shall be deposited in an earmarked revenue fund until a final determination and adjustment have been made as provided in [section 10] and amounts have been deducted by the department for costs attributable to implementation of [sections 7 through 15] and for contract costs incurred pursuant to [subsection (3) of section 8], if any. After a final determination has been made and additional payments or refunds have been made, the penalty money remaining shall be transferred to the state general fund.

Section 14. **Effect of new standards on noncompliance penalty.** In the case of any emission limitation, emission standard, or other requirement approved or adopted by the board under [Title 75, chapter 2] after [the effective date of this act], and approved by the federal environmental protection agency as an amendment to the state implementation plan, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation, emission standard, or other requirement approved or adopted before [the effective date of this act], the date for imposition of the noncompliance penalty under [sections 7 through 15] shall be the date on which the source is required to be in full compliance with such emission limitation, emission standard, or other

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requirement or 3 years after the approval or promulgation of such emission limitation or requirement, whichever is sooner.

Section 15. **Effect of noncompliance penalty on other remedies.** (1) Any orders, payments, sanctions, or other requirements under [sections 7 through 15] shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under [Title 75, chapter 2] and shall in no way affect any civil or criminal enforcement proceedings brought under 75-2-412 or 75-2-413.

(2) The noncompliance penalties collected pursuant to [sections 7 through 15] are intended to be cumulative and in addition to any other remedies, procedures, and requirements authorized by [Title 75, chapter 2].

Section 16. Section 75-2-413, MCA, is amended to read:

"75-2-413. Civil penalties — out-of-state litigants — effect of action. (1) Any person who violates any provision of this chapter or any rule enforced thereunder or any order made pursuant thereto *and after notice thereof has been given by the department* shall be subject to a civil penalty not to exceed *$10,000.* Each day of violation shall constitute a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings hereunder. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412.

(2) (a) Action under subsection (1) of this section is not a bar to enforcement of this chapter or of rules or orders made under it by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or the rules or orders made under it may be brought in the district court of any county where a violation occurs or is threatened if the defendant cannot be located in Montana.

(3) Moneys collected hereunder shall be deposited in the state general fund."

Section 17. **Codification.** It is intended that sections 7 through 15 be codified as an integral part of Title 75, chapter 2, part 4, and the provisions of Title 75, chapter 2, apply to sections 7 through 15.

Section 18. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 19. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 12, 1979.

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CHAPTER NO. 561

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO CONTROLLED GROUNDWATER AREAS; AMENDING SECTIONS 85-2-501, 85-2-506, AND 85-2-507, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-501, MCA, is amended to read:

"85-2-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(2) "Bureau" means the Montana state bureau of mines and geology provided for in 20-25-211.

(3) "Groundwater" means any fresh water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and which is not a part of that surface water.

(4) "Groundwater area" means an area which, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of groundwater, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable."

Section 2. Section 85-2-506, MCA, is amended to read:

"85-2-506. Controlled groundwater areas — designation or modification. *(1) The board may designate or modify controlled groundwater areas as provided in this part.*

(2) Designation or modification of an area of controlled groundwater use may be proposed to the board by the department on its own motion or by petition signed by at least 20 or one-fourth of the users (whichever is the lesser number) of groundwater in a groundwater area wherein there *are* alleged to be *facts* showing:

(a) that groundwater withdrawals are in excess of recharge to the aquifer or aquifers within such groundwater area;

(b) that excessive groundwater withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the groundwater area;

(c) that significant disputes regarding priority of rights, amounts of groundwater in use by appropriators, or priority of type of use are in progress within the groundwater area; *or*

(d) that groundwater levels or pressures in the area in question are declining or have declined excessively.

(3) When such a proposal is thus made, the *board* shall fix a time and place for a hearing, which time shall not be less than *90* days from the

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making of the proposal. *The place for the hearing shall be within or as close as practical to the controlled groundwater area.*

(4) The department shall publish a notice of the hearing, setting forth therein:

(a) the names of the petitioners;

(b) the description by legal subdivisions *(section, township, range)* of all lands included in *or proposed to be included in* the groundwater area or subarea;

(c) the purpose of the hearing; and

(d) the time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal, and be fully heard.

(5) Such notice of hearing shall be published at least once in each week for 3 successive weeks *not less than 30 days* before the date of the hearing in a newspaper of general circulation in the county or counties in which the groundwater area or subarea is located. The department shall also cause a copy of the notice, together with a copy of the petition, to be served by mail, not less than *30* days before the hearing, *upon each well driller licensed in Montana whose address is within any county in which any part of the area in question is located; upon each person or public agency known from an examination of the records in the department's office to be a claimant or appropriator of groundwater in the area in question (claimant or appropriator meaning one who diverts, impounds, or withdraws groundwater and not merely one who uses or obtains groundwater from another who diverts, impounds, or withdraws groundwater); upon the bureau; and upon the mayor or chairman of the governing body of each incorporated municipality located in whole or in part within the proposed groundwater area. The department may also serve notice upon any other person or state or federal agency that the department feels may be interested in or affected by the proposed designation or modification of a controlled groundwater area. The petition need not be served on any petitioner.* A copy of the notice, together with a copy of the proposal, shall be mailed to each person at his *last-known* address, and such service shall be complete upon depositing it in the post office, postage prepaid, addressed to each person on whom it is to be served. Publication and mailing of such notice as prescribed herein, when completed, shall be deemed to be sufficient notice of such hearing to all interested persons."

Section 3. Section 85-2-507, MCA, is amended to read:

"85-2-507. Limiting withdrawals — modification of order. (1) At the time set for the hearing, the board shall proceed to hear *oral and written* evidence *relevant to the designation or modification of the controlled groundwater area presented by the bureau, the department, and any other interested party. A full record shall be kept of all evidence taken at the hearing. The procedure shall be such as to secure a full, fair, and orderly proceeding and to permit all relevant evidence to be received.*

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The common-law and statutory rules of evidence shall apply only upon stipulation of all parties.

(2) After the conclusion of the hearing, *the board* shall make written findings and an order. *The board shall by order declare the area in question to be a controlled groundwater area if* the board finds on the basis of the hearing *that:*

(a) the public health, safety, or welfare require a corrective control be adopted; and

(b) (i) there is a wasteful use of water from existing wells or undue interference with existing wells;

(ii) any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water or groundwater by others; or

(iii) the facts alleged in the petition as required by 85-2-506(2) are true.

(3) The order shall define the boundary of the controlled groundwater area and shall indicate which of the groundwater aquifers located within the area in question are included within the controlled groundwater area. Any number of groundwater aquifers which wholly or partially overlie one another may be included in the same controlled groundwater area.

(4) The order may include the following corrective control provisions:

(a) a provision closing the controlled groundwater area to further appropriation of groundwater, in which event the department shall thereafter refuse to accept any applications for beneficial water use permits to appropriate groundwater located within such controlled area;

(b) a provision determining a permissible total withdrawal of groundwater in the controlled area by day, month, or year and permitting the board to apportion such permissible total withdrawal among the appropriators holding valid rights to the groundwater in the controlled area in accordance with the relative dates of priority of such rights;

(c) a provision according preference, without reference to relative priorities, to withdrawals of groundwater in the controlled area for domestic and livestock purposes first and thereafter to withdrawals for other beneficial purposes, including but not limited to agricultural, industrial, municipal (other than domestic), and recreational purposes, in such order as the board considers advisable under the circumstances;

(d) a provision reducing the permissible withdrawal of groundwater by any appropriator or well in the controlled area;

(e) when two or more wells in the controlled area are used by the same appropriator, a provision adjusting the total permissible withdrawal of groundwater by the appropriator or a provision forbidding the use of one or more such wells;

(f) a provision requiring and specifying a system of rotation of use of groundwater in the controlled area;

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(g) provisions making such additional requirements as are necessary to protect the public health, safety, and welfare in accordance with the intent, purposes, and requirements of this part and the laws of the state.

(5) If at the conclusion of the hearing the board finds that sufficient facts are not available to designate or modify a permanent controlled groundwater area, the board may by order designate the area in question to be a temporary controlled groundwater area. Such order may include the corrective control provisions contained in subsection (4). A temporary controlled groundwater area shall be designated as such for a period not to exceed 2 years from the date of the board's order designating the temporary controlled groundwater area. The board may, for sufficient cause, extend the time period for an additional 2 years, and in this case all groundwater appropriators in the controlled groundwater area shall be notified of the extension. During the 2-year period, the department shall commence studies necessary to obtain the facts needed to assist in the designation or modification of a permanent controlled groundwater area. Facts gathered during the study period shall be presented at a hearing prior to the designation or modification of a permanent controlled groundwater area. All parties appearing at the first hearing shall be served notice of this hearing by mail at least 30 days prior to the date set for the hearing. The service shall be complete upon deposit of notice at the post office, postage prepaid, addressed to each person on whom service is to be made. Mailing of the notice, when completed, shall be considered to be sufficient notice of the hearing to all persons directly affected. The department shall file in its records proof of service by its own affidavit. The hearing shall be conducted by the board in the manner of the first hearing, and the board shall make written findings of fact and conclusions of law and issue an order according to the provisions set forth in subsections (1) through (4). In the event the department does not complete the necessary study in the 2-year period or extension thereof, the temporary controlled groundwater area designation will terminate at the end of the 2-year period or extension.

(6) The department may enforce the order and bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(7) The order of the board shall be published and mailed by the department in the manner and for the length of time as prescribed by 85-2-506 for the publication and mailing of the notice of hearing, except that a copy of the written findings *and order* of the board shall be mailed instead of a copy of the proposal and, except further, that a copy of the order, together with a copy of the written findings, shall be mailed to each petitioner at his *last-known* address. *The department shall file a copy of the order with the county clerk of each county within which any part of the controlled groundwater area lies, and the county clerk shall record the order without fee. The department shall file in its records proof of service by its own affidavit of service.* Upon publication and mailing of such order as prescribed herein, the order shall be final and conclusive unless an appeal therefrom is taken.

(8) The board may by order suspend, modify, or revoke any order made as provided in this section upon such notice and in such manner as is reasonable under the circumstances. A copy of each suspension,

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modification, or revocation shall be served or filed and recorded as provided for orders in subsection (1).

(9) While a matter is pending before the board, the department may restrict further development of the subarea."

Section 4. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 12, 1979.

CHAPTER NO. 562

AN ACT TO REQUIRE THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO FOLLOW PRIORITIES ESTABLISHED BY THE LEGISLATURE WHEN THERE ARE INSUFFICIENT FUNDS TO PROVIDE MEDICAL CARE FOR ALL ELIGIBLE PERSONS; AMENDING SECTION 53-6-141, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-141, MCA, is amended to read:

"53-6-141. Amount, scope, and duration of assistance. (1) The amount, scope, and duration of medical assistance granted eligible persons shall be determined by the department of social and rehabilitation services. Payments on behalf of persons in state-operated institutions shall be made only from funds appropriated specifically for this purpose, as such funds are available.

(2) If available funds are not sufficient to provide medical care for all eligible persons, the department shall have the *authority to set priorities* to limit, reduce, or otherwise curtail the amount, scope, *or* duration of the medical care and services made available.

(3) For the purpose of determining eligibility and amount of assistance to be granted to those individuals covered in subsections (2)(g) and (2)(h) of 53-6-131, the department shall establish a maintenance standard."

Approved April 12, 1979.

CHAPTER NO. 563

AN ACT TO REVISE THE LAWS RELATED TO ANTIQUITIES; CREATING A PRESERVATION REVIEW BOARD AND AN HISTORIC PRESERVATION OFFICE; PRESCRIBING THE DUTIES OF THE OFFICE AND ITS PRINCIPAL OFFICER; PROVIDING FOR PERMITS; PROVIDING FOR PENALTIES; AND REPEALING SECTIONS 22-3-401 THROUGH 22-3-413, MCA.

WHEREAS, Article IX, section 4, of the Montana constitution requires that the legislature provide for the identification, acquisition, restoration, enhancement, preservation, and administration of historic, archeologic, scientific, and cultural areas, sites, records, and objects and for their use and enjoyment by the people; and

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WHEREAS, rapid social and economic development of contemporary society threatens to destroy the remaining vestiges of Montana's rich heritage; and

WHEREAS, it is in the interest of all Montanans that state government provide leadership in historic preservation for the general education, inspiration, pleasure, and enrichment of the people.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Preservation review board.** (1) There is a preservation review board within the Montana historical society consisting of nine members.

(2) Members shall be appointed by the governor in the following manner:

(a) five professional persons recognized in the fields of archeology, history, architecture, or architectural history; however, no more than two members may be appointed from any one of these fields;

(b) a professional paleontologist;

(c) the state liaison officer for the federal land and water conservation fund;

(d) two members of the public who have actively demonstrated an interest in historic preservation matters.

(3) Each member shall serve a 4-year term. A member may be reappointed.

Section 2. **Transition period — appointment of preservation review board members.** (1) For the purpose of providing staggered terms, the initial terms of preservation review board members shall be as follows:

(a) two members appointed for a 1-year term;

(b) two members appointed for 2-year terms;

(c) two members appointed for 3-year terms; and

(d) three members appointed for 4-year terms.

(2) Thereafter, all members of the council shall be appointed for 4-year terms.

Section 3. **Salary and expenses of board members.** Unless he is a full-time salaried officer or employee of this state or of a political subdivision, each member is entitled to be paid $25 a day for each day in which he is actually and necessarily engaged in board duties and to reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503, incurred in the performance of board duties.

Section 4. **Definitions.** As used in [sections 1 through 14], unless the context clearly indicates otherwise, the following definitions apply:

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(1) "Antiquities permit" means the permit granted for exploration or field investigations of heritage properties or paleontological remains provided for in [section 8].

(2) "Heritage property" means any district, site, building, structure, or object located upon or beneath the earth or under water that is significant in American history, architecture, archeology, or culture.

(3) "Historic preservation office" means the office within the Montana historical society provided for in [section 6].

(4) "Historic preservation officer" means the officer provided for in [section 6].

(5) "Paleontological remains" means fossilized plants and animals of a geological nature found upon or beneath the earth or under water which are rare and critical to scientific research.

(6) "Preservation review board" means the board provided for in [section 1].

(7) "Register" means the National Register of Historic Places, the official list of the nation's heritage properties worthy of preservation because of national, state, or local significance.

(8) "Registered property" means any heritage property listed in the register.

(9) "State agency" means any executive agency of the state of Montana.

Section 5. **Preservation review board — duties.** The preservation review board shall:

(1) recommend nominations to the register;

(2) approve or disapprove all nominations to the register;

(3) approve or disapprove additions to statewide inventories of heritage properties;

(4) review the annual work program that recommends preservation goals and grant allocations for the next succeeding fiscal year; and

(5) act in an advisory capacity to the historic preservation office and to state agencies.

Section 6. **Historic preservation office — duties of historic preservation officer.** (1) There is established the historic preservation office within the Montana historical society to consist of an historic preservation officer and a qualified professional staff.

(2) The historic preservation officer is appointed by the governor.

(3) The historic preservation officer has the following duties and responsibilities:

(a) follow necessary procedures to qualify the state for money that is now or will be made available under any act of congress of the United States or otherwise for purposes of historic preservation;

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(b) conduct an ongoing statewide survey to identify and document heritage properties and paleontological remains;

(c) maintain a state inventory file of heritage properties and paleontological remains and maintain a repository for all such inventory work done in the state;

(d) evaluate and formally nominate potential register properties according to the criteria established by the register;

(e) prepare and annually review the state preservation plan, register nominations, and historic preservation grant activity;

(f) maintain, publish, and disseminate information relating to heritage properties and paleontological remains in the state;

(g) cooperate with and assist local, state, and federal government agencies in comprehensive planning that allows for the preservation of heritage properties and paleontological remains;

(h) enter into cooperative agreements with the federal government, local governments, and other governmental entities or private landowners or the owners of objects to ensure preservation and protection of registered properties;

(i) any other necessary or appropriate activity permitted by law to carry out and enforce the provisions of [sections 3 through 14].

Section 7. **Registration of heritage properties.** (1) Any citizen of Montana may submit to the historic preservation officer for his consideration the necessary forms to nominate heritage properties to the register.

(2) For properties not owned by the state, the historic preservation officer may, upon approval by the preservation review board and after written approval by the landowner, nominate heritage properties to the register.

(3) For lands owned by the state, the historic preservation officer may, upon approval by the preservation review board, nominate heritage properties to the register. The historic preservation officer shall notify the appropriate state agency and give public notice when any property is being considered for nomination. Unless state agency or public objections are submitted in writing within 30 days after notification, the historic preservation officer shall complete the nominations. When a state agency or any citizen of Montana submits written objections, the historic preservation officer shall consider the objections and may conduct a public hearing. If a hearing is held, it shall be commenced within 30 days after the final date for submission of written objections. Within 60 days after submission of the objections or after the public hearing, the historic preservation officer shall make a final decision on the proposed registration and prepare a statement responsive to the objections submitted.

Section 8. **Issuance of permits.** (1) No person may excavate, remove, or restore any heritage property or paleontological remains on lands owned by the state without first obtaining an antiquities permit from the historic preservation officer.

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(2) Antiquities permits are to be granted only after careful consideration of the application for a permit and after consultation with the appropriate state agency. Permits are subject to strict compliance with the following guidelines:

(a) Antiquities permits may be granted only for work to be undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions, societies, or persons with a view toward dissemination of knowledge about cultural properties, provided no such permit may be granted unless the historic preservation officer is satisfied that the applicant possesses the necessary qualifications to guarantee the proper excavation of those sites and objects that may add substantially to man's knowledge about Montana and its antiquities.

(b) The antiquities permit must specify that a summary report of such investigations, containing relevant maps, documents, drawings, and photographs, be submitted to the historic preservation officer. The historic preservation officer shall determine the appropriate time period allowable between all work undertaken and submission of the summary report.

(3) All heritage property and paleontological remains collected under an antiquities permit are the permanent property of the state and must be deposited in museums or other institutions within the state or loaned to qualified institutions outside the state, unless otherwise provided for in the antiquities permit.

(4) An antiquities permit is not a substitution for any other type of permit that a state agency may require for other purposes.

Section 9. **State agency participation.** State agencies shall:

(1) adopt policies for the preservation of heritage properties and paleontological remains on lands owned by the state and avoid, whenever feasible, state actions, or state assisted or licensed actions that substantially alter heritage properties or paleontological remains on lands owned by the state;

(2) identify and develop, in consultation with the historic preservation officer, methods and procedures to ensure that the identification and protection of heritage properties and paleontological remains on lands owned by the state is given appropriate consideration in state agency decisionmaking;

(3) deposit in the historic preservation office all inventory reports, including maps, photographs, and site forms, of heritage properties and paleontological remains.

Section 10. **Environmental review process.** (1) Each state agency responsible for the preparation of an environmental impact statement in accordance with the Montana Environmental Policy Act shall, as a part of its evaluation and study process, consult with and obtain the comments of the historic preservation officer concerning the identification and location of heritage properties and paleontological remains on lands owned by the state that may be adversely impacted by the proposed action, provided,

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however, that where the grant of an interest in state land requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, the environmental impact statement shall be limited to an evaluation of the heritage properties and paleontological remains located in, on, under, and within only the affected state land.

(2) When heritage properties and paleontological remains are located and identified as described in subsection (1), the responsible state agency, in consultation with the historic preservation officer and the preservation review board, shall include as part of its environmental impact statement a plan for the avoidance or mitigation of damage to heritage properties and paleontological remains to the greatest extent practicable. Whenever necessary or appropriate, the state agency may require an applicant for a lease, permit, license, or other approval for use of land owned by the state to develop an avoidance or mitigation plan in consultation with the historic preservation officer and the preservation review board.

Section 11. **Denial of applications.** State agencies may deny or approve with conditions any application for an easement, lease, permit, contract, license, or certificate in order to protect heritage properties and paleontological remains that cannot be properly mitigated provided that this section is limited only to heritage properties and paleontological remains which have been located as a part of the environmental impact statement reviews process as described in [section 10].

Section 12. **Report of discovered heritage properties or paleontological remains.** Any person conducting activities, including survey, excavation, or construction, who discovers on any lands owned by the state any heritage property or paleontological remains as defined in [section 4] or who finds that an operation licensed or otherwise entitled by the state may damage heritage properties or paleontological remains on any lands owned by the state shall promptly report to the historic preservation officer the discovery of such findings and shall take all reasonable steps to ensure preservation of the heritage property or paleontological remains.

Section 13. **Reproduction or sale of heritage property and paleontological remains.** (1) No person may reproduce or falsely identify any heritage property or paleontological remains with the intent to sell the property or remains as an original.

(2) No person may sell any heritage property or paleontological remains with the knowledge that the property or remains have previously been collected or excavated in violation of [sections 8, 12, and 13].

Section 14. **Violation a misdemeanor — penalty.** A person violating any provision of [sections 8, 12, and 13] is guilty of a misdemeanor and upon conviction shall be fined not more than $1,000 or be imprisoned in the county jail for not more than 6 months, or both. Each day of continued violation of any provision of [sections 8, 12, and 13] constitutes a distinct and separate offense.

Section 15. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part

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of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 16. **Repealer.** Sections 22-3-401 through 22-3-413, MCA, are repealed.

Approved April 12, 1979.

CHAPTER NO. 564

AN ACT TO PROVIDE FOR REHABILITATION OF CERTAIN RAIL FACILITIES; AUTHORIZING THE ISSUING OF REVENUE BONDS AND THE MAKING OF LOANS BY THE DEPARTMENT OF HIGHWAYS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Intent.** It is the intent of the legislature to provide a mechanism for the rehabilitation of railroad tracks and associated facilities in Montana and thereby to strengthen the rail transportation system of Montana and the state's economy.

Section 2. **Definitions.** As used in [sections 1 through 13], unless the context indicates otherwise, the following definitions apply:

(1) "Bonds" means railroad rehabilitation revenue bonds authorized by [section 3].

(2) "Department" means the department of highways.

(3) "Person" means an individual or a partnership, association, corporation, or other business entity.

(4) "Project" or "rehabilitation project" means a business undertaking to repair or replace rail facilities to improve the safety and efficiency of the facilities and to derive revenue.

(5) "Rail facilities" means the line of track of a railroad, including spurs and extensions, and associated facilities, including but not limited to loading platforms, signal and switching systems, roadbeds, and machinery and equipment designed for rail maintenance, but the term does not include engines or rolling stock used for the transport of goods or passengers.

(6) "Refunding bonds" means railroad rehabilitation refunding revenue bonds authorized by [section 9].

Section 3. **Railroad rehabilitation revenue bonds.** (1) The department is authorized to issue and sell railroad rehabilitation revenue bonds under the provisions of [sections 1 through 13]. The department of administration shall assist the department of highways in the issuance and sale of the bonds.

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(2) The bonds do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or assets of the department acquired or held in connection with rehabilitation projects.

Section 4. **Bond details.** (1) The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination of serial and term bonds. A bond may not mature more than 50 years from its date of issue. The amount to be issued and sold at any one time shall be determined by the department. The bonds may be sold at either public or private sale and at prices determined by the department.

(2) At the time of issuance of the bonds, the department shall specify the bond details, including but not limited to:

(a) whether serial, term, or combination thereof;

(b) the interest rate;

(c) the denominations;

(d) whether coupon or registered bonds;

(e) the manner, medium, and place of payment;

(f) whether redeemable or not and if redeemable, the manner of redemption;

(g) bond covenants.

Section 5. **Bond limitations.** (1) The interest rate on the bonds may not exceed 9%. The bonds may not be sold for less than par. The total amount of bonds outstanding at any one time may not exceed $25 million.

(2) Each bond must have printed on its face a statement that the state is not liable on the bond, the bond is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or the interest on the bond.

Section 6. **Bond covenants.** The department may enter into covenants with the bondholders to enhance the marketability of the bonds. These covenants may relate to:

(1) the purpose to which the bond proceeds are to be applied;

(2) the use and disposition of the revenue of a project to which the bond proceeds are to be applied;

(3) the issuance of additional bonds to be paid from revenue of a project to which the bond proceeds are to be applied;

(4) the insurance to be carried on a project to which bond proceeds are to be applied;

(5) the accounting procedures and auditing powers related to a project;

(6) the terms and conditions upon which the bondholders are entitled to have a receiver appointed to operate a project to which bond proceeds are to be applied;

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(7) the maintenance of a required capital reserve.

Section 7. **Bond accounts — appropriation.** (1) There is a railroad rehabilitation account in the bond proceeds and insurance clearance fund provided for in 17-2-102. All bond proceeds shall be placed in the railroad rehabilitation account, and all money deposited in the account is continuously appropriated to the department and may be expended by the department for the purposes authorized in [sections 1 through 13].

(2) There is a railroad rehabilitation reserve account in the sinking fund provided for in 17-2-102. Loan repayments and required capital reserves shall be deposited in the railroad rehabilitation reserve account, and all money deposited in the account is continuously appropriated to the department and may be expended for the payment of principal and interest on the bonds as they become due.

Section 8. **Financial administration.** The department shall institute strict accounting procedures and take whatever steps are required by the federal government in the financial administration of bond proceeds and loan accounts.

Section 9. **Refunding bonds.** (1) The department may issue railroad rehabilitation refunding revenue bonds. These bonds are subject to the same provisions as the railroad rehabilitation revenue bonds.

(2) Refunding bonds may be sold or exchanged for outstanding bonds. The proceeds may be applied to the purchase, redemption, or repayment of outstanding bonds, and if not prevented by agreement with the bondholders, the proceeds may be invested as provided in Title 17, chapter 6, pending use of the proceeds for the purchase, redemption, or repayment of outstanding bonds.

Section 10. **Tax exemption.** Bonds and refunding bonds, their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or instrumentality of the state, except for inheritance and estate taxes.

Section 11. **Use of bond proceeds.** (1) The proceeds of the bonds shall be used by the department to make loans to persons for financing rehabilitation projects on rail lines in Montana.

(2) The revenue from the project shall be used for repayment of the loan.

Section 12. **Loan details.** The terms of any loan made pursuant to [section 11] shall be specified by the department and shall be such as to assure sufficient payments to meet the obligations on the bonds. Any terms required under an agreement with the bondholder must be included in the loan agreement. The department may require the borrower to secure the loan with property.

Section 13. **Administration of loans.** (1) The department shall develop forms and application procedures to enable a person to secure a loan authorized by [section 11]. Loans may only be made to persons the department determines to be capable of repaying the loan. The department shall develop criteria for this determination.

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(2) Preference in making loans must be given to persons who intend to use the loan proceeds in such a manner as to create new jobs in Montana.

Section 14. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. **Effective date.** This act is effective on passage and approval.

Approved April 12, 1979.

CHAPTER NO. 565

AN ACT TO PROVIDE FINANCIAL ASSISTANCE FOR THE MANUFACTURE, PURCHASE, OR LEASE OF CERTAIN RAILROAD ROLLING STOCK; AUTHORIZING THE ISSUING OF REVENUE BONDS AND THE MAKING OF LOANS; PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Intent.** It is the intent of the legislature to provide a mechanism to alleviate the shortage of railroad rolling stock in Montana and to stimulate the economy of the state by strengthening the rail transportation system and by providing jobs for more Montanans.

Section 2. **Definitions.** As used in [sections 1 through 13], unless the context indicates otherwise, the following definitions apply:

(1) "Bonds" means railroad rolling stock revenue bonds authorized by [section 3].

(2) "Department" means the department of highways.

(3) "Person" means an individual or a partnership, association, corporation, or other business entity.

(4) "Project" or "rolling stock project" means a business undertaking to manufacture, purchase, or lease rolling stock and to subsequently use, sell, or lease the rolling stock to derive revenue.

(5) "Railroad rolling stock" or "rolling stock" means railroad cargo carriers used to transport grain.

(6) "Refunding bonds" means railroad rolling stock refunding revenue bonds authorized by [section 9].

Section 3. **Railroad rolling stock revenue bonds.** (1) The department acquired or held in connection with rolling stock projects is authorized to issue and sell railroad rolling stock revenue bonds under the provisions of [sections 1 through 13]. The department of administration

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shall assist the department of highways in the issuance and sale of the bonds.

(2) The bonds do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or assets of the department acquired or held in connection with rolling stock projects.

Section 4. **Bond details.** (1) The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination of serial and term bonds. A bond may not mature more than 50 years from its date of issue. The amount to be issued and sold at any one time shall be determined by the department. The bonds may be sold at either public or private sale and at prices determined by the department.

(2) At the time of issuance of the bonds, the department shall specify the bond details, including but not limited to:

(a) whether serial, term, or combination thereof;

(b) the interest rate;

(c) the denominations;

(d) whether coupon or registered bonds;

(e) the manner, medium, and place of payment;

(f) whether redeemable or not and if redeemable, the manner of redemption;

(g) bond covenants.

Section 5. **Bond limitations.** (1) The interest rate on the bonds may not exceed 9%. The bonds may not be sold for less than par. The total amount of bonds outstanding at any one time may not exceed $75 million.

(2) Each bond must have printed on its face a statement that the state is not liable on the bond, the bond is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or the interest on the bond.

Section 6. **Bond covenants.** The department may enter into covenants with the bondholders to enhance the marketability of the bonds. These covenants may relate to:

(1) the purpose to which the bond proceeds are to be applied;

(2) the use and disposition of the revenue of a project to which the bond proceeds are to be applied;

(3) the issuance of additional bonds to be paid from revenue of a project to which the bond proceeds are to be applied;

(4) the insurance to be carried on a project to which bond proceeds are to be applied;

(5) the accounting procedures and auditing powers related to a project;

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(6) the terms and conditions upon which the bondholders are entitled to have a receiver appointed to operate a project to which bond proceeds are to be applied;

(7) the maintenance of a required capital reserve.

Section 7. **Bond accounts — appropriation.** (1) There is a railroad rolling stock account in the bond proceeds and insurance clearance fund provided for in 17-2-102. All bond proceeds shall be placed in the railroad rolling stock account, and all money deposited in the account is continuously appropriated to the department and may be expended by the department for the purposes authorized in [sections 1 through 13].

(2) There is a railroad rolling stock reserve account in the sinking fund provided for in 17-2-102. Loan repayments and required capital reserves shall be deposited in the railroad rolling stock reserve account, and all money deposited in the account is continuously appropriated to the department and may be expended for the payment of principal and interest on the bonds as they become due.

Section 8. **Financial administration.** The department shall institute strict accounting procedures and take whatever steps are required by the federal government in the financial administration of bond proceeds and loan accounts.

Section 9. **Refunding bonds.** (1) The department may issue railroad rolling stock refunding revenue bonds. These bonds are subject to the same provisions as the railroad rolling stock revenue bonds.

(2) Refunding bonds may be sold or exchanged for outstanding bonds. The proceeds may be applied to the purchase, redemption, or repayment of outstanding bonds, and if not prevented by agreement with the bondholders, the proceeds may be invested as provided in Title 17, chapter 6, pending use of the proceeds for the purchase, redemption, or repayment of outstanding bonds.

Section 10. **Tax exemption.** Bonds and refunding bonds, their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or instrumentality of the state, except for inheritance and estate taxes.

Section 11. **Use of bond proceeds.** (1) The proceeds of the bonds shall be used by the department to make loans to persons doing business or resident in Montana for financing rolling stock projects when the rolling stock is to be used primarily in Montana and primarily for the transport of grain produced in Montana.

(2) The revenue from the sale or use of the rolling stock shall be used for repayment of the loans.

Section 12. **Loan details.** The terms of any loan made pursuant to [section 11] shall be specified by the department and shall be such as to assure sufficient payments to enable the department to meet its obligations on the bonds. Any terms required under an agreement with the bondholder must be included in the loan agreement. The department may

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require the borrower to secure the loan with the rolling stock or other property.

Section 13. **Administration of loans.** (1) The department shall develop forms and application procedures to enable a person to secure a loan authorized by [section 11]. Loans may only be made to persons the department determines to be capable of repaying the loan. The department shall develop criteria for this determination.

(2) Preference in making loans shall be given to persons who intend to use the loan proceeds in such a manner as to create new jobs in Montana.

(3) The loan agreement may provide for a reduction in loan interest with the reduction proportional to the amount of time the rolling stock is located in Montana. The interest rate may not be reduced below the level required to meet obligations on the bonds or required by agreement with the bondholders.

Section 14. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. **Effective date.** This act is effective on passage and approval.

Approved April 12, 1979.

CHAPTER NO. 566

AN ACT GENERALLY REVISING THE LAW REGULATING LIVESTOCK MARKETS, DEALERS, AND BROKERS; REPEALING SECTIONS 81-8-101 THROUGH 81-8-109, 81-8-121 THROUGH 81-8-133, AND 81-8-201 THROUGH 81-8-210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Montana Livestock Marketing Act".

Section 2. **Purpose.** The purpose of [this act] is to:

(1) simplify, clarify, and modernize the law governing livestock marketing businesses and livestock marketing transactions;

(2) encourage, stimulate, and stabilize the livestock economy of the state; and

(3) promote open, free, and competitive factors in the market place in relation to all market conditions involving the sale and purchase of livestock.

Section 3. **Definitions.** As used in [this act], the following definitions apply:

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(1) "Board" means the board of livestock provided for in 2-15-3102.

(2) "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.

(3) "Livestock" means cattle, calves, hogs, pigs, horses, mules, sheep, lambs, and goats.

(4) "Livestock broker" means a business, not including facilities, conducted for the receiving, handling, and care of livestock and involving livestock purchased by it for its own account for resale, for the account of any principal for delivery to him, or for slaughter. It does not include a farmer or rancher who buys or sells livestock in the ordinary course of his farming or ranching operation.

(5) "Livestock dealer" means a business conducted in facilities utilized for the receiving, handling, and care of livestock purchased by it for its own account for resale, for the account of any principal for delivery to him, or for slaughter. It does not include a farmer or rancher who buys or sells livestock in the ordinary course of his farming or ranching operation.

(6) "Livestock market" means a place where a person for compensation assembles livestock for sale, except:

(a) a place used solely for a dispersal sale of the livestock of a farmer, dairyman, livestock breeder, or feeder who is discontinuing business and at which no other livestock is sold or offered for sale;

(b) a farm, ranch, or place where livestock either raised or kept thereon for the grazing season or for fattening is sold and to which no other livestock is brought for sale or to be offered for sale;

(c) the premises of a butcher, packer, or processor who receives animals exclusively for immediate slaughter;

(d) the premises of a person engaged in the raising of livestock for breeding purposes only, who limits his sale to livestock of his own production;

(e) a place where a breeder or an association of breeders of livestock of any class assembles and offers for sale and sells under his or its own management any livestock, when the breeder or association of breeders assumes all responsibility for the sale and the title of livestock sold.

(7) "Person" means an individual, firm, association, partnership, or corporation.

(8) "Test station sale" means the sale of livestock from a place where livestock is taken to measure rates of gain under uniform feeding conditions when that place is not owned by the owner of the livestock.

Section 4. **Regulation of livestock markets, dealers, and brokers.** The department shall:

(1) supervise and regulate livestock markets, livestock brokers, and livestock dealers in this state;

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(2) regulate the properties, facilities, operations, services and practices of all livestock markets, livestock brokers, and livestock dealers;

(3) supervise and regulate livestock markets in all matters affecting the relationship between the livestock market and owners of livestock and between the livestock market and purchasers of livestock;

(4) prescribe by general order or otherwise rules in conformity with [this act] applicable to all livestock markets, livestock brokers, or livestock dealers and not in conflict with the laws of the United States or regulations of the United States department of agriculture or other federal agencies;

(5) enforce [this act] and adopt rules necessary to carry out [this act].

Section 5. **Posting of certificate or license.** Every person certified or licensed under the provisions of [this act] shall conspicuously post at his place of business for inspection by any other person the certificate or license issued by the department.

Section 6. **Financial responsibility.** (1) Every livestock market, livestock broker, or livestock dealer shall maintain a financial condition of total assets in excess of total liability, including total current assets in excess of total current liabilities.

(2) Payment for livestock purchased shall be made upon completion of the sales transaction. Payment in all livestock transactions shall be made by cash, check, or draft, as defined in 30-3-104; by electronic funds transfer, as defined in 32-6-103; or by any other bankable instrument.

Section 7. **Penalties.** (1) A person found, after notice and hearing, to be in violation of [section 6] shall be assessed a civil penalty by the department of not less than $100 or more than $5,000, have his license or certificate suspended or revoked, or both.

(2) A person found, after notice and hearing, to have committed a subsequent violation of [section 6] after the department has assessed a penalty pursuant to subsection (1) shall be fined not less than $250 or more than $5,000 and have his license or certificate suspended or revoked.

(3) The maker of any bankable instrument who knowingly and without right fails to honor or causes another to dishonor that instrument once it is issued or delivered in payment for a livestock purchase is guilty of a felony and on conviction may be imprisoned for not more than 5 years or fined not more than $10,000, or both.

Section 8. **Title warranty of livestock sold.** A livestock market, livestock broker, or livestock dealer shall warrant to the purchaser thereof the title of all livestock sold. A livestock market is liable to the rightful owner of all livestock sold for the net proceeds for such livestock whether or not the rightful owner was known to the market at the time of the sale.

Section 9. **Certificate to operate livestock market required — application.** (1) A person may not operate a livestock market unless he first obtains from the department a certificate declaring that public convenience and necessity require the operation.

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(2) The application for a certificate of public convenience shall be in writing, verified by the applicant, and filed with the department. It shall specify the following:

(a) the names of the persons applying for a certificate together with their permanent addresses. If the applicant is a firm, association, partnership, or corporation, the names of its directors, officers, and members, if applicable;

(b) the place where the applicant proposes to operate a livestock market;

(c) a complete description of the property and facilities proposed to be used for the livestock market;

(d) the commissions or charges the applicant proposes to impose on the consignors' livestock for services rendered to them by the applicant in the operation of the livestock market;

(e) the location of other livestock markets within a radius of 200 miles of the proposed livestock market and the names and addresses of the operators thereof;

(f) a detailed statement of the facts upon which the applicant relies to show public convenience and necessity for the livestock market, including the trade area to be served, the economic benefits to the livestock industry, the services to be offered, and the anticipated revenue from inspection that may be derived by the state;

(g) if the applicant is a foreign corporation, its principal place of business outside the state, the state in which it is incorporated, and a showing that it is in compliance with the laws relating to foreign corporations doing business in this state;

(h) a detailed financial statement showing that current assets exceed current liabilities and that long-term assets exceed long-term liabilities;

(i) any additional information the department may require.

Section 10. **Certificate to operate livestock market — hearings — limitations on issuance.** (1) Upon the filing of the application, the department shall fix a time and place for a hearing thereon, which may not be less than 10 days after the filing. The department shall have a copy of the application and notice of hearing served by mail upon:

(a) the operators of any other livestock markets that in the opinion of the department might be affected by the granting of any such certificate;

(b) the secretaries of the Montana stockgrowers association and the Montana woolgrowers association;

(c) the secretary of the district livestock association, if any;

(d) the secretary of the livestock association or associations, if any, within the vicinity of the proposed livestock market, if known to the department; and

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(e) any railroad company operating into or through the town or city in which the proposed livestock market will be located.

(2) If, after the hearing on the application, the department finds from the evidence that public convenience and necessity require the authorization of the proposed livestock market, a certificate must be issued to the applicant. In determining whether public convenience and necessity require the livestock market, the department shall give reasonable consideration to the service rendered by other existing livestock markets in this state and the effect upon them if the proposed livestock market is authorized and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year.

Section 11. **Livestock markets — transfer of certificates.** The department may approve the transfer of ownership of a certificate of public convenience and necessity issued pursuant to [this act] without a determination and showing of public convenience and necessity. Such approval may be granted only after a public hearing at which the transferee's qualifications to operate a livestock market have been thoroughly examined and found sufficient to properly operate a livestock market. A minimum of 10 days' notice by mail must be given to all persons to whom notice is sent pursuant to the provisions of [section 10] of a hearing to consider an initial application for a certificate.

Section 12. **Livestock markets — fee.** A person operating a livestock market shall pay annually on May 1 a fee of $100 to the department. All fees shall be paid into the state treasury and credited to the earmarked revenue fund for the use of the department.

Section 13. **Livestock markets — bond required.** (1) Every person operating a livestock market in this state shall provide a bond in favor of this state, upon a form and with sureties to be approved by the board, in the minimum sum of $10,000 or such greater sum as the board may determine, conditioned upon:

(a) the payment immediately upon the sale of the livestock of all money received, less reasonable expenses and commissions, by the livestock market to the rightful owner of livestock so consigned and delivered to it for sale; and

(b) a full compliance with [this act] including all rules adopted under [this act].

(2) When approved, the bond shall be filed with the department.

(3) A civil action may be brought in the name of the state upon the bond for the use and benefit of a person who suffers loss or damage from violations thereof and may be brought by the person suffering loss or damage in the county of his residence.

Section 14. **Livestock markets — cancellation or suspension of certificate.** (1) The department may cancel or suspend the certificate of an operator of a livestock market if it finds that the operator:

(a) is guilty of fraud or misrepresentation as to the titles, charges, number, brands, weights, proceeds of sale, or ownership of livestock;

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(b) is in violation of any of the provisions of [this act];

(c) is in violation of any of the rules adopted by the department; or

(d) is in violation of Title 81, chapter 3, part 2.

(2) The department on its own initiative or on written complaint may investigate a livestock market and may file a complaint against the livestock market with the board. The complaint shall be set for hearing before the board, and the department shall serve notice of the hearing on the livestock market at least 10 days before such hearing.

(3) An investigation or hearing initiated by the department under [this act] may be held before an examiner designated by the board. Any finding or order made by an examiner, if confirmed by the board, is the order or finding of the board.

Section 15. **Appeal by holder of or applicant for certificate — bond — procedure.** An appeal of a decision of the department refusing to grant an application for a certificate or suspending or revoking a certificate of a livestock market shall be taken to the district court of the county in which the proposed livestock market is to be located or in which the authorized livestock market has its principal place of business. The appellant shall file a bond with the clerk of the district court in the sum of $300, to be approved by the judge, conditioned to pay all costs that may be awarded against the appellant in the event of an adverse decision or the decision of the department being affirmed. The cost of preparing transcripts shall be paid by appellant. In a case of suspension or revocation of a certificate, the filing of the notice and bond stays the order of the department until the final determination of the appeal. If the appellant fails to perfect the appeal, the stay shall automatically terminate.

Section 16. **Regulation of certain nonmarket sales.** (1) A person not a livestock market operator authorized under [this act] conducting the sale of livestock in a breed sale, a breed association sale, or at a test station sale, except when all of the livestock are his and are being sold from his own place, shall obtain approval from the department before conducting the sale.

(2) The department, as conditions to granting approval, may require:

(a) the names and addresses of those conducting the sale;

(b) the date and time when and the place where the sale will be conducted;

(c) a detailed statement of the assets and liabilities of the persons conducting the sale;

(d) the establishment of a custodial account into which all money received for the sale of livestock must be deposited;

(e) the posting of a reasonable bond in an amount determined by the department;

(f) the commissions or charges proposed to be imposed on the owners of livestock for services associated with the sale;

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(g) a guarantee to pay all consignors in full within a reasonable time as set by the department;

(h) such other information as the department considers necessary.

Section 17. **Occasional off-premises sales authorized.** (1) The department may authorize occasional off-premises sales by authorized livestock markets and may establish the conditions under which approval for an off-premises sale may be granted, including any change in bonding requirements the department considers necessary.

(2) No livestock market for which a certificate has been issued under [this act] may conduct an off-premises sale without obtaining prior approval of the department.

Section 18. **Livestock markets — record keeping — reports.** Each livestock market shall keep accounts, records, and memoranda and shall make reports which the board requires, and the board and its authorized agents and employees shall at all times have access to the accounts, records, and memoranda for inspection and examination.

Section 19. **Dispersal sales.** Dispersal sales conducted through a livestock market must meet the requirements of [this act].

Section 20. **Inspection of public markets.** Livestock inspectors, including stock inspectors of a county or district, the sheriff of a county, or a representative of the department of livestock, may enter upon the premises where livestock is being held or sold and shall be accorded every facility by the owners thereof in determining whether a violation of the law is being committed or is likely to be committed. The inspection may not unnecessarily interfere with the conduct of the sales. Livestock sold at the market may not be delivered to the purchaser until he has first received an inspection certificate issued by one of the officers mentioned in this section, showing clearly and explicitly that the person making the inspection is satisfied as to the ownership of the livestock and the health of all livestock so sold.

Section 21. **Quarantine of diseased animals.** If the livestock inspector at a sale finds any livestock afflicted with an infectious or contagious disease, he shall immediately take possession of the livestock and place it in quarantine, to be disposed of as directed by the department.

Section 22. **Sale of animals of unknown ownership.** (1) If there is any question respecting the ownership of livestock sold, the livestock inspector may take possession of the livestock. The livestock inspector shall notify the person in charge of the market and conducting the sales and the person who has purchased the livestock at the sale within a reasonable time.

(2) Whenever livestock is sold, the ownership of which is not known or cannot be determined by the livestock inspector, it may be sold as strays and the net proceeds derived from the sale shall be handled as provided in [section 23].

Section 23. **Duties when ownership in doubt.** An operator of a livestock market shall, when notified by the authorized brand inspector

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that there is a question as to whether any designated livestock sold through the market is lawfully owned by the consignor thereof, hold the proceeds received from the sale of the livestock for a reasonable time, not to exceed 30 days, to permit the consignor to establish ownership. If at the expiration of that time the consignor fails to establish his lawful ownership of the livestock, the proceeds must be transmitted by the operator of the livestock market to the department. The department may dispose of the proceeds in accordance with chapter 4, part 6, of Title 81, relating to the distribution of estray money, and the department's receipt therefor shall relieve the operator of the livestock market from further responsibility for the proceeds. Proof of ownership and account of all sales of livestock must be transmitted by the authorized brand inspector to the department.

Section 24. **Penalties.** A person who violates any provision of [sections 9 through 23] or rules adopted by the department under [section 4] is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $600, imprisoned in the county jail not less than 30 days or more than 6 months, or both. A person convicted of a subsequent violation of [sections 9 through 23] or rules adopted under [section 4] shall be fined not less than $200 or more than $1,000, imprisoned in the county jail for not less than 3 months or more than 6 months, or both, and the department may cancel his certificate.

Section 25. **Livestock brokers and livestock dealers — licenses.** (1) No person may operate as a livestock broker or livestock dealer without a license. A person who wishes to operate as a livestock broker or livestock dealer shall file with the department an application for a license to transact such business on a form prescribed by the department stating the type of license sought and the following information:

(a) the names of the persons applying for the license together with their permanent addresses and, if the applicant is a firm, association, partnership, or corporation, the names of its directors, officers, and members, if applicable;

(b) the post-office address and principal place of business of the applicant;

(c) if the applicant is a foreign corporation, its principal place of business outside the state, the name of the state in which it is incorporated, and a statement showing that it has complied with the laws of this state relating to foreign corporations and its right to do business in this state;

(d) a detailed financial statement setting forth all assets and liabilities of the applicant pertinent to the business for which the license is sought;

(e) if the applicant is a livestock dealer, a description of the facilities at which he proposes to operate.

(2) An application fee of $50 must be submitted with each application for a livestock broker's or livestock dealer's license. The fee shall be the first annual fee if the license is granted.

(3) Livestock brokers and livestock dealers shall pay an annual fee of $50 and supply a current financial statement. The fee is payable on May 1 to the state treasurer to the credit of the department.

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(4) When an applicant has paid the fee and met the requirements of this section, the department shall issue to the applicant a license which entitles the licensee to engage in the business specified in his application for a period of 1 year unless the license is suspended or revoked under [this act].

Section 26. **Refusal of livestock broker's or livestock dealer's license.** The department shall refuse to issue or renew a license if the applicant:

(1) has failed to maintain a financial condition of total assets in excess of total liabilities, including total current assets in excess of total current liabilities;

(2) is in violation of any of the provisions of [this act];

(3) has knowingly made false or misleading statements as to the health or physical condition of livestock or practiced fraud or misrepresentation in connection with the buying or receiving of livestock or the selling, exchanging, soliciting, or negotiating of the sale of livestock or the weighing of the same;

(4) has failed to keep records of all purchases and sales or refused to grant inspection of such records by authorized agents of the department;

(5) is in violation of the rules adopted by the department;

(6) has failed to comply with a lawful order of the department;

(7) has not filed a surety bond in the form and amount required under [section 27];

(8) has been found by the department to have failed to pay, without reasonable cause, obligations incurred in connection with livestock transactions;

(9) has been suspended by the order of the secretary of agriculture of the United States department of agriculture under provisions of the Packers and Stockyards Act, 1921, as amended, 7 U.S.C. 181, et seq.

Section 27. **Livestock brokers and livestock dealers — bond required.** (1) A livestock broker or livestock dealer applying for a license under [this act] shall maintain a bond in the form and amount set forth in this section, or if he is registered and bonded under the Packers and Stockyards Act, 1921, 7 U.S.C. 181, et seq., he shall file a statement with the department showing he is maintaining a bond or its equivalent under the packers and stockyards act. The department may require evidence of the bond to be filed with it.

(2) The amount of the bond shall be set by the department but may not be less than $5,000. The bond shall contain the following conditions:

"This bond is conditioned on the principal paying to the rightful recipient the purchase price of all livestock he purchases for himself or others and on the principal safely keeping and properly disbursing all funds received on behalf of others."

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(3) Each bond shall contain provisions that a person damaged by failure of the principal to comply with the condition clause of the bond may bring an action to recover on the bond. At least 30 days' notice in writing shall be given to the department by any party terminating the bond.

Section 28. **Inspection of records.** A livestock broker or livestock dealer shall maintain records that disclose all purchases and sales of livestock. A livestock broker or livestock dealer shall, at all reasonable times, give the department access to and let the department copy any of the records relating to his business.

Section 29. **Livestock brokers and livestock dealers — suspension and revocation of license — procedure.** Whenever the department finds that any livestock broker or livestock dealer has violated the provisions of [this act] or rules adopted under [this act], the department may, by order, suspend the license of such person for a period not to exceed 1 year, and if the violation is repeated, the department may, by order, after hearing, permanently revoke the license of such person. Before any license issued under [this act] may be suspended or revoked, the licensee shall be furnished with a copy of the complaint made against him and a hearing shall be had before the department to determine whether the license should be suspended or revoked. The licensee shall be given notice of the time and the place of such hearing. The notice may be served by registered or certified mail at the post-office address listed in the application. The hearing must be held not less than 10 days or more than 30 days after the mailing of the notice. At the time and place set for the hearing, the department shall take and receive evidence, under oath, with respect to the complaint, and upon such evidence received, shall promptly dismiss the proceedings or revoke or suspend the license.

Section 30. **Termination of livestock broker or livestock dealer license.** A license issued under [this act] terminates at the close of business on May 1 of each year following the issuance of the same unless the annual fee has been paid. Termination of the license will automatically occur if the bond required by [section 27] is terminated.

Section 31. **Penalties.** A person who violates any provision of [sections 25 through 28] or rules adopted by the department under [section 4] is guilty of a misdemeanor and upon conviction shall be fined not less than $250 or more than $1,000 or imprisoned for not more than 6 months, or both.

Section 32. **Jurisdiction.** The justices' courts have jurisdiction of all misdemeanor and civil violations of [this act].

Section 33. **Injunctive remedy.** The operation of a livestock market or the buying or selling of livestock by a person not licensed or certified and bonded as required by [this act] may be enjoined by the district court on petition from the department upon a showing that a person is engaged in the business of a livestock market, livestock broker, or livestock dealer as defined in [section 3] without the license or certificate and bond required by [this act]. The court shall enjoin the person from further activities as a livestock market operator, livestock broker, or livestock dealer until the license or certificate and bond have been properly

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obtained. It is not necessary to show that any individual has been injured by the actions complained of in order to obtain the issuance of the injunction. The injunctive relief provided by this section is an additional remedy to the criminal penalties provided in [this act].

Section 34. **Transition.** Licenses and certificates issued before and still in effect on July 1, 1979, are valid until May 1, 1980, unless suspended or revoked pursuant to this act. The actions of persons holding such existing licenses and certificates are governed by this act.

Section 35. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 36. **Codification.** This act is intended to be codified as an integral part of Title 81, chapter 8, and the provisions contained in Title 81, chapter 8, apply to this act.

Section 37. **Repealer.** Sections 81-8-101 through 81-8-109, 81-8-121 through 81-8-133, and 81-8-201 through 81-8-210, MCA, are repealed.

Approved April 12, 1979.

CHAPTER NO. 567

AN ACT TO REVISE AND CLARIFY THE ROLES OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND THE COUNTY WELFARE DEPARTMENT IN CONDUCTING INVESTIGATIONS, INCLUDING FINANCIAL INVESTIGATIONS, AND PREPARING REPORTS WHEN A MINOR IS PLACED IN A FOSTER HOME, CHILD CARE AGENCY, GROUP HOME, OR PRIVATE TREATMENT FACILITY PURSUANT TO THE LAWS RELATING TO ABUSED, NEGLECTED, OR DEPENDENT CHILDREN OR THE MONTANA YOUTH COURT ACT; PROVIDING FOR AN ADJUDICATORY AND A DISPOSITIONAL HEARING ON PETITIONS FOR ABUSED, NEGLECTED, OR DEPENDENT YOUTH AND PROVIDING FOR A COURT DETERMINATION OF THE FINANCIAL ABILITY OF PARENTS OR THE ADEQUACY OF GUARDIANSHIP ASSETS TO PAY THE COST OF SUPPORTING A MINOR; AMENDING SECTIONS 41-3-105, 41-3-202, 41-3-401, 41-3-404 THROUGH 41-3-406, 41-5-522, AND 41-5-803, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Rulemaking authority.** The department of social and rehabilitation services shall adopt rules to govern the procedures used by department personnel and by employees of county welfare departments in preparing and processing reports and in making investigations authorized by [Title 41, chapter 3] or [section 11].

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Section 2. Section 41-3-105, MCA, is amended to read:

"41-3-105. Recovery from parents or guardianship assets — division between state and county. (1) In the event any recovery is made from the parent or parents *or guardianship assets* of children for whom board, clothing, personal needs, and room have been paid by the state and county, any amount so recovered shall be divided equally between the department and the county of residence of such child or children.

(2) Any amount collected from *the* parents *or guardianship assets* when a child is placed in a foster home, *child care agency, group home, or private treatment facility* shall be transmitted to the department of social and rehabilitation services. The department shall then pay to the county one-half of the amount so collected."

Section 3. Section 41-3-202, MCA, is amended to read:

"41-3-202. Action on reporting — maintenance of central registry on child abuse. (1) *Upon receipt of a report as required by 41-3-201 that a* child suffered such injury or injuries or willful neglect, *a* social worker shall conduct a thorough investigation into the home of the child involved, into the circumstances surrounding the injury of the child, and into all other *nonfinancial* matters which in the discretion of the social worker *are* relevant and material to the investigation. *In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care.* If from the investigation it *appears* that the child suffered such injury or injuries or willful neglect, the department shall provide protective services to protect the child and preserve the family. The department will advise the county attorney of its investigation.

(2) The investigating social worker shall also furnish a written report to the department of social and rehabilitation services which shall have the responsibility of maintaining a central registry on child abuse or willful neglect cases."

Section 4. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse, neglect, and dependency petitions. (1) The county attorney shall be responsible for filing all petitions alleging abuse, neglect, or dependency. He may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. *Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.*

(2) *Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition.* Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

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(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency resides out of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced by a representative of the department of social and rehabilitation services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) limited legal custody;

(d) permanent legal custody, including the right to consent to adoption;

(e) appointment of guardian ad litem;

(f) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint a guardian ad litem for the youth or counsel for any indigent party.

(13) This section does not apply to a petition for temporary investigative authority and protective services."

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Section 5. Section 41-3-404, MCA, is amended to read:

"41-3-404. Adjudicatory hearing — temporary disposition. (1) In *the adjudicatory* hearing on a petition under 41-3-401, the court shall determine whether *the* youth is an abused, neglected, or dependent child and ascertain, as far as possible, the cause thereof.

(2) The court shall hear evidence regarding the residence of the *youth, the* whereabouts of the parents, guardian, or nearest adult relative, *and any other matters the court considers relevant in determining the status of the youth.*

(3) In all civil and criminal proceedings relating to abuse, neglect, or dependency, the doctor-patient privilege and husband-wife privilege *do* not apply to the extent any testimony relates to such matters.

(4) (a) If the court determines that the youth is not an abused, neglected, or dependent child, the petition shall be dismissed and any order made pursuant to 41-3-403 shall be vacated.

(b) If the court determines that the youth is an abused, neglected, or dependent child, the court shall set a date for a dispositional hearing, and order any necessary or required investigations. The dispositional hearing shall be scheduled as soon as practicable. The court may issue a temporary dispositional order, pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(2)."

Section 6. Section 41-3-405, MCA, is amended to read:

"41-3-405. Investigation of parents' or guardian's financial ability. *(1) Whenever a court determines a youth to be an abused, neglected, or dependent child pursuant to 41-3-404, the court shall issue an order directing the county welfare department of the county in which the petition was filed to conduct an investigation of the financial status of the child's parents or the extent of guardianship assets.*

(2) Upon receipt of *the order*, the county welfare department shall make an investigation for the purpose of ascertaining *the residence of* the parents *or guardian* of the child and the financial ability of *the* parents *or the adequacy of the guardianship assets* to pay the cost of supporting the child in a foster home, *child care agency, group home, or private treatment facility. A written report of the investigation* shall *be filed* with the clerk of court before the time fixed for the *dispositional* hearing.

(3) A copy of the written report shall be provided to all parties to the proceeding before the time *set* for *the dispositional* hearing."

Section 7. Section 41-3-406, MCA, is amended to read:

"41-3-406. Dispositional hearing. (1) If a youth is found to be abused, neglected, or dependent *under 41-3-404*, the court *after the dispositional hearing* may enter its judgment making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with his parents or guardian subject to those conditions and limitations the court may prescribe;

(b) transfer legal custody to any of the following:

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(i) department of social and rehabilitation services;

(ii) a child-placing agency willing and able to assume responsibility for the education, care, and maintenance of the youth and which is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care for the youth;

(c) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling;

(d) order such further care and treatment as the court may deem in the best interest of the youth.

(2) Whenever the court vests legal custody in any agency, institution, or department, it shall transmit with the dispositional judgment copies of any medical report and such other clinical, predisposition, or other reports and information as may be pertinent to the care and treatment of the youth.

(3) Any youth found to be abused, neglected, or dependent may be committed to the Montana children's center, and if the center is unable to receive the child or if for any other reason it appears to be in the best interest of the child, the court may make such other disposition of the child as the court deems best for his social and physical welfare. The form of commitment shall be as follows:

ORDER OF COMMITMENT

State of Montana, County of ...., ss:

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ..., minor of this county, was charged on the petition of ...., county attorney of .... County, with being an abused or neglected or dependent child. Upon due proof I find that it is for the best interests of the child that he be taken from the custody of his parents, guardian, or other person having custody of him.

The names, addresses, and occupations of the parents are:

Name	Address	Occupation
.....		
.....		

The child's guardian is .....
The child is in the custody of .....

It is ordered that .... be committed to .... until discharged as provided by law.

Witness my hand this .... day of ...., A.D. 19...

.....
Judge

(4) Transfer of legal custody of a child shall include guardianship of any assets or estate of the child, unless otherwise specified by the court.

(5) Except in cases in which the court permanently terminates all parental rights or rights of the guardian of the youth, the court shall retain jurisdiction over the case and may subsequently modify any disposition ordered pursuant to this section."

Section 8. **Order for financial support.** (1) Whenever a youth is placed in a foster home, child care agency, group home, or private treatment facility under 41-3-406, the court shall determine the ability of the youth's parents or guardian to contribute to the support of the youth or the adequacy of the guardianship assets to provide a contribution. This question of financial ability shall be considered at the dispositional hearing, and evidence concerning financial status may be introduced. In determining financial ability the court shall consider the report prepared pursuant to 41-3-405 and any other evidence introduced at the dispositional hearing.

(2) If the court determines that the parents are able to contribute to the support of the youth or that the guardianship assets are adequate to provide a contribution, the court shall issue an order directing the parents or guardian to make specified payments to the department of social and rehabilitation services to the extent considered appropriate under the circumstances. Payments required of a guardian may not exceed the funds available from guardianship assets. Upon a showing of change in financial ability, the court may modify the order.

Section 9. Section 41-5-522, MCA, is amended to read:

"41-5-522. Dispositional hearing. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. *The dispositional hearing may involve a determination of financial liability as provided in [sections 11 and 12].*

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian who gives his consent and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

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(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation."

Section 10. Section 41-5-803, MCA, is amended to read:

"41-5-803. Support of youth committed to a custodial agency. (1) When a youth under this chapter is committed by the court to custody other than that of his parents and no provision is otherwise made by law for the support of such youth, compensation for the care of such youth, when approved by order of the court, shall be a charge upon the county or the appropriate division thereof.

(2) *Whenever the provisions of [sections 11 and 12] do not apply, the* court may, after giving the parent a reasonable opportunity to be heard, adjudge and order that such parent shall pay in such manner as the court may direct such sum as will cover, in whole or in part, the support of such youth. In determining the amount the parents must pay, the court shall use the standards set out in Title 53, chapter 1, part 4, and the department of institutions' rules governing payment for care of residents of institutions as those provisions and rules apply to the youth and parents before the court. If such parent shall willfully fail or refuse to pay such sum, he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence or said cost may be collected in a civil action against the parent or parents."

Section 11. **Financial investigation by county welfare department.** (1) Whenever a disposition under 41-5-403, 41-5-523, or 41-5-524 involves placement in a foster home, child care agency, group home, or private treatment facility and the department of social and rehabilitation services is responsible for all or part of the cost of such placement, the probation officer or the court shall notify the department of social and rehabilitation services and order the county welfare department in the youth's county of residence to conduct an investigation of the financial status of the youth's parents or guardianship assets. Following an adjudicatory hearing in which a youth is determined to be a delinquent youth or a youth in need of supervision, the court may order the county welfare department to conduct a financial status investigation.

(2) Upon receipt of the order, the county welfare department shall make an investigation for the purpose of ascertaining the residence of the parents or guardian of the youth and the financial ability of the parents

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or the adequacy of the guardianship assets to pay the cost of supporting the youth in the foster home, child care agency, group home, or private treatment facility. A written report of the investigation shall be filed with the court having jurisdiction, the department of social and rehabilitation services, and the department of institutions, and a copy shall be sent to the parents or guardian of the youth or to any other party to the proceeding.

Section 12. **Order for financial support.** (1) Upon receipt of a financial status report pursuant to [section 11], a court providing for disposition of a youth under 41-5-523 or 41-5-524 shall hold a hearing to determine the ability of the youth's parents to contribute to the support of the youth or the adequacy of the guardianship assets to provide a contribution. If feasible, this hearing may be held in conjunction with a dispositional hearing under 41-5-522. In cases involving informal adjustment under 41-5-403, the department may petition the district court having jurisdiction for a hearing to determine the financial ability of the parents to contribute to the support of the youth or the adequacy of the guardianship assets to provide a contribution.

(2) In addition to the report prepared under [section 11], any evidence concerning financial status may be introduced. In determining financial ability, the court shall consider the report and other evidence introduced at the hearing.

(3) If the court determines that the parents are able to contribute to the support of the youth or that the guardianship assets are adequate to provide a contribution, the court shall issue an order directing the parents or guardian to make specified payments to the department of social and rehabilitation services to the extent considered appropriate under the circumstances. Payments required of a guardian may not exceed the funds available from guardianship assets. Upon a showing of change in financial ability, the order may be modified.

Approved April 12, 1979.

CHAPTER NO. 568

AN ACT TO CLARIFY AND REVISE THE PROVISIONS OF THE STATE EMPLOYEE CLASSIFICATION AND BENEFIT LAWS; AMENDING SECTIONS 2-18-101, 2-18-102, 2-18-601, 2-18-603, 2-18-611, 2-18-612, AND 2-18-617 THROUGH 2-18-619, MCA; AND REPEALING SECTIONS 2-18-602 AND 2-18-613, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-101, MCA, is amended to read:

"2-18-101. Definitions. As used in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Compensation" means the annual wage or salary plus the annual state contribution of health insurance premiums under provisions of 2-18-703.

(3) "Department" means the department of administration.

(4) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 from the statewide classification system.

(5) "Permanent position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206 and approved as such in the biennium budget.

(6) "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period in a permanent position.

(7) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in 2-18-103(10).

(8) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(9) "Program" means a combination of planned efforts to provide a service.

(10) "Seasonal position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206 and which is a permanent position but which is interrupted by the seasonal nature of the position.

(11) "Temporary position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period of time not to exceed 9 months."

Section 2. Section 2-18-102, MCA, is amended to read:

"2-18-102. Personnel administration — general policy setting. (1) *Except as otherwise provided by law or collective bargaining agreement, the* department shall:

(a) encourage and exercise leadership in the development of effective personnel administration within the several agencies in the state and make available the facilities of the department to this end;

(b) foster and develop programs for *recruitment and selection of capable persons for permanent, seasonal, temporary, and other types of positions and for* the improvement of employee effectiveness, including training, safety, health, counseling, welfare, *discipline, grievances, and evaluation for productivity and retention in permanent status*;

(c) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the policies made thereunder and report the findings and recommendations to the governor;

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(d) establish policies, procedures, and forms for the maintenance of records of all employees in the state service;

(e) apply and carry out parts 1 and 2 and the policies thereunder and perform any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

(2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided that such agencies remain in compliance with policies, procedures, time tables, and standards established by the department.

(3) The department shall *develop and* issue personnel policies for the state. Adequate public notice shall be given to all interested parties of proposed changes or additions to the personnel policies before the date they are to take effect. If requested by any of the affected parties, the department shall schedule a public hearing on proposed changes or additions to the personnel policies before the date they are to take effect."

Section 3. Section 2-18-601, MCA, is amended to read:

"2-18-601. Definitions. For the purpose of this part, the following definitions apply:

(1) "Agency" means any legally constituted department, board, or commission of state, county, or city government *or any political subdivision thereof.*

(2) "Employee" means any person employed by *an agency except elected state, county, or city officials, schoolteachers, and persons contracted as independent contractors or hired under personal services contracts.*

(3) "Permanent employee" means an employee who *is assigned to a position designated as permanent on the appropriate list of authorized positions referenced in 2-18-206 and approved as such in the biennium budget.*

(4) "Part-time employee" means an employee who normally works less than 40 hours a week.

(5) "Full-time employee" means an employee who normally works 40 hours a week.

(6) "Temporary *employee*" means *an employee assigned to* a position *designated as temporary on the appropriate agency list of authorized positions referenced in 2-18-206,* created for a definite period of time not to exceed *9* months.

(7) "Seasonal *employee*" means *an employee assigned to* a position *designated as seasonal on the appropriate agency list of authorized positions referenced in 2-18-206 and for which the agency has a permanent need but which is interrupted by the seasonal nature of the assignment.*

(8) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer.

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(9) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or his immediate family.

(10) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

(11) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(12) "Break in service" means *a* period of time *in excess of 5 working days when the person is not employed and that severs continuous employment.*"

Section 4. Section 2-18-603, MCA, is amended to read:

"2-18-603. Holidays — observance when falling on employee's day off. *(1)* Any *full-time* employee who is scheduled for a day off on a day which is observed as a legal holiday, except Sundays, shall be entitled to receive a day off either on the day preceding or the day following the holiday, whichever allows a day off in addition to the employee's regularly scheduled days off. *Part-time employees receive paid holiday time off based only on the number of hours scheduled for the holiday.*

(2) For purposes of this section, the term "employee" does not include nonteaching school district employees."

Section 5. Section 2-18-611, MCA, is amended to read:

"2-18-611. Annual vacation leave. (1) Each *permanent* full-time employee shall earn annual vacation leave credits from the first *day* of employment. For calculating vacation leave credits, 2,080 hours (52 weeks x 40 hours) shall equal 1 year. *Vacation* leave credits *earned* shall be credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.

(2) *Seasonal employees* shall earn vacation credits. However, such persons must be employed 6 qualifying months before they *may* use the vacation credits. In order to qualify, such employees must immediately report back for work when operations resume in order to avoid a break in service.

(3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.

(4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status exceeding 15 working days.

(5) Temporary employees do not earn vacation leave credits, except that a temporary employee who is subsequently hired into a permanent position within the same jurisdiction without a break in service and temporary employees who are employed continuously longer than 6 months may count as earned leave credits for the immediate term of temporary employment."

Section 6. Section 2-18-612, MCA, is amended to read:

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"2-18-612. Rate earned. Vacation leave credits *are* earned at a yearly rate calculated in accordance with the following schedule, *which applies to the total years of an employee's employment with any agency whether the employment is continuous or not*:

Years of employment	Working days credit
1 *day* through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years on	24"

Section 7. Section 2-18-617, MCA, is amended to read:

"2-18-617. Accumulation of leave — cash for unused — transfer. (1) Annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the *end of the first pay period* of *the next* calendar year.

(2) An employee who terminates his employment for reason not reflecting discredit on himself shall be entitled upon the date of such termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in 2-18-611.

(3) However, if an employee transfers between agencies of the same jurisdiction, there shall be no cash compensation paid for unused vacation leave. In such a transfer the receiving agency assumes the liability for the accrued vacation credits transferred with the employee."

Section 8. Section 2-18-618, MCA, is amended to read:

"2-18-618. Sick leave. (1) Each *permanent* full-time employee shall earn sick leave credits from the first *day* of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) shall equal 1 year. *Sick* leave credits shall be credited at the end of each pay period. Sick leave credits shall be earned at the rate of 12 working days for each year of service without restriction as to the number of working days *that* may *be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.*

(2) An employee may not accrue sick leave credits *while in* a *leave-without-pay status exceeding 15 working days.*

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) An employee who terminates employment with the *agency* is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave shall be computed on the basis of the employee's salary or wage at the time he terminates his employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment therefor

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shall be the responsibility of the *agency* wherein the sick leave accrues. However, no employee forfeits any sick leave rights or benefits he had accrued prior to July 1, 1971. However, where an employee transfers between agencies within the same jurisdiction, he shall not be entitled to a lump-sum payment. In such a transfer the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(6) An employee who receives a lump-sum payment pursuant to this section and who is again employed by *any agency* shall not be credited with any sick leave for which *the employee* has previously been compensated.

(7) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section."

Section 9. Section 2-18-619, MCA, is amended to read:

"2-18-619. Jury duty — service as witness. (1) Each employee who is under proper summons as a juror shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Juror fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his juror time off against his annual leave, he shall not be required to remit his juror fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowance paid him by the court.

(2) An employee subpoenaed to serve as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Witness fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his witness time off against his annual leave, he shall not be required to remit his witness fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowances paid him by the court.

(3) Employers may request the court to excuse their employees from jury duty if they are needed for the proper operation of a unit of state or local government."

Section 10. **Administration of rules.** The department of administration or the administrative officer of any county, city, or political subdivision is responsible for the proper administration of the employee annual, sick, or military leave provisions and the jury duty provisions found in Title 2, chapter 18, part 6, and shall promulgate rules necessary to achieve the uniform administration of these provisions and to prevent the abuse thereof. When promulgated, the rules are effective as to all employees of the state or any county, city, or political subdivision thereof.

Section 11. **Codification.** It is intended that section 10 be codified as an integral part of Title 2, chapter 18, part 6, and the provisions of Title 2, chapter 18, part 6, apply to section 10.

Section 12. **Repealer.** Sections 2-18-602 and 2-18-613, MCA, are repealed.

Approved April 12, 1979.

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CHAPTER NO. 569

AN ACT TO REQUIRE A CLAIMANT TO FIRST PERMIT AN ALLEGED LIBEL OR SLANDER PUBLISHED IN OR BROADCAST BY COMMUNICATIONS MEDIA TO BE CORRECTED BEFORE CLAIMING PUNITIVE DAMAGES; PROVIDING A MEANS FOR SUCH CORRECTION AND PROVIDING FOR THE USE OF SUCH CORRECTION AS A DEFENSE AGAINST PUNITIVE DAMAGES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Media management to be given opportunity to publish correction prior to action for libel or slander.** In order to claim punitive damages because of any defamatory publication in or broadcast on any newspaper, magazine, periodical, radio or television station, or cable television system, the defamed person shall first give those alleged to be responsible or liable for the publication or broadcast a reasonable opportunity to correct the defamatory matter. Such opportunity shall be given by notice in writing specifying the article or broadcast and the statements therein which are claimed to be false and defamatory and a statement of what are claimed to be the true facts. The notice may also state the sources, if any, from which the true facts may be ascertained with definiteness and certainty.

Section 2. **What constitutes a reasonable time for correction.** The first issue of a newspaper, magazine, or periodical published after the expiration of 1 week from the receipt of the notice provided for in [section 1] is within a reasonable time for correction. In the case of radio and television stations and cable television systems, a broadcast made at the same time of day as the broadcast complained of and of at least equal duration which is made within 7 days following receipt of such notice is within a reasonable time for correction.

Section 3. **Content of correction.** To the extent that the true facts are, with reasonable diligence, ascertainable with definiteness and certainty, only a retraction constitutes a correction; otherwise the publication or broadcast of the defamed person's statement of the true facts or so much thereof as is not defamatory of another, scurrilous, or otherwise improper for publication or broadcast, published or broadcast as his statement, constitutes a correction within the meaning of [sections 1 through 4].

Section 4. **Extent to which a correction is a defense upon trial.** If it appears upon trial that the publication or broadcast complained of was made under honest mistake, then a correction timely published or broadcast without comment in a position and type as prominent as the alleged libel or in a broadcast made at the same time of day as the broadcast complained of and of at least equal duration constitutes a defense against the recovery of punitive damages.

Approved April 12, 1979.

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CHAPTER NO. 570

AN ACT TO REVISE CERTAIN LAWS RELATING TO THE REGULATION OF INSURANCE COMPANIES; AMENDING SECTIONS 33-2-501, 33-2-531, 33-2-822, 33-2-830, AND 33-2-832, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-501, MCA, is amended to read:

"33-2-501. Assets allowed. In any determination of the financial condition of an insurer, there shall be allowed as assets only such assets as are owned by the insurer and which consist of:

(1) cash in the possession of the insurer or in transit under its control and including the true balance of any deposit in a solvent bank or trust company;

(2) investments, securities, properties, and loans acquired or held in accordance with this code and in connection therewith the following items:

(a) interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest;

(b) declared and unpaid dividends on stock and shares unless such amount has otherwise been allowed as an asset;

(c) interest due or accrued upon a collateral loan in an amount not to exceed 1 year's interest thereon;

(d) interest due or accrued on deposits in solvent banks and trust companies and interest due or accrued on other assets, if such interest is in the judgment of the commissioner a collectable asset;

(e) interest due or accrued on a mortgage loan in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal. In no event shall interest accrued for a period in excess of 18 months be allowed as an asset.

(f) rent due or accrued on real property if such rent is not in arrears for more than 3 months and rent more than 3 months in arrears if the payment of such rent be adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral;

(g) the unaccrued portion of taxes paid prior to the due date on real property;

(3) premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy;

(4) the net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer;

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(5) premiums in the course of collection, other than for life insurance, not more than 3 months past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States government or by any of its instrumentalities.

(6) installment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy to which premiums apply;

(7) notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon;

(8) the full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under 33-2-1205;

(9) amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty;

(10) deposits or equities recoverable from underwriting associations, syndicates, and reinsurance funds or from any suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by him;

(11) electronic data processing *equipment* if the cost of such *equipment* is at least $100,000, which cost shall be amortized in full over a period of not to exceed 10 calendar years. *However, with regard to life insurers, such equipment shall be allowed as an asset if the cost of such equipment is at least $25,000, which cost shall be amortized in full over a period of not to exceed 5 calendar years, and the amount of such asset allowed may not exceed 1% of the total of the other allowable assets of the insurer.*

(12) all assets, whether or not consistent with the provisions of this section, as may be allowed pursuant to the annual statement form approved by the commissioner for the kinds of insurance to be reported upon therein;

(13) other assets, not inconsistent with the provisions of this section, deemed by the commissioner to be available for the payment of losses and claims, at values to be determined by him."

Section 2. Section 33-2-531, MCA, is amended to read:

"33-2-531. Deposit of reserves — domestic life insurers. (1) Domestic life insurers shall deposit and maintain on deposit, in securities and assets, with depositaries and subject to conditions as provided for in part 6 of this chapter, an amount not less than the reserves on its outstanding life insurance policies and annuity contracts, as valued under 33-2-521 through 33-2-526.

(2) Annually on or before April 1, the insurer shall so deposit any additional such securities required under subsection (1) and related to the increase of such reserves during the calendar year next preceding, as determined from the insurer's annual statement as at December 31 of such preceding year.

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(3) A domestic stock life insurer may credit toward such deposit the amount of any other deposit of the insurer held under part 6 of this chapter for the protection of its policyholders or of its policyholders and creditors.

(4) Deposits of the reserves of a domestic life insurer under this section shall consist of securities and assets acquired in accordance with part 8 of this chapter, *except that securities acquired under 33-2-829 are not eligible for deposit.*

(5) Real estate mortgage loans, chattel mortgage loans, and policy loans may be made a part of the deposit by filing a verified statement of the loans with the commissioner, which statement shall be subject to audit at all times by the commissioner. Nonnegotiable securities where deposited with the commissioner shall be accompanied by transfer powers in due form. *If the insurer uses real estate acquired under 33-2-832 as a deposit, then a deed of trust, mortgage, or other instrument sufficient to convey a security interest in such real estate, in a form acceptable to the commissioner, shall be completed in due form and recorded prior to being deposited with the commissioner.*

(6) If default occurs in the payment of interest or principal of any deposited security and such default continues for a period of 120 days, the commissioner may declare such security no longer eligible for deposit under this section."

Section 3. Section 33-2-822, MCA, is amended to read:

"33-2-822. Stocks of subsidiaries. With the commissioner's consent, an insurer may invest in the stock of its subsidiary insurance corporation or in the stock of its subsidiary business corporation formed under the laws of this state and necessary and incidental to the convenient operation of the insurer's insurance business or to the administration of any of its investments. All of the insurer's investments under this section shall not at any time exceed *10% of the investing insurer's assets. For the purposes of this section, a "subsidiary" is a corporation of which the insurer owns a majority of the outstanding shares of all voting stock.*"

Section 4. Section 33-2-830, MCA, is amended to read:

"33-2-830. Real estate mortgages. (1) An insurer may invest any of its funds in bonds, notes, or other evidences of indebtedness which are secured by first mortgages or deeds of trust upon improved real property located in the United States or Canada or which are secured by first mortgages or deeds of trust upon leasehold estates having an unexpired term of not less than 21 years, inclusive of the term or terms which may be provided by enforceable options of renewal, in improved real property located in the United States or Canada. In all cases the security for the loan must be a first lien upon such real property, and there must not be any condition or right of reentry or forfeiture not insured against, under which, in the case of real property other than leaseholds, such lien can be cut off or subordinated or otherwise disturbed or under which, in the case of leaseholds, the insurer is unable to continue the lease in force for the duration of the loan. Nothing herein shall prohibit any investment by reason

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of the existence of any prior lien for ground rents, taxes, assessments, or other similar charges not yet delinquent. This section shall not be deemed to prohibit investment in mortgages or similar obligations when made under 33-2-828.

(2) "Improved real estate" means all farm lands used for tillage, crop, pasture, *or* timberlands, and all real estate on which permanent improvements suitable for residential, institutional, commercial, or industrial use are situated.

(3) (a) No such mortgage loan or loans made or acquired by an insurer on any one property shall, at the time of investment by the insurer, exceed the larger of the following amounts as applicable:

(i) *80%* of the value of the real property or leasehold securing the same, provided, however, if said real property or leasehold consists of one- or two-family residential property, *90%* of said value;

(ii) the amount of any insurance or guaranty of such loan by the United States of America or by any agency or instrumentality thereof; or

(iii) the amounts provided in subsection (i) herein, plus the amount by which the excess of such loan over such amount is insured or guaranteed by the United States of America or by any agency or instrumentality thereof.

(b) In the case of a purchase money mortgage given to secure the purchase price of real estate sold by the insurer, the amount so loaned or invested shall not exceed the unpaid portion of the purchase price.

(4) No such mortgage loan or loans shall be made or acquired by an insurer except after an appraisal made by a qualified appraiser for the purpose of such investment.

(5) No such mortgage loan made or acquired by an insurer which is a participation or a part of a series or issue secured by the same mortgage or deed of trust shall be a lawful investment under this section unless the entire series or issue which is secured by the same mortgage or deed of trust is held by such insurer or unless the insurer holds a senior participation in such mortgage or deed of trust, giving it substantially the rights of a first mortgagee.

(6) No mortgage loan upon a leasehold shall be made or acquired pursuant to this section unless the terms thereof shall provide for amortization payments to be made by the borrower on the principal thereof at least once in each year in amounts sufficient completely to amortize the loan within a period of four-fifths of the term of the leasehold, inclusive of the term which may be provided by an enforceable option of renewal, which is unexpired at the time the loan is made, but in no event exceeding 35 years."

Section 5. Section 33-2-832, MCA, is amended to read:

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"**33-2-832. Real estate.** An insurer may invest in real estate only if used for the purposes or acquired in the manners and within the limits as follows:

(1) the land and the buildings thereon in which it has its principal office and such other real estate as shall be requisite for its convenient accommodation in the transaction of its business. Except with the consent of the commissioner, all such investments shall not aggregate more than 5% of the insurer's assets.

(2) real estate acquired in satisfaction of loans, mortgages, liens, judgments, decrees, or debts previously owing to the insurer in the course of its business;

(3) real estate acquired in part payment of the consideration on the sale of other real estate owned by it if such transaction does not increase the insurer's investment in real estate;

(4) real estate acquired by gift or devise or through merger, consolidation, or bulk reinsurance of another insurer under this code;

(5) the seller's interest in real property subject to an agreement of purchase or sale. The sum invested in any such parcel of real estate shall not exceed *90%* of the market value of such parcel provided the same consists of one- or two-family residential property and *80%* of the market value of all other such parcels of real estate.

(6) real estate or any interest therein acquired or held by purchase, lease, or otherwise, other than real estate to be used primarily for agricultural, ranch, mining, development of oil or mineral resources, recreational, amusement, or club purposes, acquired as an investment for the production of income or acquired to be improved or developed for such investment purposes pursuant to an existing program therefor. The insurer may hold, improve, develop, maintain, manage, lease, sell, and convey real estate acquired by it under this provision. An insurer shall not, except with the commissioner's consent, have at any one time invested in real estate under this subsection an amount exceeding 5% of its assets.

(7) additional real estate and equipment incident to real estate if necessary or convenient for the purpose of enhancing the sale or other value of real estate previously acquired or held by the insurer under subsections (2), (3), (4), or (6) of this section. Such real estate and equipment shall be included, together with the real estate for the enhancement of which it was acquired, for the purpose of applicable investment limits and shall be subject to disposal at the same time and under the same conditions as applying to such enhanced real estate under 33-2-841.

(8) except with the commissioner's consent, all real estate owned by the insurer under this section, except as to seller's interest specified in subsection (5), shall not at any one time exceed 10% of the insurer's assets."

Approved April 12, 1979.

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CHAPTER NO. 571

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO ELECTIONS; REPEALING SECTIONS 2-15-413, 7-2-4604, 7-2-4605, 7-3-1233, 7-3-1234, 7-3-1272 THROUGH 7-3-1280, 7-3-4224 THROUGH 7-3-4226, 7-3-4232 THROUGH 7-3-4241, 7-3-4263, 7-3-4328 THROUGH 7-3-4333, 7-3-4342 THROUGH 7-3-4352, 7-5-301 THROUGH 7-5-303, 7-5-311, 7-5-2211 THROUGH 7-5-2222, 7-5-4211 THROUGH 7-5-4225, 7-5-4402 THROUGH 7-5-4409, 7-6-4433, 7-6-4435, 7-7-2230 THROUGH 7-7-2236, 7-7-4228 THROUGH 7-7-4234, 7-13-2223, 7-13-2224, 7-13-2248, 7-13-2250 THROUGH 7-13-2253, 7-13-2257, 7-13-2326, 13-1-105, 13-2-101, 13-2-111, 13-2-113, 13-2-121, 13-2-204, 13-2-303, 13-4-204 THROUGH 13-4-206, 13-10-101, 13-10-206, 13-10-207, 13-10-210, 13-10-304, 13-10-312 THROUGH 13-10-321, 13-10-506, 13-10-603, 13-11-101 THROUGH 13-11-103, 13-12-103 THROUGH 13-12-105, 13-12-206, 13-12-211, 13-12-213, 13-13-102 THROUGH 13-13-110, 13-13-202, 13-13-237, 13-13-238, 13-13-240, 13-13-302, 13-13-303, 13-13-308, 13-14-101 THROUGH 13-14-104, 13-14-201 THROUGH 13-14-208, 13-15-302, 13-17-202, 13-17-205, 13-17-207, 13-17-302 THROUGH 13-17-304, 13-17-307, 13-17-401 THROUGH 13-17-404, 13-18-101 THROUGH 13-18-106, 13-18-201 THROUGH 13-18-210, 13-35-212, 13-35-216, 13-35-219, 13-35-222 THROUGH 13-35-224, 13-35-229, 13-35-230, 13-35-232, 20-20-412 THROUGH 20-20-414, 85-7-1701, 85-7-1704 THROUGH 85-7-1709, 85-7-1711, AND 85-9-423, MCA.

Section 1. Section 13-1-101, MCA, is amended to read:

"13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Anything of value" means any goods that have a certain utility to the recipient that is real and that *is* ordinarily not given away free but is purchased.

(2) "Candidate" means:

(a) an individual who has filed a declaration *or petition for* nomination, acceptance of nomination *or appointment as a candidate* for public office as required by law;

(b) for the purposes of chapters 35, 36, or 37, an individual who has publicly announced his intention to seek nomination or election to public office by write-in vote and who has received a contribution or made an expenditure or has given an authorization to another person to receive a contribution or make an expenditure for the purpose of supporting his nomination or election.

(3) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

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(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residence for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, so long as such organization is not a primary political committee; or

(iv) filing fees paid by the candidate.

(4) "Election" means a general, special, or primary election held *pursuant to the requirements of state law, regardless of the time and/or purpose.*

(5) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

(6) "Elector" means an individual qualified and registered to vote under state law.

(7) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection *(3)*;

(ii) payments by a candidate for his *filing fee or for* personal travel expenses, food, clothing, lodging, or personal necessities for himself and his family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, so long as such organization is not a primary political committee.

(8) "General election" means an election held for the election of public officers throughout the state at times specified by law, *including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state.*

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(9) "Individual" means a human being.

(10) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. *For the purposes of chapters 35, 36, and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes an "issue" upon approval by the secretary of state of the form of the petition or referral.*

(11) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (2) of this section.

(12) "Political committee" means a combination of two or more individuals or a person other than an individual *who makes a contribution or expenditure:*

(a) to support or oppose a candidate or *a committee organized to support or oppose a candidate or a petition for nomination; or*

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

(13) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(14) "Primary" or "primary election" means *an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for such nominations is set on the same date for all similar subdivisions in the state.*

(15) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(16) "Registrar" means the county *election administrator* and any regularly appointed deputy *or assistant election administrator.*

(17) "Special election" means an election *other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.*

(18) "Voting machine or device" means any equipment used to record, tabulate, or in any manner process the vote of an elector."

Section 2. Section 13-1-103, MCA, is amended to read:

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"**13-1-103. Determination of winner.** The *individual* receiving the highest number of votes for any office at an election is elected *or nominated* to that office."

Section 3. **Times for holding primary elections.** (1) On the first Tuesday after the first Monday in June preceding the general election provided for in 13-1-104(1), a primary election shall be held throughout the state.

(2) On the Tuesday following the second Monday in September preceding the general election provided for in 13-1-104(2), a primary election, if required, shall be held throughout the state.

Section 4. Section 13-1-104, MCA, is amended to read:

"**13-1-104. Times for holding general elections.** *(1)* A general election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November *to elect federal officers, state or multicounty district officers, members of the legislature, judges of the district court, and county officers when the terms of such offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.*

(2) A general election shall be held throughout the state in every odd-numbered year on the first Tuesday after the first Monday in November to elect municipal officers, officers of political subdivisions wholly within one county, and any other officers specified by law for election in odd-numbered years when the term for the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(3) The general election for any political subdivision required to hold elections annually shall be held with the general election provided for in subsections (1) and (2). If a primary election is necessary, it shall be held at the same time as the primary provided for the regular general election for that year."

Section 5. Section 13-1-106, MCA, is amended to read:

"**13-1-106. Time of opening and closing of polls for all elections.** *Polls must be open from 8 a.m. to 8 p.m., except polling places having fewer than 100 registered electors, which must be open from noon to 8 p.m. or until* all registered electors in any precinct have voted, *at which time* the polls shall be closed immediately."

Section 6. **Notice of special elections.** Notice of any special election shall be published at least once a week for the 3 successive weeks before the election on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the jurisdiction where the election will be held.

Section 7. Section 13-1-112, MCA, is amended to read:

"**13-1-112. Rules for determining residence.** For registration or voting, the residence of any *individual* shall be determined by the following rules as far as they are applicable:

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(1) The residence of *an individual* is where his habitation is fixed and to which, whenever he is absent, he has the intention of returning.

(2) *An individual* may not gain or lose a residence while kept involuntarily at any public institution, not necessarily at public expense; *as a result of being* confined in any public prison; or *solely as a result of* residing on a military reservation.

(3) *An individual* in the armed forces of the United States may not become a resident *solely as a result* of being stationed at a military facility in the state. *An individual* may not acquire a residence *solely as a result* of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) *An individual* does not lose his residence if he goes into another state or other district of this state for temporary purposes with the intention of returning unless he exercises the election franchise in the other state or district.

(5) *An individual* may not gain a residence in a county if he comes in for temporary purposes without the intention of making that county his home.

(6) If *an individual* moves to another state with the intention of making it his residence, he loses his residence in this state.

(7) The place where *an individual's* family resides is presumed *to be* that *individual's* place of residence. However, *an individual* who takes up or continues a residence at a place other than where his family resides with the intention of remaining is a resident of the place where he resides.

(8) A change of residence can be made *only* by the act of removal joined with intent to remain in another place."

Section 8. Section 13-1-113, MCA, is amended to read:

"13-1-113. Only one residence. There can *be* only one residence."

Section 9. Section 13-1-114, MCA, is amended to read:

"13-1-114. Computation of elector's age and term of residence. *An elector's age and the* term of *his* residence must be computed by including the day of election."

Section 10. Section 13-1-122, MCA, is amended to read:

"13-1-122. Ballot form and content. The ballot submitting the question to the people shall contain the following:

Article XIV, sections 3 and 4, of the Montana constitution *requires* the question of holding an unlimited constitutional convention to be submitted to the people at the general election in each 20th year following its last submission. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session.

☐ FOR CALLING A CONSTITUTIONAL CONVENTION

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☐ AGAINST CALLING A CONSTITUTIONAL CONVENTION"

Section 11. **Chief election officer.** The secretary of state is the chief election officer of this state, and it is his responsibility to obtain and maintain uniformity in the application, operation, and interpretation of the election laws other than those in chapters 35, 36, or 37 of this title.

Section 12. **Forms and rules prescribed by chief election officer.** (1) In carrying out his responsibilities under 13-1-201, the secretary of state shall prepare and deliver to the election administrators:

(a) written directives and instructions relating to and based on the election laws;

(b) sample copies of prescribed and suggested forms; and

(c) advisory opinions on the effect of election laws other than those laws in chapters 35, 36, or 37 of this title.

(2) The secretary of state may prescribe the design of any election form required by law. He must seek the advice of election administrators and printers in designing the required forms.

(3) Each election administrator shall comply with the directives and instructions and shall provide election forms prepared as prescribed.

Section 13. **Chief election officer to advise, assist, and train.** The secretary of state shall advise and assist election administrators with regard to application, operation, and interpretation of Title 13, except for chapters 35, 36, or 37. He shall hold at least one workshop each year to provide training and assistance to election administrators. Election administrators shall be reimbursed, from funds appropriated to the secretary of state, for their mileage and expenses for attending the workshops at the rates set for mileage and expenses for county officials as provided for in 2-18-501 through 2-18-503. At the discretion of the secretary of state and within the budget limits allowed for workshops, such workshops may be held in several sessions at separate locations in the state.

Section 14. **Election administrator.** (1) The county clerk and recorder of each county is the election administrator unless the governing body of the county designates another official or appoints an election administrator.

(2) The election administrator is responsible for the administration of all procedures relating to registration of electors and conduct of elections and shall keep all records relating to elector registration and elections.

Section 15. **Election records open to public.** Unless specifically provided otherwise, all records pertaining to elector registration and elections are public records. They shall be open for inspection during regular office hours.

Section 16. **Election costs.** (1) Unless specifically provided otherwise, all costs of the primary and general elections regularly scheduled for even-numbered years shall be paid by the counties.

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(2) Costs of the primary and general elections regularly scheduled for odd-numbered years shall be paid by the counties and other political subdivisions for which the elections are held. Each political subdivision shall bear its proportionate share of the costs as determined by the county governing body.

(3) A political subdivision holding an annual election with a regularly scheduled election shall bear its proportionate share of the costs as determined by the county governing body.

(4) The political subdivision for which a special election is held shall bear all costs of the election, or its proportionate share as determined by the county governing body if held in conjunction with any other election.

(5) Costs of elections may not include the services of the election administrator or capital expenditures.

(6) The county governing body shall set a schedule of fees for services provided to school districts by the election administrator.

(7) Election costs shall be paid from county funds, and any shares paid by other political subdivisions shall be credited to the fund from which the costs were paid.

Section 17. **Disposition of ballots and other election materials.** (1) The voted ballots, detached stubs, unvoted ballots, and unused ballots from an election shall be kept in the unopened packages received from the election judges for a period of 12 months. Such packages may be opened only when an order for opening is given by the proper official for a recount procedure. After 12 months, if there is no contest begun, recount pending, or appeal of a decision relating to a contest or recount, an election administrator may destroy the ballots without opening the packages.

(2) The secretary of state, in consultation with the state records committee, shall prepare a suggested plan for retention and destruction of all other election records. Each election administrator shall prepare a plan for retention and destruction of election records in the county and shall submit it to the secretary of state for approval. After approval of such a plan, records may be destroyed as provided in the plan.

Section 18. **Election records to be kept by secretary of state.** (1) The secretary of state shall maintain current and accurate records including:

(a) a list of all precincts in each county;

(b) a map showing the boundaries of all precincts in each county;

(c) a count of the number of registered voters in each precinct for the latest general election;

(d) a list of legislative districts, judicial districts, and any multicounty election districts, showing the precinct numbers of each county contained in each district and the number of registered voters in each district for the latest general election;

(e) a count of votes cast at the latest general election by precinct; by municipality; and by legislative, judicial, and multicounty districts.

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(2) Each election administrator shall provide the information and map for the record required in subsection (1) in the form and at the time prescribed by the secretary of state.

(3) The records required in subsection (1) and all records in the secretary of state's office pertaining to elections shall be open for public inspection during normal office hours.

Section 19. Section 13-2-102, MCA, is amended to read:

"13-2-102. Deputy registrars. (1) *A notary* public *who fulfills the requirements of subsection (4) may be a* deputy *registrar* in the county in which *he resides.*

(2) (a) The governing body of each county shall appoint at least two deputy registrars for each precinct in the county before March 15 of each even-numbered year.

(b) The number of appointed deputy registrars shall be equally divided between the political parties meeting the requirements of 13-10-601 unless one or more of the parties fail to submit the list required in subsection (3) or submit an incomplete list. A political party which qualifies under 13-10-501 may request the appointment of deputy registrars and shall submit a list for such appointments within 30 days of such qualification.

(c) An appointed deputy registrar must be a resident elector in the precinct for which appointed but may register electors in all precincts in the county.

(3) *Deputy registrars shall be appointed from lists of individuals recommended by the qualified political parties, submitted by February 1 of even-numbered years. If no lists are submitted by political parties, the governing body may appoint two deputy registrars for each precinct without party recommendations.*

(4) *Each election administrator shall provide training to all deputy registrars in registration procedures and shall issue a certificate to each deputy registrar on successful completion of the training. A deputy registrar may not register voters without a current certificate. All certificates expire on March 15 of each even-numbered year.*

(5) *Deputy* registrars shall forward *all completed cards* to the *county* registrar *within 3 days.* Registration cards properly executed *before a deputy registrar prior to the close of registration* shall be accepted for 3 days after the *close of registration.*"

Section 20. Section 13-2-112, MCA, is amended to read:

"13-2-112. Register of electors to be kept. *Each election administrator* shall keep an official register *of electors* in *the* manner *he considers* most efficient. *The original signed registration form for each elector shall be filed alphabetically in a separate file for each precinct. Additional files and records may be established for convenience. The information recorded in the official register of electors and the design of the registration forms shall be prescribed by the secretary of state.*"

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Section 21. Section 13-2-114, MCA, is amended to read:

"13-2-114. Registration numbers to be assigned. (1) *The registration form for each elector shall be assigned a number by the election administrator, using a system of numbering that best accommodates the filing system and list preparation method used. The election administrator may adopt the use of the elector's social security number as the registration number. If social security numbers are used, they may not be printed on lists of registered voters or released as public information.*

(2) *If social security numbers are used as the registration number, the election administrator may assign an alternative number for any elector who does not have a social security number or who declines to provide the number. A system of assigning alternative numbers shall be developed in consultation with the secretary of state.*"

Section 22. Section 13-2-115, MCA, is amended to read:

"13-2-115. Registration lists to be prepared. (1) Immediately after registration is closed, the *election administrator* shall prepare *and have printed* lists of all registered electors *in each precinct. Names of electors shall be listed alphabetically, with their residence address or mailing address if located where street numbers are not used. A preliminary list of registered electors may be printed before the close of registration for an election. If a preliminary list is printed, a supplementary list must be printed after the close of registration.*

(2) A copy of the list of registered voters shall be *displayed* at the polling place. *Extra* copies of the lists shall be retained by the *election administrator* and furnished to an elector upon request.

(3) The list of registered *electors* prepared for a primary election may be used for the general election if a supplemental list giving the *additions and deletions since the primary list was prepared* is printed. *The election administrator may prepare lists for a special election, but lists are not required to be printed for special elections.*"

Section 23. Section 13-2-116, MCA, is amended to read:

"13-2-116. Precinct register. (1) *Before each election, the election administrator shall prepare a precinct register for each precinct for use by the election judges. The register must contain an alphabetical list of the names, with addresses, of the registered electors, a space for the signature of the elector, and such other information as prescribed by the secretary of state.*

(2) *If some of the electors in a precinct are not eligible to receive all ballots at an election because of a combination of the elections of more than one political subdivision, the election administrator shall distinguish the names of those eligible for each ballot by whatever method will be clear and efficient.*

(3) When several precincts have been combined at one polling place for an election, the election administrator may combine the electors from all precincts into one register or may provide separate registers for each precinct."

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Section 24. Section 13-2-117, MCA, is amended to read:

"13-2-117. County governing body to provide election administrator with sufficient help. The *county governing body must* provide the *election administrator* with sufficient help for the duties imposed by this title. The cost of stationery, printing, publishing, and posting is a proper charge against the county."

Section 25. **Duties of officials when election not held.** If a scheduled election is not necessary or is cancelled for any reason, the governing body or official making the determination shall immediately notify the election administrator in writing. If the election is not necessary because of the number of candidates filed, the election administrator shall make the determination and notify the proper governing body. Lists of registered voters and precinct registers need not be printed if the election will not be held.

Section 26. Section 13-2-201, MCA, is amended to read:

"13-2-201. Hours of registration. The *election administrator's* office shall be open for registration *of electors* from 8 a.m. until 5 p.m. on all regular working days. *The office may be kept open for the registration of electors at other times at the discretion of the election administrator.*"

Section 27. Section 13-2-202, MCA, is amended to read:

"13-2-202. Registration by personal appearance. An elector may register by appearing before the registrar or *a* deputy registrar in the county in which he resides and:

(1) answering any questions asked by the *official* concerning items of information called for *in the registration form*;

(2) signing and verifying or affirming the affidavit or affidavits on the *form.*"

Section 28. Section 13-2-203, MCA, is amended to read:

"13-2-203. Registration by mail. (1) *A qualified individual* may register by mailing, postage paid, a properly completed *registration form* to the *election administrator* in the county in which he resides.

(2) The *election administrator* shall send *registration forms* for mail registrations to all *qualified individuals* requesting them *and shall, in addition, arrange for the forms to be widely and conveniently available* within the county. The mail *registration form* shall be *designed as* prescribed by the secretary of state.

(3) The elector shall complete, sign, and either verify or affirm the *mail registration form* before a notary public or other officer empowered to administer oaths or complete and sign the *form* and obtain the signature, address, and voting precinct of at least one registered voter in the county who shall witness the facts stated on the *registration form.*

(4) The registration *form* must be received *by the election administrator* on or before the day of the close of registration *and must be returned*

to the administrator no later than 15 days after the date it is signed by the witness or officer before whom signed."

Section 29. Section 13-2-205, MCA, is amended to read:

"**13-2-205. Procedure when prospective elector not qualified at time of registration.** *An individual* who is not eligible to register because of residence *or age* requirements but who will be eligible on or before election day may register if it appears that he will become qualified to vote by election day."

Section 30. **Notice of registration.** (1) The election administrator shall give or mail to each elector a notice, affirming registration and giving the location of the elector's polling place. Mailed notices must have printed on the address side the words "Do Not Forward, Return Postage Guaranteed".

(2) The election administrator must investigate the reason for the return of any mailed notices and correct the address on the registration form and mail a new notice or cancel the registration of the elector if a diligent effort fails to locate the elector named on the registration form.

Section 31. Section 13-2-212, MCA, is amended to read:

"**13-2-212. Registration of electors in the United States service.** (1) Any elector in the United States service who is absent from the state and the county of which he is a resident may register by *mailing to the election administrator*:

(a) the *registration form,* filled out and signed under oath; or

(b) the federal post card application, filled out and signed under oath.

(2) The form of the federal post card application, which may be used both as an application for registration and for a ballot, shall be prescribed by the secretary of state."

Section 32. Section 13-2-213, MCA, is amended to read:

"**13-2-213. Oath for elector in United States service.** (1) Any oath required for electors in the United States service may be administered and attested, within or without the United States, by any commissioned officer in active service, any member of the merchant marine of the United States designated for this purpose by the secretary of commerce, the head of any department or agency of the United States, any civilian official empowered by state or federal law to administer oaths, or any civilian employee designated by the head of any department or agency of the United States.

(2) No official seal is required to be affixed to the oath. Neither the elector nor the certifying officer need disclose his whereabouts at the time of taking the oath except to the extent required by the federal post card application."

Section 33. Section 13-2-214, MCA, is amended to read:

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"13-2-214. Classification of federal post card application. (1) Upon receipt by the *election administrator* of a federal post card application, properly filled out and signed under oath, the *election administrator* shall classify the application according to the precinct in which the elector resides *or, if the information is insufficient to determine precinct of residence, assign an appropriate precinct.*

(2) The *election administrator* shall, upon receipt of any federal post card application, immediately enter *all information in the registration records of the office and either file the post card application with regular registration forms or file a photocopy attached to a regular registration form on which the information has been entered.*

(3) *The election administrator* shall send to *the applicant* by the fastest mail service available a notice that he has been registered and informing him that in order to secure a ballot he must mail at any time within *75* days preceding the election another federal post card application to *the election administrator.*

(4) A federal post card application received from an elector in the United States service within *75* days preceding an election shall be treated as a simultaneous application for registration and for ballot. Where the elector is already registered, the federal post card application shall be treated as an application for a ballot. *The election administrator may use photocopies of the post card application to complete all necessary records.*"

Section 34. Section 13-2-301, MCA, is amended to read:

"13-2-301. Close of registration — procedure. (1) The *election administrator* shall:

(a) *close registrations for 30 days before any election; and*

(b) *publish a notice specifying the day registrations will close on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county at least once a week for 3 weeks before the close of registration.*

(2) *Information to be included in the notice shall be prescribed by the secretary of state.*"

Section 35. Section 13-2-302, MCA, is amended to read:

"13-2-302. Registration immediately before an election. *An individual may register during* the time when *registration* is closed preceding any election, and the *election administrator* shall keep his *registration form* in a separate file until *it can be properly entered after the election.*"

Section 36. Section 13-2-401, MCA, is amended to read:

"13-2-401. Cancellation of registration for failure to vote — reregistration. (1) Except as provided in subsection (3), within 60 days after every general election in which a president is elected, the *election administrator* shall:

(a) *cancel the registration of the electors who have not voted in each precinct, as shown by the official pollbook and precinct register of each precinct;*

(b) *mark the form of each elector whose registration has been canceled; and*

(c) place canceled forms for the entire county in alphabetical order in the canceled file.

(2) An elector whose *registration* is canceled may *reregister* in the same manner as *if he were registering for the first time.*

(3) The registration of an elector who votes by absentee ballot *but whose ballot does not arrive in time to be counted may* not be canceled if his ballot is received and rejected by the *election administrator* within 10 days succeeding the election.

(4) When the *election administrator* has completed cancellation of *the electors' registration* as provided in this section, a notice of cancellation shall be published *on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county* once a week for 2 weeks. The notice shall be run in a display advertisement *(known as ROP in the trade) if in a newspaper or as an announcement if on radio or television* and shall be in a form prescribed by the secretary of state. *The names of those electors whose registration has been canceled need not be published.*"

Section 37. Section 13-2-402, MCA, is amended to read:

"13-2-402. Other reasons for cancellation. The *election administrator* shall cancel *the* registration *of any elector*:

(1) at the written request of the registered *elector*;

(2) if a certificate of the death of any elector is filed or if an elector is reported as deceased by the department of health and environmental sciences in the department's reports submitted to the county under 72-16-217;

(3) if the elector is *of unsound mind as established by a court*;

(4) if the incarceration of an elector in a penal institution for a felony conviction is legally established;

(5) if a certified copy of a court order directing the cancellation is filed with the *election administrator;*

(6) if an elector is successfully challenged and not allowed to vote at an election as provided in 13-13-308; or

(7) if a notice is received from another county or state that the elector has registered in that county or state."

Section 38. Section 13-2-403, MCA, is amended to read:

"13-2-403. Challenge of registration. *(1) Forty-five or more days before the close of registration for an election, three registered electors of*

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a precinct may challenge the registration of an elector by filing affidavits giving the name of the elector whose registration is challenged, the address at which he is registered, and a statement that the affiant has personal knowledge that the elector does not reside at the address where registered.

(2) No later than 3 days after the filing of affidavits as provided in subsection (1), the election administrator must send written notice to the elector whose registration is challenged, at the address shown on the registration form. The notice must state that registration will be cancelled within 15 days of the filing of the affidavits unless the elector refutes the affidavits by submitting proof or a sworn statement that he resides at the address given on his registration form.

(3) The election administrator must cancel the registration of an elector whose registration is challenged under this section 15 days after the filing of the affidavits required in subsection (1) unless proof or a sworn statement as required in subsection (2) is received.

(4) If an elector proves or swears he resides at the address given on his registration form after his registration has been canceled as provided in this section, he may reregister by completing a new registration form. Such registration shall be effective for the next election even though the registration for that election is closed."

Section 39. Section 13-2-404, MCA, is amended to read:

"13-2-404. Challenges prior to election. (1) *If an* elector *believes* another elector *fails to meet the qualifications required in 13-1-111, he may challenge the right of that elector to vote* any time not later than 20 days prior to an election. The challenge must:

(a) be filed with the *election administrator* and be signed by the elector;

(b) be verified by the affidavit of the elector that the elector designated is not entitled to vote;

(c) state the grounds of the challenge, objection, and disqualification.

(2) The *election administrator* shall:

(a) file the affidavit of challenge in his office;

(b) deliver a correct copy of the affidavit to the judges of election, together with the precinct *register*;

(c) write *in the precinct register beside* the name of any *individual* whose qualifications are challenged the words "to be challenged";

(d) notify the elector within 5 days by certified or registered mail that his qualifications as an elector have been challenged."

Section 40. Section 13-2-501, MCA, is amended to read:

"13-2-501. Transferring registration or changing name. *An elector shall notify the election administrator of a change in residence within the county or a change in name by using a transfer form provided*

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by the election administrator or by completing the changed information on a registration or mail registration form. The form must be signed and affirmed or verified as required on the form. If a registration or mail registration form is used, it must be clearly marked "for transfer of address" or "for change of name" in a space provided on the form for that purpose."

Section 41. **Right to vote when precinct or name changed.** (1) An elector who has changed his residence to a different precinct within the same county and has failed to notify the election administrator of the change by a transfer or new registration form may vote in the precinct where he is registered at the first election at which he offers to vote after the change unless his registration has been canceled as provided in [section 30], 13-2-401, or 13-2-402.

(2) An elector still residing in the same precinct where registered whose name has changed and who has failed to notify the election administrator of the change by a new registration form may vote under his former name at the first election at which he offers to vote after the change unless his registration has been canceled as provided in [section 30], 13-2-401, or 13-2-402.

(3) The elector must state his correct residence address and name when offering to vote and must complete a transfer form or new registration form to make the necessary correction before being allowed to sign the precinct register and vote.

Section 42. Section 13-2-502, MCA, is amended to read:

"13-2-502. Procedure for transferring registration. *The election administrator shall make the necessary corrections in the registration records in his office when he receives a transfer form or corrected registration form if he is satisfied the form is valid. The original registration form may be fastened to the back of the new form, in which case the original and current forms must be retained, or the original registration form may be marked "canceled" and filed in a canceled file."*

Section 43. **Change of residence to another county.** (1) An elector who changes his residence to a different county within this state must register in his new county of residence in order to vote in any election unless the change occurs less than 45 days before the election.

(2) An elector who changes his residence to a different county 45 days or less before an election may vote in person or by absentee ballot in the precinct and county where previously registered.

(3) The elector must state his correct name and residence address and date of residence change when offering to vote or when applying for an absentee ballot. The election administrator shall note the information on the elector's registration form if an absentee ballot application is received. The election judges shall note the change of address and date of residence change in the precinct register if the elector votes in person.

(4) The registration of an elector who votes under the provisions of subsection (2) of this section shall be canceled after the election.

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Section 44. Section 13-2-503, MCA, is amended to read:

"13-2-503. Inquiry as to previous registration — notices of changes. (1) *The election administrator shall check each new registration to ascertain whether the elector has listed previous registration in another county of this state or another state. If the elector has been previously registered, the election administrator shall enter his name on a notice or may photocopy the registration form.*

(2) *At least once a week and not more than 3 days after the close of registration, the election administrator shall forward the notices or photocopies for counties in this state to the election administrator of the county where the elector was previously registered. A list or other record shall be kept of notices or photocopies sent.*

(3) *Once a month and not more than 3 days after the close of registration, the election administrator shall forward the notices or photocopies for other states to the secretary of state or chief election official of the state where the elector was previously registered. A list or other record shall be kept of notices or photocopies sent.*"

Section 45. Section 13-2-601, MCA, is amended to read:

"13-2-601. Name on precinct register prima facie evidence of right to vote. *An elector* may not vote at an election mentioned in this title unless his name appears on election day in the copy of the official precinct register furnished by the *election administrator* to the election judges. The fact that his name appears in the copy of the precinct register is prima facie evidence of his right to vote."

Section 46. Section 13-2-603, MCA, is amended to read:

"13-2-603. Erroneous omission of name from precinct register. (1) An elector whose name is erroneously omitted from a precinct register or other election register may secure from the *election administrator* a certificate of the error, stating the precinct in which he is entitled to vote, and present the certificate which will entitle him to vote to the election judges.

(2) The certificate shall be marked "voted" by the election judges and returned by them with the precinct register.

(3) If the elector's polling place is not located in the city where the election administrator's office is located, the elector may vote by signing an oath that his name was erroneously omitted if the election administrator can confirm such omission by telephone to the chief election judge of the precinct."

Section 47. Section 13-3-101, MCA, is amended to read:

"13-3-101. Establishment of election precincts. (1) The territorial unit for elections is the election precinct. All election precincts shall be designated by numbers, names, or both.

(2) The *governing body* of each county shall establish a convenient number of election precincts, equalizing the number of electors in each precinct as nearly as possible."

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Section 48. Section 13-3-102, MCA, is amended to read:

"13-3-102. Change of precinct boundaries. (1) The *county governing body* may change the boundaries of precincts, but not *within 100 days before any primary or between a general election and the primary for that election. When* the changes are required to make precinct boundaries conform to legislative district boundaries following the adoption of *a districting and apportionment plan* under Article V, section 14, of the 1972 Montana constitution *or other district boundaries changed by the districting and apportionment plan,* the changing of precinct boundaries must be accomplished within *45* days of the filing of the final plan.

(2) All changes must be certified to the *election administrator* 3 days or less after the change is made.

(3) The *officials responsible for preparing a districting and apportionment plan shall consider the problems of conforming present precinct boundaries to the new districts as well as existing boundaries of wards, school districts, and other districts. The election administrator of counties involved in the plan shall be consulted before adoption of the final plan.*"

Section 49. Section 13-3-103, MCA, is amended to read:

"13-3-103. Certification of boundary changes. (1) Not more than 10 days after an order of the *governing body* has established or changed the boundaries of an election precinct, the *governing body* shall cause to be prepared and delivered *to the election administrator a written legal description and* a map showing the borders of all precincts and districts *in which elections are held* within the county.

(2) Not more than 10 days after *school district or other election district boundaries* have been changed, the *governing body making the change shall* certify any changes or *alterations* in the boundaries to the *election administrator* and deliver *a written legal description and* a map showing boundaries of the wards, *school districts, or other election districts. The map must be sufficiently detailed to clearly identify the wards or districts and the territory included in each.*"

Section 50. Section 13-3-104, MCA, is amended to read:

"13-3-104. Precincts, wards, and election districts. (1) A ward or *election* district may be divided into two or more precincts, and a precinct may be divided into two or more polling places.

(2) *Precincts may include two or more adjoining wards or election districts, together with contiguous territory lying outside the municipality or district, if provision can be made for clearly identifying the electors eligible to vote in each ward or district.*"

Section 51. Section 13-3-105, MCA, is amended to read:

"13-3-105. Designation of polling place. (1) The *county governing body* shall *designate* the polling place for each precinct *no later than 30 days before a primary election. The same polling place shall be used for both the primary and general election if at all possible. Changes may*

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be made by the governing body in designated polling places up to 10 days before an election if a designated polling place is not available. Polling places may be located outside the boundaries of a precinct.

(2) Not more than 10 or less than 2 days before an election, the *election administrator* shall publish in a newspaper of general circulation in the county, a statement of the locations of the precinct polling places. *Notice may also be given as provided in 2-3-105 through 2-3-107.*

(3) An election administrator may make changes in the location of a polling place if an emergency occurs 10 days or less before an election. Notice shall be posted at both the old and new polling places, and other notice may be given by whatever means available."

Section 52. Section 13-4-101, MCA, is amended to read:

"13-4-101. Appointment of election judges — second board of election judges. (1) *At least 30 days before the primary election in even-numbered years, the county governing body shall appoint 3 or more election judges for each precinct, one of whom shall be designated chief judge.*

(2) *A second board of election judges, designated as a counting board, may be appointed in any precinct if recommended by the election administrator."*

Section 53. **Qualifications of election judges.** (1) Election judges shall be registered electors of the county and of the precinct in which they serve, except as provided in 13-4-102(4).

(2) No election judge may be a candidate or a spouse, ascendent, descendent, brother, or sister of a candidate or a candidate's spouse or the spouse of any of these in an election precinct where the candidate's name appears on the ballot. However, this does not apply to candidates for precinct offices.

Section 54. Section 13-4-102, MCA, is amended to read:

"13-4-102. Manner of choosing election judges. (1) *Election* judges shall be chosen from lists of qualified *registered electors for each precinct in the county, submitted at least 45 days before the primary election in even-numbered years by the county central committees of the political parties eligible to nominate candidates in the primary.*

(2) The list of each party may contain *more names than the number* of election judges to be appointed. *The names of those not appointed as election judges shall be given to the election administrator for use in making appointments to fill vacancies.*

(3) *Each board of election judges shall contain judges representing all parties that have submitted lists as provided in subsection (1). No more than a majority may be appointed from the list of one political party in each precinct. If any of the political parties entitled to do so fail to submit a list, the governing body shall, insofar as possible, appoint judges so that all parties eligible to participate in the primary are represented on each board.*

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(4) *The election administrator shall make appointments to fill vacancies from the list provided for in subsection (2), or if the list is insufficient, any qualified registered elector from the county may be appointed.*"

Section 55. Section 13-4-103, MCA, is amended to read:

"**13-4-103. Judges to serve until others appointed.** The election judges continue to be judges of all elections held in their precincts until other judges are appointed."

Section 56. Section 13-4-104, MCA, is amended to read:

"**13-4-104. Election administrator to notify judges.** The *election administrator* must notify the judges of their appointment *and of the time set for instruction sessions.*"

Section 57. Section 13-4-105, MCA, is amended to read:

"**13-4-105. Oath of judges.** Before votes are cast, the election judges must take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other."

Section 58. Section 13-4-106, MCA, is amended to read:

"**13-4-106. Compensation of judges.** *(1) Election* judges shall be *paid* at the prevailing federal minimum wage *for the number of hours worked during an election plus the number of hours spent at the instruction session. Mileage may be paid to election judges for attending instruction sessions.*

(2) The chief election judge may be reimbursed for the actual expenses of transporting election materials.

(3) The election administrator shall certify the amount due each election judge to the county governing body as soon after an election as all records necessary for such certification are received."

Section 59. Section 13-4-201, MCA, is amended to read:

"**13-4-201. Duties of chief election judge.** *The chief election judge shall be responsible for the conduct of the proceedings in the polling place, shall assign duties to other members of the board of election judges, and shall be responsible for the return of all ballots and election supplies to the election administrator.*"

Section 60. Section 13-4-202, MCA, is amended to read:

"**13-4-202. Administration of oaths.** Any election judge may administer and certify oaths required during an election."

Section 61. Section 13-4-203, MCA, is amended to read:

"**13-4-203. Instruction of judges — training materials.** (1) Before each election, all election judges who do not possess a *current* certificate of instruction shall be instructed by *the election administrator. In precincts where voting machines or devices are used, instructions shall cover both machines or devices and paper ballots.*

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(2) *Chief judges may be required to attend the training session before each election, as well as a special session that may be held for chief judges only.*

(3) *Any individual willing to be appointed an election judge may attend an instruction session by registering with the election administrator. Such individuals may not be paid for attendance unless they are appointed election judges.*

(4) *The secretary of state shall prepare and distribute training materials for election judges. The materials shall include instructions on the use of all machines or devices approved for use in this state, as well as paper ballots. Enough copies of the materials to supply all election judges in the county and provide a small extra supply shall be sent to each election administrator. The secretary of state shall hold at least one workshop every 2 years to instruct election administrators and their staffs in use of the materials. Workshops may be held in various locations around the state. Costs of the materials and workshops shall be paid by the secretary of state.*

(5) *Each election judge completing a training session shall be given a certificate of completion. No individual may serve as an election judge without a valid certificate. However, this does not apply to individuals filling vacancies in emergencies.*

(6) *All certificates of completion expire 30 days before the primary election in even-numbered years.*

(7) Notice of place and time of instruction must be given by the *election administrator* to the county chairmen of the political parties."

Section 62. **Judges to remain at polls — emergency provisions.** (1) Election judges may not leave the premises on which the polling place is located during the hours they are assigned to work unless permission to leave is given by the chief election judge for that precinct. Permission may be granted only for illness or a family emergency.

(2) A chief election judge must obtain the permission of the election administrator to leave the polling place premises because of illness or an emergency. If the chief judge is excused, the election administrator shall appoint one of the other judges to act as chief election judge.

(3) The time of departure and reason for leaving shall be entered near the oath form subscribed by the election judge or on a form provided by the election administrator. The chief election judge shall sign the entry.

(4) The election administrator may appoint a judge to replace an excused judge.

Section 63. Section 13-10-201, MCA, is amended to read:

"13-10-201. Declaration for nomination. (1) Each candidate in the primary election, *except nonpartisan candidates filing under the provisions of chapter 14,* shall send a declaration *for* nomination to the secretary of state or *election administrator.* Each candidate for governor

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shall send a joint declaration *for* nomination with a candidate for lieutenant governor.

(2) A declaration for nomination shall be filed in the office of:

(a) the secretary of state for a congressional office, state or district office to be voted for in more than one county, member of the legislature, or judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate *shall* sign the declaration and send with it the required filing fee or, in the case of *an indigent* candidate, send with it the documents required *by 13-10-203.* The declaration *for* nomination shall be acknowledged by *an officer empowered to acknowledge signatures* if sent by mail or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by his party.

(5) The declaration for nomination shall be in the form and contain the information prescribed by the secretary of state. *The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.*

(6) *Declarations for nomination* shall be filed *no sooner than the first business day in January of an election year for that office and no* later than 5 p.m., *50* days before the date of the primary election."

Section 64. Section 13-10-202, MCA, is amended to read:

"13-10-202. Filing fees. Filing fees are as follows:

(1) for offices having an annual salary of *$2,500* or less *and* candidates for the legislature, $15;

(2) for *county* offices having an annual salary of more than *$2,500, .5%* of the total annual salary;

(3) for other offices having an annual salary of more than $2,500, 1% of the total annual salary;

(4) for offices in which compensation is paid in fees, $10;

(5) for officers of political parties, presidential electors, and officers who receive no salary or fees, no filing fee is required."

Section 65. Section 13-10-203, MCA, is amended to read:

"13-10-203. Indigent candidates. If *an individual* is unable to pay a filing fee, the filing officer shall accept the following documents in lieu of a filing fee:

(1) from a *successful* write-in candidate, a verified statement that he is unable to pay the filing fee;

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(2) from a candidate for nomination, a verified statement that he is unable to pay the filing fee and a written petition for nomination as a candidate that meets the following requirements:

(a) contains the name of the office to be filled *and* the candidate's name *and* residence address;

(b) *contains signatures numbering* 5% or more of the total vote cast for the successful candidate for the same office at the *last* general election;

(c) *the signatures are those of* electors residing within the political *subdivision* of the state in which the candidate petitions for nomination; *and*

(d) the signatures have been certified by the appropriate election administrator by the procedure provided in 13-27-303 and 13-27-304."

Section 66. Section 13-10-204, MCA, is amended to read:

"**13-10-204. Write-in nominations.** *An individual* nominated by having his name written in on the primary ballot and desiring to accept the nomination may not have his name printed on the general election ballot unless he:

(1) files with the secretary of state or *election administrator no later than* 10 days after the *official canvass,* a written declaration indicating his acceptance of the nomination;

(2) pays the required filing fee or, if indigent, complies with 13-10-203;

(3) received at least 5% of the *total* votes cast for the *successful candidate for the same* office at the last general election; *and*

(4) complies with the provisions of 13-37-126."

Section 67. Section 13-10-205, MCA, is amended to read:

"**13-10-205. Register of candidates.** The secretary of state and *the election administrator* shall *each* keep a *register* of *candidates who file with their respective offices.* The register shall *provide a complete record of the requisite information pertaining to all candidates in the primary and general election. Information on ballot issues may also be included in the register. The secretary of state shall prepare and distribute a recommended format for the register.*"

Section 68. Section 13-10-208, MCA, is amended to read:

"**13-10-208. Certificate of primary ballot — printing ballot.** (1) Not more than *50* days and not less than *42* days before the date of the primary election, the secretary of state shall *certify to the election administrators the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official records of his office in the manner provided in 13-10-209 and chapter 12, part 2, of this title.*

(2) Not more than *40* days and not less than *30* days before the date of the primary election, the *election administrator* shall *certify the names and designations of candidates, except as provided in 13-37-126, and any*

ballot issues as shown in the official record of his office and have the official ballots printed in the manner provided in 13-10-209 and chapter 12, part 2, of this title."

Section 69. Section 13-10-209, MCA, is amended to read:

"13-10-209. Arrangement of ballots. (1) *Ballots for a* primary *election* shall be *arranged and printed in the same manner and number as provided in chapter 12 for general election ballots, except there shall be separate ballots for each political party entitled to participate and separate nonpartisan and ballot issue ballots if necessary. The name of the political party shall be printed at the top of the separate ballot for that party and need not be printed opposite each candidate's name.*

(2) *It is not necessary to print a primary ballot for a political party which does not have candidates for more than half of the offices on the ballot in even-year elections if no more than one candidate files for nomination by that party for any of the offices on the ballot. The secretary of state shall certify that no primary election is necessary for that party if such is the case and shall certify or instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.*

(3) *The separate ballots for each party shall be the same size and color. The stubs of each set of party ballots shall bear the same number. The nonpartisan ballot shall be a different size or color than the party ballots, but the stubs shall be numbered in the same order as the party ballots.*

(4) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may be a different size and color than the other ballots in the election, but the stubs shall be numbered in the same order.

(5) Each elector shall receive a set of party ballots and a nonpartisan and a ballot issue ballot if such ballots are printed."

Section 70. Section 13-10-301, MCA, is amended to read:

"13-10-301. Casting of ballot. (1) *Unless otherwise provided by law, the conduct of the primary election, the voting procedure, the counting, tallying, and return of ballots and all election records and supplies, the canvass of votes, the certification and notification of nominees, recounts, procedures upon tie votes, and any other necessary election procedures shall be at the same times and in the same manner as provided for in the laws for the general election.*

(2) *At a primary election, the elector shall mark only one of the set of party ballots. After marking any other ballots received other than the party ballots, the elector shall fold the marked and unmarked ballots separately in a manner so that the marks cannot be seen, the official stamp is visible on each ballot, and all stubs can be detached by an election judge.*

(3) The elector shall hand the marked and unmarked ballots separately to the election judge, identifying them as marked and unmarked.

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If the judge determines the ballots may be voted, he shall, in the presence of the elector:

(a) remove the stubs from all the ballots;

(b) deposit the unmarked ballot or ballots and all the stubs in the stub and unmarked ballot box;

(c) and deposit the marked ballots in the voted ballot box."

Section 71. Section 13-10-302, MCA, is amended to read:

"**13-10-302. Write-in votes for previously nominated candidates.** If an elector writes the name of *an individual* upon a *primary party* ballot *when* the *individual's* name appears as a candidate *for the same office on* another *party* ballot, the *vote* shall count for the *individual* only as a candidate of the party upon whose *ballot* his name is written *and the votes cast on the separate party ballots may not be added together.*"

Section 72. Section 13-10-303, MCA, is amended to read:

"**13-10-303. Nominations by more than one party.** If *an individual* is nominated *by* more than one *party, he shall,* not later than 10 days after the election, file written notification with the secretary of state or *election administrator indicating* the party under which his name is to appear upon the ballot for the general election. *If* he fails to notify the proper officers, his name shall appear under the party with whom his declaration *for nomination* was filed *if a declaration was filed. If an individual did not file a declaration or acceptance of nomination and fails to notify the proper officers, his name shall be printed on the ballot without a party designation.*"

Section 73. Section 13-10-305, MCA, is amended to read:

"**13-10-305. Independent forfeits place on ballot.** *An individual who has filed as an independent candidate forfeits his place on the general election ballot as an independent candidate if he accepts a write-in nomination for an office as provided in 13-10-204.*"

Section 74. Section 13-10-311, MCA, is amended to read:

"**13-10-311. Election judges' duties upon closing of polls.** (1) *The election judges at the primary election shall separate the ballots for each political party and count each party's ballots separately.*

(2) *They shall reconcile the total number of party ballots and the separate total number of other ballots used at the election with the number of electors voting. Any discrepancies in the reconciliations shall be handled as provided in 13-15-201(3).*

(3) *Each party's candidates shall be listed separately in the tally books.*

(4) *The voted ballots of each party shall be bundled separately for return to the election administrator. The unvoted ballots deposited in the stub box shall be bundled with the stubs.*"

Section 75. Section 13-10-325, MCA, is amended to read:

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"13-10-325. Withdrawal from nomination. *(1) A candidate for nomination or candidate for election to an office may withdraw from the election by sending a statement of withdrawal to the officer with whom his declaration, petition, or acceptance of nomination was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. It shall be sworn or affirmed before an officer empowered to administer oaths. A candidate may not withdraw later than 30 days before an election.*

(2) Filing fees paid by the candidate may not be refunded."

Section 76. Section 13-10-326, MCA, is amended to read:

"13-10-326. Vacancy prior to primary election. *(1) If a candidate for nomination for a partisan office dies or withdraws 40 days or more before the primary election, the affected political party may appoint someone to replace the candidate by the procedure provided in 13-10-327.*

(2) If the death or withdrawal occurs less than 40 days before the primary, the affected political party shall appoint a candidate after the primary as provided in 13-10-327 if a candidate for that office for that party was not nominated at the primary election. This section does not allow a political party to appoint a candidate for an office if no candidate for nomination by that party filed for the office before the primary election."

Section 77. Section 13-10-327, MCA, is amended to read:

"13-10-327. Vacancy after primary and prior to general election. (1) *If a party candidate dies or withdraws after the primary and before the general election, the affected political party shall appoint someone to replace the candidate in one of the following ways:*

(a) For offices to be filled by the state at large, the state central committee shall make the appointment as provided by the rules of the party.

(b) For offices to be filled in districts including more than one county, a committee appointed by the county central committees of all counties in the district shall make the appointment. Procedures for the appointment of the committee and making the appointment shall be provided in party rules.

(c) For offices to be filled in counties, municipalities, or districts wholly within a county, the appointment shall be made under rules adopted by the county central committee.

(2) *Appointments to fill vacancies must be made no later than 40 days before the election. A candidate may not officially withdraw 50 days or less before a general election. However, if a candidate for partisan office dies less than 40 days before the general election, the affected political party shall appoint a candidate within 5 days after being notified of the vacancy. The procedures provided in 13-12-204 shall be used to place the name of the appointee on the ballot if necessary.*

(3) *The appointing committee shall send a certificate to the officer with whom a declaration for nomination for the office would be filed,*

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with the information required on a declaration for nomination and the name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed and acknowledged acceptance of the appointment and the filing fee for the office.

(4) *The officer receiving the certificate of appointment, accompanied by a statement of acceptance and the filing fee, shall certify the name of the appointee for the ballot.*"

Section 78. Section 13-10-328, MCA, is amended to read:

"**13-10-328. Vacancy in governor or lieutenant governor candidacy.** *The death or withdrawal* of *a* candidate for governor or lieutenant governor *does* not affect the candidacy of the other joint candidate."

Section 79. Section 13-10-401, MCA, is amended to read:

"**13-10-401. Date of presidential primary.** In the years in which a president of the United States is to be elected, a presidential preference primary election will be held on the same day as the primary provided for in *[section 3]*."

Section 80. Section 13-10-402, MCA, is amended to read:

"**13-10-402. Ballot.** The regular *party primary* ballots shall be used for the presidential preference primary election. The presidential section of the ballot shall be placed before any other section, national, state, or local."

Section 81. Section 13-10-403, MCA, is amended to read:

"**13-10-403. Form of ballot.** The presidential preference ballot shall list all candidates nominated in accordance with the provisions of this part and shall, in addition, include a presidential ballot position which shall be designated as "no preference" *and a blank write-in space.*"

Section 82. Section 13-10-405, MCA, is amended to read:

"**13-10-405. Submission and verification of petition.** Petitions of nomination for the presidential preference primary election must be presented to the *election administrator* of the county in which the signatures are gathered. The *election administrator* must verify the signatures in the manner prescribed in 13-27-303 through *13-27-308* and must forward the petitions to the secretary of state. The petitions must be submitted to the *election administrator* at least 30 days before the filing deadline established in 13-10-201(6). *No filing fee is required.*"

Section 83. Section 13-10-501, MCA, is amended to read:

"**13-10-501. Petition for nomination by independent candidates or political parties not eligible to participate in primary election.** (1) Except as provided in 13-10-504, nominations for public office by an *independant candidate* or a political party which *does* not *meet the requirements of 13-10-601* may be made by a *petition for* nomination.

(2) *The petition must contain the same information and the oath of the candidate required for a declaration for nomination.*

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(3) *If a petition is filed by a political party, it must contain the party name and, in five words or less, the principle which such body represents.*

(4) The form of the petition shall be prescribed by the secretary of state, and he shall furnish sample copies to the election administrators and on request to any individual.

(5) Each sheet of a petition must contain signatures of electors residing in only one county."

Section 84. Section 13-10-502, MCA, is amended to read:

"**13-10-502. Signature requirements for petition.** (1) The *petition for* nomination must be signed by electors residing within the state and district or political *subdivision* in which the officer or officers are to be elected. Each *signature line must contain spaces for the signature, post-office address, and printed last name of the signer.*

(2) The number of signatures must be 5% or more of the total vote cast for the successful candidate for the same office at the *last* general election.

(3) If the office sought is a new office or the boundaries of the district or political subdivision in which the election is to be held have changed since the last election for the office, the secretary of state shall determine the number of signatures required for a petition of nomination for that office."

Section 85. Section 13-10-503, MCA, is amended to read:

"**13-10-503. Filing deadlines.** *(1) A petition for nomination, accompanied by the required filing fee, shall be filed with the same officer with whom other nominations for the office sought are filed. Petitions to be filed with the secretary of state must first be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306.*

(2) Except as provided in 13-10-504, each petition shall be filed on or before the filing deadline for the primary election or for the special or general election if no primary election is scheduled."

Section 86. Section 13-10-504, MCA, is amended to read:

"**13-10-504. Independent or minor party candidates for president or vice president.** *(1) An individual* who desires to run for president or vice president as an independent candidate *or as a candidate of a party not qualified under 13-10-601* must file a *petition for* nomination with the secretary of state 90 days prior to the date of the general election.

(2) The petition must first be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306.

(3) The *petition* must have the signatures of electors equal to 5% or more of the *total* votes cast for *the successful candidate for* governor at

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the *last* general election. *The names of the candidates for the required number of presidential electors allowable to Montana shall be certified to the secretary of state when the petition for nomination is filed.*"

Section 87. Section 13-10-505, MCA, is amended to read:

"**13-10-505. Applicability.** *The provisions of sections* 13-10-501 through 13-10-504 shall not *be used to fill vacancies or* to *nominate candidates in nonpartisan elections except as provided in [section 210].*"

Section 88. Section 13-10-601, MCA, is amended to read:

"**13-10-601. Parties eligible for primary election.** Every political party *that had a candidate for a statewide office who received a total vote that was 5% or more of the total votes cast for the successful candidate for governor at the last general election* shall nominate its *candidates* for public office, *except for presidential electors, by a primary election as provided in this chapter.*"

Section 89. Section 13-10-604, MCA, is amended to read:

"**13-10-604. Nominations for minor parties.** Any political party that *does* not *qualify under the provisions of 13-10-601* may make nominations for public office as provided in 13-10-501 through 13-10-505."

Section 90. Section 13-12-101, MCA, is amended to read:

"**13-12-101. Copies of election laws to be furnished.** (1) The secretary of state shall publish copies of the election laws and laws which relate to elections. He shall transmit sufficient copies to each *election administrator to* furnish each election precinct in his county with two copies *and to provide a small extra supply.*

(2) The secretary of state shall, at the expense of the state, furnish the *election administrator* with copies of the election laws relating to penalties, campaign practices, campaign finances, and *contested elections.* The public official with whom a candidate files a declaration, *petition, or acceptance* of nomination shall transmit one *copy* to the candidate. *A copy* shall also be furnished to any other person required to file a statement. Upon his own information or at the written request of any *elector*, the secretary of state shall provide a copy to any other individual who *is* a candidate or who *is* required to make a statement required by this title."

Section 91. Section 13-12-102, MCA, is amended to read:

"**13-12-102. Items to be furnished by election administrators.** The *election administrators* shall *deliver to each polling place or to the chief election judge for a polling place all supplies necessary to conduct the election at that polling place. If the blank ballots for the polling place are delivered before noon of the day before the election, the election administrator shall retain sufficient ballots to supply electors requesting absentee ballots. The election administrator shall write in the pollbook for that polling place, after the numbers of the ballots retained, "reserved for absentee ballots".*"

Section 92. Section 13-12-201, MCA, is amended to read:

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"13-12-201. Secretary of state to certify ballot. *(1) Fifty days or more before an election, except as provided in 13-10-208, the secretary of state shall certify to the election administrators the name and party or other designation of each candidate entitled to appear on the ballot and ballot issues as shown in the official records of his office, which must include the notification specified in 13-37-126.*

(2) The election administrator shall certify the name and party or other designation of each candidate entitled to appear on the ballot and ballot issues as shown in the official records of his office, which must include the notification specified in 13-37-126, and shall have the official ballots printed."

Section 93. Section 13-12-202, MCA, is amended to read:

"13-12-202. Ballot form and uniformity. (1) *The secretary of state shall prescribe the ballot form for all types of ballots used in this state.*

(2) The names of *all* candidates printed upon the ballots shall be in type of the same size and character.

(3) When the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot *for the same office or issue.*

(4) The ballots must contain the name of every candidate whose nomination is certified under law for *an* office and no other names, except that the names of candidates for president and vice president of the United States shall appear on the ballot as provided in *13-25-101(2).*"

Section 94. Section 13-12-203, MCA, is amended to read:

"13-12-203. Printing of candidate's name and party designation on ballot. (1) *Except as provided in 13-10-209 and 13-10-303, in partisan elections, candidates' names shall be printed under the title of the office sought, with the name of the party, in not more than three words, or "Independent" printed opposite the name.*

(2) *In nonpartisan elections, the candidates' names shall be printed under the title of the office sought, with no description or designation printed with the name unless partisan and nonpartisan offices appear on the same ballot. In such a case, the names of nonpartisan candidates shall have printed with them the words "Nominated without party designation".*"

Section 95. Section 13-12-204, MCA, is amended to read:

"13-12-204. Labels to be printed and distributed where vacancy has been filled. (1) If *an appointment has been made to replace a candidate as provided in 13-10-326 or 13-10-327 after the ballots have been printed but before the election, the election administrator shall order labels printed containing the name of the new nominee and any other information required to go on the ballot.*

(2) The election *administrator* shall affix the *labels* in the proper place on each ballot *or deliver the labels to the chief election judges to be*

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affixed in the proper place on each ballot before it is given to the elector."

Section 96. Section 13-12-205, MCA, is amended to read:

"13-12-205. Arrangement of names — rotation on ballot. (1) The candidates' names shall be arranged alphabetically on the ballot according to surnames under the title of the respective offices.

(2) *If two or more individuals are candidates for nomination or election to the same office, the election administrator shall divide the ballot forms into sets equal in number to the greatest number of candidates for any office. The candidates for nomination to an office by each political party shall be considered separately in determining the number of sets necessary for a primary election.*

(3) *The election administrator shall begin with a form arranged alphabetically and rotate so that each candidate's name will be at the top of the list for each office on substantially an equal number of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the names shall be rotated in groups so that each candidate's name is as near the top of the list as possible on substantially an equal number of ballots.*

(4) *If the county contains more than one legislative district, the election administrator may rotate each candidate's name so that it will be at or near the top of the list for each office on substantially an equal number of ballots in each house district.*

(5) *For purposes of rotation, the offices of president and vice president and of governor and lieutenant governor shall be considered as a group.*

(6) *No more than one of the sets may be used in printing the ballot for use in any one precinct, and all ballots furnished for use in any precinct must be identical.*"

Section 97. Section 13-12-207, MCA, is amended to read:

"13-12-207. Order of placement. (1) The order on the ballot *for state and national offices* shall be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line shall be the names and spaces for voting for candidates for president and vice president. The names of candidates for president and vice president for each political party shall be grouped together.

(b) United States senator;

(c) United States representative;

(d) Governor and lieutenant governor;

(e) Secretary of state;

(f) Attorney general;

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(g) State auditor;

(h) Public service commissioners;

(i) State superintendent of public instruction;

(j) Clerk of the supreme court;

(k) Chief justice of the supreme court;

(l) Justices of the supreme court;

(m) District court judges;

(n) State senators;

(o) Members of the house of representatives.

(2) *The* following order of placement shall be observed *for county offices*:

(a) clerk of the district court;

(b) county commissioner;

(c) county clerk and recorder;

(d) sheriff;

(e) *coroner*;

(f) county *attorney*;

(g) *county superintendent of schools;*

(h) county auditor;

(i) public administrator;

(j) county assessor;

(k) county treasurer;

(l) surveyor;

(m) justice of the peace.

(3) *The secretary of state shall designate the order for placement on the ballot of any offices not on the above lists, except that the election administrator shall designate the order of placement for municipal, charter, consolidated, or confederated local government offices and district offices when the district is part of only one county.*

(4) *Constitutional amendments shall be placed before statewide referendum and initiative measures. Ballot issues for a county, municipality, school district, or other political subdivision shall follow statewide measures in the order designated by the election administrator.*

(5) *If any offices are not to be elected they shall not be listed, but the order of the offices to be filled shall be maintained.*

(6) *If there is a short-term and a long-term election for the same office, the long-term office shall precede the short-term.*"

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Section 98. Section 13-12-208, MCA, is amended to read:

"13-12-208. Provision for write-in votes. Below the *list of* names of candidates for each office there must be *as many* blank spaces *for write-in voting* as there are *officers* to be elected."

Section 99. Section 13-12-209, MCA, is amended to read:

"13-12-209. Paper ballots — stub size — content. (1) *Paper ballots* shall be printed on the same *sheet* with a stub, separated by perforation.

(2) The stub shall extend the entire width of the ballot and have instructions printed on it.

(3) Upon the face of the stub shall be printed the following:

This ballot should be marked with an *"x"* in the square before the name of each *individual* or candidate for whom the elector intends to vote. The elector may write in *or affix a preprinted label in the* blank spaces or over *any other* name, the name of *an individual* for whom he wishes to vote and vote by marking an *"x"* in the square before the name. If a ballot contains a constitutional amendment or other *issue* to be submitted to a vote of the people, it is voted on by marking an *"x"* in the square before the amendment or *issue.*

(4) On the stub shall be printed or stamped the consecutive number of the ballot, beginning with number 1 and increasing in regular numerical order to the total number of ballots required for the precinct."

Section 100. Section 13-12-210, MCA, is amended to read:

"13-12-210. Number of ballots to be provided for each precinct. (1) The *election administrator shall* provide each election precinct with sufficient ballots for the electors registered, plus *an extra supply to cover spoiled* ballots.

(2) The *election administrator* shall keep a record in his office showing the exact number of ballots that are delivered to the election judges of each precinct."

Section 101. Section 13-12-212, MCA, is amended to read:

"13-12-212. Election administrator to provide printed ballots — other ballots prohibited. Except as otherwise provided in the election laws of this state:

(1) the *election administrator* shall provide printed ballots for every election. He shall *have printed* on the ballot the names of all candidates *for all offices to be filled at the election and the title and other wording required by law for all ballot issues.*

(2) ballots other than those printed by the *election administrator* may not be cast or counted in any election."

Section 102. **Sample ballots.** The election administrator may have sample ballots printed in a number sufficient to answer requests from the political parties, schools, and electors. Sample ballots must be duplicates

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of the official ballots but must be clearly distinguishable from official ballots and may not have perforated stubs or be numbered.

Section 103. Section 13-13-101, MCA, is amended to read:

"13-13-101. Duties — proclamation prior to opening and closing polls. *(1) The election judges shall meet at their assigned polling places at the time set by the election administrator. The judges shall take and subscribe the official oath prescribed by the constitution. They may administer the oath to each other. The judges shall check all supplies and complete preparations for voting before the time set for opening the polls, under the direction of the chief election judge.*

(2) Before the polls are opened or closed, that fact must be proclaimed at the place of election."

Section 104. **Provision and use of election booths, voting machines, or voting devices.** (1) The election administrator shall provide a sufficient number of booths, voting machines, or voting devices to allow voting to proceed with as little delay as possible. Booths, voting machines, or voting devices must be arranged in a manner that will not permit any other individual to see how the elector votes or has voted, and the election judges may not permit any individual to remain in any position that would allow him to see how the elector votes or has voted.

(2) No more than one individual may occupy a booth at one time except when assistance is furnished an elector as provided by law. No individual may occupy a booth or use a voting machine or device longer than is reasonably necessary to prepare his ballot, after which the election judges may eject him.

Section 105. **Display of instructions for electors.** (1) Instructions for electors on how to prepare their ballots or use machines or devices must be posted in each compartment provided for the preparation of ballots and elsewhere in the polling place.

(2) The instructions must be in easily read type and explain how to:

(a) obtain ballots for voting;

(b) prepare ballots for deposit in the ballot box; and

(c) obtain a new ballot in place of one spoiled by accident.

(3) If the instructions for use of the machine or device are printed on the machine or device or are part of a ballot package given each elector, separate instructions need not be posted in the compartment.

(4) Official ballots for the precinct, clearly marked "sample" across the face, shall be posted in each booth or compartment and in conspicuous places about the polling place in all precincts where paper ballots are used. Diagrams showing the arrangement of the ballot for that precinct shall be posted in conspicuous places about the polling place in all precincts using machines or devices.

Section 106. **Warning notice to be posted.** Warning notices shall be posted in conspicuous places in the polling place. Each notice shall be headed "WARNING" in large letters and shall state:

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"The sections of law printed below list specific conduct or actions which may cause an elector to be subject to criminal prosecution. This is not intended to be a complete printing of all laws pertaining to election violations."

Below this statement shall be printed the following sections: 13-35-201; 13-35-202; 13-35-206; 13-35-211; 13-35-214; 13-35-217; and 13-35-218.

Section 107. **Marking precinct register book before elector votes.** (1) Before an elector is permitted to receive a ballot or vote, he shall sign his name on the place designated in the precinct register. Before signing the register, the elector shall state his name and current address. If the name or address is not as listed in the precinct register, the elector must complete a transfer form or new registration form to correct the information. The election judges shall write "transfer form" or "registration form" beside the name of any elector submitting a form. No elector may sign the precinct register unless his name and address are the same as shown in the register or the proper corrections have been made.

(2) The election judges shall require an elector not able to sign his name to produce two electors who shall sign an affidavit stating that the elector is the individual whose name and address appears in the precinct register before one or more of the election judges on a form prescribed by the secretary of state. The affidavit shall be filed by the election judges and returned to the election administrator with the returns of the election. One of the judges shall write the elector's name, noting the fact of his inability to sign, and the names of the two electors signing the affidavit.

(3) If the elector fails or refuses to sign his name or, if unable to write, fails to procure two electors who will take the oath required, he may not vote.

Section 108. **Pollbooks.** (1) In precincts using paper ballots, the name of each elector who votes shall be entered in a pollbook and numbered in the order voting so that the number corresponds with the number on the stubs of the ballots given the elector.

(2) In precincts where machines or devices are used, a pollbook need be used only for paper ballots. The election administrator shall provide such precincts with some method of recording the number of individuals voting.

Section 109. **Ballots to be stamped — one ballot to elector.** (1) Before delivering ballots to an elector, the election judges shall stamp the words "official ballot" on the back near the top of the ballot. No part of the stamp may appear on the stub. They shall also stamp the name of the county, the number of the precinct, the date of the election, and any other information the election administrator believes necessary to distinguish the ballots from those used in any other election.

(2) Each elector shall receive from the election judges one of each type of ballot being used at the election.

Section 110. **Method of voting.** (1) On receipt of his ballot, the elector must immediately retire to one of the booths and prepare his ballot.

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(2) He shall prepare his ballot by marking an "x" in the square before the name of the individual or individuals for whom he intends to vote.

(3) If the ballot contains a ballot issue, he shall mark an "x" in the applicable square indicating his vote either for or against the issue.

(4) The elector may write the name of an individual for whom he wishes to vote in the blank space or affix a preprinted label in the blank space or over any other name and may vote for that individual by marking an "x" before the name. When the ballot is marked in this manner, it must be counted the same as though the name were printed upon the ballot and marked by the elector.

(5) After preparing his ballot, the elector must fold it so the face of the ballot will be concealed and the official stamp may be seen and hand it to the election judges.

(6) The judge receiving the ballots shall remove the stubs in sight of the elector and deposit each ballot in the ballot box and each stub in a box for detached stubs. The judge must place the ballots in the ballot box immediately without opening or examining them.

(7) No individual except an election judge may put a ballot, any paper resembling a ballot, or anything other than a ballot in a ballot box.

(8) Any elector who spoils his ballot may, on returning the spoiled ballot, receive another in place of it.

Section 111. **Taking ballot to disabled elector — two judges.** (1) The chief election judge may appoint two election judges who represent different political parties to take a ballot to an elector able to come to the premises where a polling place is located but unable to enter the polling place because of a disability. The elector may request assistance in marking his ballot as provided in [section 112].

(2) The judges shall have the elector sign an oath form stating he is entitled to vote and shall write in the precinct register by the elector's name "voted on the premises by oath" and sign their names.

(3) When the ballot or ballots are marked and folded, the judges shall immediately take them into the polling place and give them to the judge at the ballot box. The judge receiving the voted ballots shall distinctly announce he has "a ballot offered by..... (name), an elector physically unable to enter the room. Does anyone object to the reception of the ballot?" If no objection is heard, the judge shall remove the stub and place the ballot and stub in the proper boxes. Any challenge to the elector's right to vote shall be resolved as provided in Title 13, chapter 13, part 3.

Section 112. **Aid to disabled elector.** (1) The election judges or a qualified elector of the county chosen by the disabled elector may aid an elector who, because of physical disability or inability to read or write, needs assistance in marking his ballot.

(2) The election judges shall require the declaration of disability by the elector to be under oath and may administer the oath.

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(3) The elector may be assisted by two judges who represent different parties. The judges must certify on the precinct register opposite the disabled elector's name that the ballot was marked with their assistance. The judges may not reveal information regarding the ballot.

(4) Instead of assistance as provided in subsection (3), the elector may request the assistance of any qualified elector of the county whom he designates to the judges to aid him in the marking of his ballot, and the elector chosen shall sign his name on the precinct register beside the name of the elector assisted.

(5) No elector other than the one who requires assistance may divulge to anyone within the polling place the name of any candidate for whom he intends to vote or may ask or receive the assistance of any individual within the polling place in the preparation of his ballot.

Section 113. **Poll watchers — announcement of elector's name.** The election judges shall permit one poll watcher from each political party to station himself close to the poll lists in a location that does not interfere with the election procedures. At the time when each elector signs his name, one of the election judges shall pronounce the name loud enough to be heard by the poll watchers. A poll watcher who does not understand the pronunciation has the right to request that the judge repeat the name. Poll watchers shall also be permitted to observe all of the vote counting procedures of the judges after the closing of the polls and all entries of the results of the elections.

Section 114. **Additional poll watchers.** A candidate, a group of candidates, or any group having an interest in the election may request the election administrator to allow additional poll watchers at any precinct. The election administrator shall grant such requests if the number of poll watchers at the polling place will not interfere with the election procedures.

Section 115. **Preventing obstructions.** An election officer, sheriff, constable, or other peace officer may clear the passageway, prevent any obstruction, or arrest any individual obstructing the passageway to a polling place.

Section 116. Section 13-13-201, MCA, is amended to read:

"13-13-201. Voting by elector when absent from place of residence or physically incapacitated from going to polls. *(1)* A qualified registered elector who will be absent from the county or physically incapacitated and unable to go to the polls on the day of election may vote as provided in this part.

(2) Election judges who will be serving in a different precinct than the one in which they are registered may vote by absentee ballot."

Section 117. Section 13-13-203, MCA, is amended to read:

"13-13-203. Absentee ballots where voting machines or devices used. (1) In precincts where voting machines *or devices* are used, the *election administrator* shall *if necessary* print and provide:

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(a) ballots in official form for possible absent or physically incapacitated *electors*; and

(b) ballot boxes required for precincts in which printed ballots are used.

(2) Absentee ballots received in those precincts shall be handled as provided in this chapter."

Section 118. Section 13-13-211, MCA, is amended to read:

"13-13-211. Application of absentee or physically incapacitated elector for ballot. During a period beginning 75 days before the day of election and ending at noon on the day before the election, an elector expecting to be absent from the county in which his voting precinct is situated, an elector in United States service, or an elector who will be unable to go to the polls because of physical incapacity may apply to the *election administrator* for an absentee ballot."

Section 119. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot. (1) Application for absentee ballots shall be made *by a written request signed by the applicant and addressed to the election administrator of the applicant's county of residence.*

(2) Application for an absentee ballot may be made by any elector in the United States service by the federal post card application or by any written request signed by the applicant and addressed to the *election administrator* of the applicant's *county of* residence."

Section 120. Section 13-13-213, MCA, is amended to read:

"13-13-213. Transmission of application to election administrator. (1) The elector shall forward the application by mail or deliver it in person to the *election administrator.*

(2) The *election administrator* shall compare the signature on the application with the applicant's signature on the registration card. If convinced the *individual* making the application is the same as the one whose name appears on the registration card, he shall deliver the ballot."

Section 121. Section 13-13-214, MCA, is amended to read:

"13-13-214. Mailing ballot to elector. (1) *As soon as the official ballots are printed, the election administrator shall send by mail, postage prepaid, to each elector from whom he has received a valid application whatever official ballots are necessary. Ballots shall be sent immediately to electors submitting valid requests after the official ballots are printed.*

(2) *The election administrator shall enclose with the ballots a self-addressed envelope for the return of the ballots. An affirmation in the form prescribed by the secretary of state shall be printed on the back of the envelope.*

(3) The election administrator shall stamp the ballots sent to an absentee elector as provided in [section 109].

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(4) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope shall have printed across the face two parallel horizontal red bars, each ¼-inch wide, extending from one side of the envelope to the other with an intervening space of ¼-inch, with the words "Official Election Ballot Material—via Air Mail" between the bars. In the upper right-hand corner shall be printed "Free of U.S. Postage". In the upper left-hand corner shall be blanks sufficient for the recipient to place his return address. All printing on the face of the envelope shall be in red. The gummed flap of the envelope supplied for the return of the ballot shall be separated by wax paper or other appropriate protective insert. Voting instructions provided in subsection *(6)* shall include a procedure to be followed by absentee *electors*, such as notation of the facts on the back of the envelope, duly signed by the *elector*, in instances of adhesion of the balloting material.

(5) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so it can be identified as being used by any one elector.

(6) Instructions for voting shall be enclosed with the ballots. *Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments which may be used to mark the absentee ballot.*

(7) The return envelope shall be self-addressed to the election administrator."

Section 122. Section 13-13-221, MCA, is amended to read:

"13-13-221. Marking and affirming ballot. (1) *After the elector marks his ballots, he shall fold them so that the vote is concealed and so that the official stamp is visible. The stubs shall be left attached and the ballots should be folded so that the stubs can be detached without revealing the vote.*

(2) *The elector shall place the ballots in the envelope addressed to the election administrator and seal it securely. If the ballots are for a primary election, the party ballot or ballots not voted shall be placed in the envelope marked for that purpose and enclosed in the outer envelope with the voted ballots.*

(3) *The elector shall complete and sign the affirmation on the envelope.*

(4) The elector shall mail the envelope, postage prepaid, or deliver it to the *election administrator.*"

Section 123. Section 13-13-222, MCA, is amended to read:

"13-13-222. Voting before election day by prospective absentee or physically incapacitated elector. (1) An elector who is present in his county after the official ballots have been printed and who has reason to believe that he will be absent from the county or physically incapacitated on election day may vote before election day before the *election administrator.*

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(2) The provisions of this chapter apply to such voting.

(3) If the ballot is marked before the *election administrator*, he shall deal with it in the same manner as if it had come by mail."

Section 124. Section 13-13-231, MCA, is amended to read:

"13-13-231. Disposition of marked ballot upon receipt by election administrator. (1) Upon receipt of the *voted absentee ballot, the election administrator* shall immediately *attach the elector's application to the* envelope *and mark the precinct number for delivery.*

(2) The *election administrator* shall safely keep *the absentee ballots* in his office until delivered by him."

Section 125. Section 13-13-232, MCA, is amended to read:

"13-13-232. Delivery of ballots to election judges — ballots to be rejected. (1) If the absentee ballot is received prior to delivery of the official ballots to the election judges, the *election administrator* shall deliver the envelope to the judges at the same time the ballots are delivered.

(2) If absentee ballots are received after the ballots are delivered to the election judges but prior to the close of the polls, the *election administrator* shall immediately deliver the envelopes to the judges.

(3) If absentee ballots for which *an* application was not received prior to noon on the day preceding an election are received by the *election administrator* or if absentee ballots are received by the *election administrator* after the close of the polls, *he* shall endorse upon the *elector's* envelope the date and exact time of receipt and the words "*to* be rejected". Absentee ballots so endorsed shall be retained by the *election administrator and placed with the proper records when they are returned to him.*"

Section 126. Section 13-13-233, MCA, is amended to read:

"13-13-233. Issue and record of absentee ballots — certificate. (1) The absentee ballots delivered shall be regular official ballots beginning with ballot number *1* and following consecutively according to the number of applications for absentee ballots.

(2) The *election administrator* shall keep a record of all absentee ballots delivered, as well as of ballots marked before him.

(3) The *election administrator* shall deliver to the *chief* election judges to whom the ballots are delivered a certificate stating:

(a) the number of absentee ballots delivered as well as those marked before him;

(b) the number of ballots retained for late absentee voting; and

(c) the names of the *electors* to whom such ballots *were* delivered or by whom they have been marked if marked before him."

Section 127. **Elector voting absentee ballot may vote in person — effect of absentee elector's death.** (1) If an elector has voted by

absentee ballot but on election day is present in the county and able to go to the polls or if he learns his absentee ballot has been rejected by the judges as provided in 13-13-235 and [section 130], the elector may vote in person at his polling place. If voting machines or devices are used, he may vote by machine or device.

(2) If an elector votes by absentee ballot and dies between the time of balloting and election day, his ballot does not count.

Section 128. Section 13-13-234, MCA, is amended to read:

"13-13-234. Duty of election judges — pollbook. (1) The election judges, at the opening of the polls, shall note on the *pollbook* opposite the numbers corresponding to the number of absentee ballots issued the fact that the ballots were issued and reserve the numbers for the absent or physically incapacitated *electors*. The notation may be made by writing the words "absent or physically incapacitated voters" opposite the numbers.

(2) The election judges shall insert only the name of the elector entitled to each particular number according to the certificate of the *election administrator* and the number of his ballot."

Section 129. Section 13-13-235, MCA, is amended to read:

"13-13-235. Examination of absentee ballot envelopes and affidavits while polls open. (1) While the polls are open, the election judges *may* compare the signature of the *elector on the absentee ballot request and affirmation. If they find that the signatures correspond, that the affirmation is sufficient, and that the absentee elector is qualified and has not yet voted, they shall place the absentee elector's envelope in a box or envelope marked "unopened — checked and valid absentee ballots".*

(2) *If the absentee ballot does not meet the requirements specified in subsection (1), it shall be rejected. The election judges, without opening the absentee ballot envelope, shall mark across it the reason for rejection, and a majority of the judges shall sign their initials. Unopened rejected absentee ballot envelopes shall be handled in the same manner as provided for rejected ballots in 13-13-236 and 13-13-237.*"

Section 130. **Procedure for absentee ballots after polls close.** (1) After the polls close, the election judges shall complete the procedures required in 13-13-235 for any absentee ballots not examined while the polls were open.

(2) After all unopened ballot envelopes have been examined, the judges shall open the valid absentee ballot envelopes and, without unfolding the ballots or permitting them to be examined, shall ascertain whether the stubs are attached or enclosed and whether the numbers correspond to the numbers in the certificate of the election administrator. If so, they shall detach the stubs, deposit the stubs and ballots in the proper ballot boxes, and make entries in their election records to show the elector has voted. In a primary election, the unvoted ballots shall be deposited in the unvoted ballot box without being removed from their enclosure envelope.

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(3) When the ballot has been voted, the absentee ballot envelope shall be deposited in the ballot box containing the voted ballots and shall be retained and preserved in the manner provided for official ballots.

(4) If upon opening the absentee ballot envelope it is found that the number does not correspond to the number on the certificate of the election administrator, the ballot shall be rejected. The reason for rejection shall be marked on the back of the ballot or ballots and the statement shall be initialed by a majority of the election judges.

Section 131. Section 13-13-236, MCA, is amended to read:

"13-13-236. Rejected absentee ballots. (1) The rejected ballots, *the applications, and all envelopes* shall be enclosed in an envelope *and* sealed, and the judges shall write on the envelope "rejected *ballot(s)* of absentee *elector*" (writing in the elector's name).

(2) *The unopened absentee ballot envelope of an elector who has voted in person on election day as provided in [section 127] shall be marked "voted in person" and initialed by a majority of the election judges.*

(3) *The unopened absentee ballot envelope of an elector who dies before election day shall be marked "died before election day" and initialed by a majority of the election judges if they are notified of the death on election day. The election administrator shall make and sign the notation if notice of the death is received before delivery of the absentee ballot to the polling place.*

(4) All rejected ballots shall be placed in the sealed package in which the voted ballots are required to be placed and may not be opened without a court order."

Section 132. Section 13-13-301, MCA, is amended to read:

"13-13-301. Challenges on election day. (1) An elector's right to vote may be challenged on election day by any registered elector by orally stating to the election judges the grounds of the challenge.

(2) *An individual* offering to vote may be orally challenged by any elector of the county upon the following grounds:

(a) that he is not the *individual* whose name appears on the register;

(b) that he does not reside at the residence listed unless the elector is voting under the provisions of [sections 41 and 43];

(c) that he is of unsound mind, as determined by a court;

(d) that he has voted before in that election; *or*

(e) that he has been convicted of a felony and is serving a sentence in a penal institution."

Section 133. **Vote by challenged elector.** (1) Whenever an individual's right to vote at an election is challenged under 13-2-404 or 13-13-301 and the challenge has been determined in favor of the individual challenged as provided in 13-13-307, an election judge shall write in the

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pollbook at the end of the individual's name the words "challenged and sworn", with the name of the challenger, if known. The elector so challenged shall vote by paper ballot. The election judge shall then write upon the back of the ballot offered by the challenged elector the number of his ballot. The ballot may be cast out if it appears to the court to have been for any reason wrongfully or illegally voted.

(2) Placing information on a ballot or pollbook under provision of subsection (1) or divulging such information in a legal proceeding subsequent to the election does not constitute a violation of 13-35-202 or 13-35-207.

Section 134. Section 13-13-304, MCA, is amended to read:

"13-13-304. Duties of election judges in response to challenges. The election judges shall:

(1) test the qualifications of the elector challenged under oath if he applies to vote;

(2) compare the answers of the elector with the entries in the precinct register; and

(3) not permit him to vote if the elector:

(a) is found to be disqualified because the answers given do not correspond to the entry in the precinct *register or any transfer form or registration form submitted by the elector*;

(b) is disqualified for any cause under the law;

(c) refuses to be sworn and to answer questions touching the matter of residence; or

(d) refuses to take an oath or affirmation as to his qualifications."

Section 135. Section 13-13-306, MCA, is amended to read:

"13-13-306. Proceedings pursuant to challenges — oaths. (1) If the challenge is on the ground that the *individual* is not the *elector* whose name appears on the official register, the election judges shall administer the following oath: "*I, ... (name of elector),* do swear (or affirm) that *I am* the *individual* whose name is entered on the official register and precinct list."

(2) If the challenge is on the ground that the individual does not reside at the residence listed, the judges shall administer this oath: "I, ... (name of elector), do swear (or affirm) that I reside at ..... (state precise address), which is the address listed on the official register."

(3) If the challenge is on the ground that the *individual* has voted before in that election, the judges shall administer this oath: "*I, ... (name of elector),* do swear (or affirm) that *I* have not voted before in this election."

(4) If the challenge is on the ground that the *individual* has been convicted of a felony and is serving a sentence in a penal institution, the judges shall administer the following oath: "*I, ... (name of elector),* do swear (or affirm) either that *I* have not been convicted of a felony or that,

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if *I* have been convicted of a felony, *I am* not serving a sentence in a penal institution."

(5) The election judges may administer any other oath relating to the individual's qualification to vote that they feel necessary."

Section 136. Section 13-13-307, MCA, is amended to read:

"13-13-307. Determination of challenges. Challenges are determined in favor of the *individual* challenged by his taking the oath tendered."

Section 137. Section 13-13-309, MCA, is amended to read:

"13-13-309. Proceedings after determination of challenge. If the challenge is determined against the *individual* offering to vote, the *individual may not be allowed to receive a ballot or vote by any other means and the precinct register shall be so marked.* If determined in favor of the *individual* offering to vote, *he shall be allowed to vote.*"

Section 138. Section 13-13-310, MCA, is amended to read:

"13-13-310. List of challenges to be kept. The election judges shall keep a list showing:

(1) the names of all *individuals* challenged;

(2) the name of the elector or judge offering the challenge, if known;

(3) the grounds of each challenge;

(4) the determination of the election judges upon the challenge."

Section 139. **Application of general laws.** Candidates for nonpartisan offices, including judicial offices, shall be nominated and elected according to the provisions of this title except as otherwise provided in Title 13, chapter 14.

Section 140. **Declarations for nomination — fee.** (1) Nonpartisan candidates shall file declarations for nomination as required by the primary election laws in a form prescribed by the secretary of state except as provided in [section 141].

(2) Declarations may not indicate political affiliation. The candidate may not state in his declaration any principles or measures he advocates or any slogans.

(3) Each individual filing a declaration shall pay the fee prescribed by law for the position he seeks.

(4) Declarations shall be filed in the office of the secretary of state or the appropriate election administrator as provided in 13-10-201. Time of filing shall be the same as provided in 13-10-201.

Section 141. **Filing for offices without salary or fees.** (1) Candidates for nonpartisan offices for which no salary or fees are paid shall file with the appropriate official a petition for nomination containing the same information and the oath of the candidate required for a declaration of nomination in a form prescribed by the secretary of state.

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(2) The petition must contain the signatures of registered electors of the election district in which the office will be on the ballot. The number of signatures must be equal to 5% of the total vote cast for the successful candidate for that office at the last general election, but in no case may it be less than five signatures.

(3) The number of signatures necessary for a petition for nomination for an office not previously on the ballot or for which the election district boundaries have changed since the last general election shall be determined by the secretary of state.

(4) Petitions for nomination shall be filed at the same time provided in 13-10-201 for other candidates and offices.

Section 142. **Register of candidates — certification.** (1) On receipt of a declaration or petition, the secretary of state or election administrator shall make an entry in the register of candidates for nomination, on a page different from entries made for candidates of political parties.

Section 143. **Preparation and distribution of nonpartisan primary ballots.** (1) The election administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated "nonpartisan primary ballots". They shall be arranged as other primary ballots and be without political designation.

(2) The number of nonpartisan primary ballots and sample ballots furnished shall be the same as other primary ballots.

Section 144. **Separate counting and canvassing of nonpartisan ballots — application of general laws.** (1) After closing the polls, the election officers shall separately count, canvass, record, and certify nonpartisan ballots, showing the number of votes cast for each person.

(2) Nonpartisan ballots, stubs, and unused ballots shall be disposed of in the same manner as other ballots, stubs, and unused ballots. Returns shall be made as provided by law.

Section 145. **Placing names on ballots for general election.** Candidates for nomination equal to twice the number to be elected at the general election who receive the highest number of votes cast at the primary are the nominees for the office. If the number of candidates is not more than twice the number to be elected, then all candidates are nominees for the office.

Section 146. **Vacancies among nominees after nomination and before general election.** (1) If after the primary a candidate is not able to run for the office for any reason, the vacancy shall be filled by the candidate next in rank in number of votes received in the primary election.

(2) If a vacancy for a nonpartisan nomination cannot be filled as provided in subsection (1) and the vacancy occurs no later than 50 days before the general election, a 10-day period for accepting declarations for nomination or statements of candidacy and nominating petitions for the office shall be declared by:

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(a) the governor for national, state, judicial district, legislative, or any multicounty district office;

(b) the governing body of the appropriate political subdivision for all other offices.

(3) The names of the candidates who filed as provided in subsection (2) shall be certified and printed on the general election ballot in the same manner as candidates nominated in the primary.

(4) If the vacancy occurs later than 50 days before the general election and no qualified individual is elected to the office at the general election, the office shall be vacant and shall be filled as provided by law.

Section 147. **Judicial offices separate and independent offices for election purposes.** (1) Each vacancy for justice of the supreme court is a separate and independent office for election purposes. The chief justice of the supreme court shall assign an individual number to the justices and certify these numbers to the office of the secretary of state.

(2) Each vacancy for judicial office in a district which has more than one district judge is a separate and independent office for election purposes..

(3) Each vacancy for office in a county which has more than one justice of the peace is a separate and independent office for election purposes.

Section 148. **Form of ballot on retention of incumbent judicial officers.** In the event there is no candidate other than the incumbent for the office of chief justice, supreme court justice, district court judge, or justice of the peace, the name of the incumbent shall be placed on the official ballot for the general election as follows:

Shall (insert title of officer) (insert name of the incumbent officer) of the (insert title of the court) of the state of Montana be retained in office for another term?

☐ YES

☐ NO

(Mark an "x" before the word "YES" if you wish the official to remain in office. Mark an "x" before the word "NO" if you do not wish the official to remain in office.)

Section 149. **Form of ballot on retention for other offices.** The election administrator or secretary of state shall use the form prescribed in [section 148] to place the name of an unopposed incumbent for a judicial office on the general election ballot if such office is subject to the provisions of Article VII, Section 8, of The Constitution of the State of Montana.

Section 150. **Counting board.** (1) In any precinct where a counting board has been appointed in addition to the regular board of election judges, the counting board shall meet at a place designated by the election administrator.

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(2) The election administrator may provide duplicate boxes for voted ballots and duplicate pollbooks at any precinct for which a counting board has been appointed and may arrange for the counting board to begin the count of the votes cast before the polls close. The counting board shall be sequestered in a separate room from where the ballots are being cast until after the polls close. Any individual observing the counting board procedures must be sequestered with the board until after the polls close. The counting board shall proceed by counting all ballots in the first box and then that box and pollbook shall be exchanged for the second box and duplicate pollbook. The board shall continue counting until the votes cast for all candidates and issues are counted. The election administrator may appoint an extra election judge to act as a marshal to be responsible for exchanging ballot boxes and pollbooks and enforcing sequestering of the board and observers.

(3) The election administrator may have the counting board for a precinct begin work as soon as the polls close instead of using the procedure outlined in subsection (2).

(4) In a county where voting devices are used, the election administrator may make provisions for the delivery of voted ballots to the counting center at any time prior to the closing of the polls. The ballots may be processed and counted as they are received, but the results of this early count may not be released to the public until after all the polls are closed.

(5) No election judge or other individual having access to the information may disclose any results of early counting while the polls are open.

Section 151. Section 13-15-101, MCA, is amended to read:

"13-15-101. Votes to be publicly counted upon closing of polls. (1) When the polls are closed, the election judges shall immediately *count* the votes. The *count* shall be public and continue without adjournment until completed and the result is publicly declared.

(2) Immediately after all the ballots are *counted* in each precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the *return forms* furnished by the *election administrator.*

(3) The election judges shall immediately post one of the *return forms* at the polling place and *return* a copy to the *election administrator. Both forms shall be signed by all the election judges completing the count.*"

Section 152. Section 13-15-201, MCA, is amended to read:

"13-15-201. Preparation for count. (1) *To* begin *the count after the close of the polls, the* election judges shall take ballots out of the box unopened to determine whether each ballot is single.

(2) They shall count the ballots to ensure that the number of ballots corresponds with the number of names on the *pollbook.*

(3) If they cannot reconcile the total number of ballots with the pollbook they must submit a written report stating how many ballots

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were missing or in excess and any reason of which they are aware for the discrepancy. All judges must sign the report.

(4) A ballot which is not endorsed by the official stamp is void and *may* not be counted *unless the judges agree the stamp is missing because of their error. Such ballot shall be marked "unstamped by error" on the back and must be initialed by all judges.*

(5) If two or more ballots are folded together to look like a single ballot, they shall be laid aside until the count is complete. The election judges shall compare the count with the pollbooks, and if a majority *believes* that the ballots folded together were voted by one elector, they must be rejected; otherwise they must be counted."

Section 153. Section 13-15-202, MCA, is amended to read:

"13-15-202. Counting votes cast — pollbook. (1) When *the procedures required by 13-15-201 are completed*, the election judges shall count and determine the votes cast for each *individual.*

(2) In counting, the ballots shall be opened singly by one of the election judges and the contents read aloud to the other judges.

(3) A ballot or part of a ballot is void and shall not be counted if the elector's choice cannot be determined. If part of a ballot is sufficiently plain to determine the elector's intention, the election judges shall count that part.

(4) As the ballots are read, *two judges* must write on a tally sheet the name of every *individual* and the office *voted for* and keep tallies of the number of votes for each *individual.*

(5) The tally sheets shall be compared and their correctness ascertained, and the judges shall immediately write in the *pollbook*:

(a) the names of all *individuals* who received votes;

(b) the offices for which they received votes;

(c) total votes received by each *individual* as shown by the tally sheets.

(6) In making the *count* in precincts where voting machines are used, the votes cast by absentee ballot shall be added to the votes cast on the voting machines.

(7) A ballot or vote rejected by the election judges *may* not be included in the count."

Section 154. Section 13-15-204, MCA, is amended to read:

"13-15-204. Signing and certifying pollbooks. Immediately after the votes are counted and the ballots sealed up, the *pollbook* shall be signed and certified to by the election judges in a form prescribed by the secretary of state."

Section 155. Section 13-15-205, MCA, is amended to read:

"13-15-205. Items to be delivered to election administrator by election judges — disposition of other items. (1) Before they

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adjourn, the election judges shall enclose in a strong envelope or package, securely *fastened*:

(a) the precinct *register*;

(b) the *list* of *individuals* challenged;

(c) the *pollbook*;

(d) both of the tally sheets.

(2) The election judges shall enclose in a separate package or envelope, securely sealed, all unused ballots with the numbered stubs attached.

(3) The election judges shall enclose in a separate package or envelope, securely sealed, all ballots voted, including those not counted or allowed, and detached stubs from *all counted or rejected absentee* ballots. This envelope shall be endorsed on the outside "ballots voted". *At the primary election the unvoted party ballots shall be enclosed in a separate package or envelope, securely sealed, and marked on the outside "unvoted ballots".*

(4) Each election judge shall write his name across *all seals.*

(5) The return form provided for in 13-15-101 shall be returned with the items provided for in this section but may not be sealed in any of the packages.

(6) The envelopes or packages required by this section shall be delivered to *the election administrator by the chief election judge or another judge appointed by the chief judge in the manner ordered by the election administrator.*

(7) The election administrator shall instruct the chief election judge in writing on the proper disposition of all other election materials and supplies."

Section 156. Section 13-15-301, MCA, is amended to read:

"13-15-301. Disposition of items by election administrator. (1) The *election administrator* shall file the envelopes or packages containing the precinct registers, pollbooks, tally sheets, certificates of registration, and oaths of election officers. He shall keep them unopened until the *county board of canvassers meets* to canvass the returns. The *board* shall open the envelopes or packages.

(2) Immediately after the returns are canvassed, the *election administrator* shall file the pollbooks, election records, and the papers delivered to the *board of canvassers with the unopened packages of ballots and ballot stubs.*"

Section 157. Section 13-15-401, MCA, is amended to read:

"13-15-401. County governing body as board of county canvassers. (1) The *governing body of a county, consolidated, or confederated local government is* ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual place of meeting of

the *governing body* within 3 days after each election, at 8 a.m., to canvass the returns.

(2) If one or more of the *members of the governing body* cannot attend the meeting, his place shall be filled by one or more county officers *chosen by the remaining members of the governing body* so that the board of county canvassers' membership equals *the* membership *of* the *governing body.*

(3) *The governing body of any political subdivision in the county that participated in the election may join with the governing body of the county, consolidated, or confederated local government in canvassing the votes cast at the election.*

(4) The election administrator is secretary of the board of county canvassers and shall keep minutes of the meeting of the board and file them in the official records of his office."

Section 158. Section 13-15-402, MCA, is amended to read:

"**13-15-402. Canvass of votes by board — procedures if all returns not received by time of canvass.** (1) If all returns are in at the time of the meeting, the board of county canvassers shall immediately canvass the returns.

(2) If all returns are not received, the board shall postpone the canvass from day to day until all returns are received.

(3) If the returns from an election precinct have not been received by the *election administrator* within *3* days after an election, he shall immediately *advise the chief* election *judge.*

(4) If it appears to the board that the polls were not open in a precinct, the board shall certify this to the *election administrator.* The *election administrator* shall enter the certification in the minutes and in the *record* required by 13-15-404."

Section 159. Section 13-15-403, MCA, is amended to read:

"**13-15-403. Canvass to be public — nonessentials to be disregarded.** (1) The canvass shall be public. It shall proceed by opening the returns, *auditing the tally books or other records of votes cast,* determining the vote for each *individual* and *for and against* each *ballot issue* from each precinct, *compiling totals,* and declaring *or certifying* the results.

(2) The board shall record all write-in votes shown in the returns from each precinct.

(3) The returns *may* not be rejected because of failure to show who administered the oath to the election judges, failure to complete all the certificates in *a pollbook,* or because of failure of any other act making up the returns that is not essential to determine for whom the votes were cast."

Section 160. Section 13-15-404, MCA, is amended to read:

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"13-15-404. Information to be entered on record. (1) *The secretary of the board shall prepare and file in the official records of his office a report of the canvass which lists:*

(a) the total number of electors voting in each precinct, municipality, district, or portion of a district in the county and the total in the county;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue;

(d) the votes by precinct, municipality, district, or portion of a district within the county for each individual and for and against each ballot issue; and

(e) the total votes in the county for each individual and for and against each ballot issue.

(2) *Write-in votes for an individual shall be entered in the report in the same place as the votes for other individuals for the same office but shall be identified as write-in votes."*

Section 161. Section 13-15-405, MCA, is amended to read:

"13-15-405. Declaration or certification of results. (1) The board shall declare *nominated or* elected the *individuals* having the highest number of votes *cast* for each county and *precinct* office, *except as provided in 13-10-204.*

(2) *The board shall proclaim the adoption or rejection of a county ballot issue.*

(3) The board shall certify the results of the canvass of votes cast for individuals for political subdivision offices and for and against political subdivision ballot issues to the governing body of each political subdivision participating in the election.

(4) If there is a tie vote for a county office, an office of a political subdivision wholly within the county, a precinct office, or a ballot issue voted on only in that county or portion of that county, the board shall certify the vote to the election administrator."

Section 162. Section 13-15-406, MCA, is amended to read:

"13-15-406. Certificates to be issued by the election administrator. The *election administrator* shall, *except as provided in 13-37-127,* deliver a certificate of *nomination or* election *to each individual declared elected by the board."*

Section 163. Section 13-15-501, MCA, is amended to read:

"13-15-501. Certification of canvass to state canvassers. (1) *The board of county canvassers shall certify the vote for each individual for whom votes were cast for the offices of president and vice president of the United States, congressional offices, state or district offices voted for in more than one county, members of the legislature, judges of the district court, and for and against ballot issues voted on in more than one*

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county to the board of state canvassers. The certification shall contain all the information required in 13-15-404 for such candidates and issues.

(2) *The secretary of the board shall send the certification to the secretary of state by certified mail in an envelope marked "election returns".*"

Section 164. Section 13-15-502, MCA, is amended to read:

"**13-15-502. Composition and meeting of board of state canvassers.** Within 20 days after the election, or sooner if the returns are all received, the state auditor, superintendent of public instruction, and attorney general shall meet as a board of state canvassers in the office of the secretary of state and determine the vote. The secretary of state *shall serve as* secretary of the board, *keep minutes of the meeting of the board,* and file *them in the official records of his office.*"

Section 165. Section 13-15-503, MCA, is amended to read:

"**13-15-503. Notification if returns not received from counties.** If the returns from all counties have not been received *3* days before the meeting of the board of state canvassers, the secretary of state shall immediately *advise the election administrator* of each delinquent county."

Section 166. **Canvass to be public — procedure.** (1) The canvass shall be public. It shall proceed by opening the returns from each county, auditing the records from each county for errors, determining the vote for each individual and for and against each ballot issue in each county, compiling totals, and declaring and certifying the results.

(2) The board shall record all write-in votes shown in the returns received from each county.

Section 167. **Report of the canvass.** (1) The secretary of the board shall prepare and file in the official records of his office a report of the canvass which lists:

(a) the total number of electors voting in each county and in each legislative house district and the total in the state;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue; and

(d) the votes by county and legislative house district and the total votes for each individual and for and against each ballot issue.

(2) Write-in votes for an individual shall be entered in the report in the same place as votes of other individuals for the same office but shall be identified as write-in votes.

Section 168. **Declaration, proclamation, and certification of results.** The board shall declare nominated or elected the individual having the highest number of votes cast for each office, except as provided in 13-10-204. The board shall proclaim the adoption or rejection of ballot issues. Certified copies of the report required in [section 167], the declaration of nominated or elected individuals, the proclamation of adoption or

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rejection of ballot issues, and the effective date of adopted ballot issues shall be delivered to the governor.

Section 169. Section 13-15-504, MCA, is amended to read:

"13-15-504. Governor to issue commissions. Upon receipt of the *statements* required by *[section 168] and 13-37-127,* the governor shall issue commissions to the *individuals* elected. If the governor has been elected to succeed himself, the secretary of state shall issue the commission."

Section 170. Section 13-16-101, MCA, is amended to read:

"13-16-101. County governing body as county recount board. (1) The county recount board shall consist of three members.

(2) *Three members of the governing body shall be appointed by the chairman if there are more than three members of the governing body.*

(3) If *three members of the governing body* cannot attend when the board meets, *any vacant* place shall be filled by *one or more* county *officers chosen by the remaining members of the governing body.*

(4) If a member of the recount board *is* a candidate for an office or nomination for which votes are to be recounted, he shall be disqualified.

(5) The *election administrator* is *secretary* of the recount board, and the board may hire *any* additional clerks as needed.

(6) The board may appoint county employees or hire clerks to assist as needed."

Section 171. Section 13-16-201, MCA, is amended to read:

"13-16-201. Conditions under which recount to be made. A recount shall be made under any of the following conditions:

(1) If a candidate for a county, *municipal,* or district office voted for in only one county, other than a legislator or a judge of the district court, or a precinct office is defeated by a margin not exceeding ¼ of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, he may, within 5 days after the official canvass, file with the *election administrator* a verified petition stating he believes a recount will change the result and a recount of the votes for the office or nomination should be had.

(2) If a candidate for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court is defeated by a margin not exceeding ¼ of 1% of the total votes cast for all candidates for the same position, he may, within 5 days after the official canvass, file a petition with the secretary of state as set forth in subsection (1). The secretary of state shall immediately notify each *election administrator* whose county includes any precincts which voted for the same office by certified or registered mail, and a recount shall be conducted in those precincts.

(3) If a question submitted to the vote of the people of a county, municipality, or district within a county is decided by a margin not

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exceeding ¼ of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the election administrator. This petition must be signed by not less than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

(4) If a question submitted to the vote of the people of the state is decided by a margin not exceeding ¼ of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the secretary of state. This petition *must* be signed by not less than 100 electors of the state, representing at least five counties of the state, and *must* be filed within 5 days after the official canvass.

(5) If a question submitted to the vote of the people of a multicounty district is decided by a margin not exceeding ¼ of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the secretary of state. This petition must be signed by not less than 25 electors of the district, representing at least two counties, and must be filed within 5 days after the official canvass.

(6) The secretary of state shall immediately notify each *election administrator* by certified mail of the filing of the petition, and a recount shall be conducted in all precincts in each county."

Section 172. Section 13-16-203, MCA, is amended to read:

"13-16-203. Recount for tie votes. When a tie has been certified to the *election administrator* or secretary of state as provided in 13-15-405 *(4)*, he shall proceed as if a petition for a recount has been filed. If a tie exists after the recount, the tie shall be resolved as provided by law."

Section 173. Section 13-16-204, MCA, is amended to read:

"13-16-204. Meeting of recount board when recount requested. (1) Immediately upon receiving an application for a recount *as provided in 13-16-201(1)* or a notice from the secretary of state that an application has been filed with him, the *election administrator* shall notify the members of the county recount board.

(2) The board shall convene at the usual meeting place of the *governing body* without undue delay but not later than 5 days after receiving notice from the *election administrator*."

Section 174. Section 13-16-301, MCA, is amended to read:

"13-16-301. Application and court order for recount. (1) *(a)* Within 5 days after the canvass of election returns, an unsuccessful candidate for any public office at *an* election may apply to the district court of the county where the election was held for an order directing the *county recount board* to make a recount of the votes cast in any or all of the precincts. *If the election was held in more than one county, the application shall be made to the district court of the county where the candidate resides.*

(b) Within 5 days after the canvass of election returns, an elector who was eligible to vote on the issue and who believes that there are grounds

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for a recount of the votes cast for and against a ballot issue may apply to the district court of the county where he resides for an order directing the appropriate county recount board to make a recount of the votes cast in any or all of the precincts.

(2) The application shall specify the grounds for a recount and be verified by the applicant that the matters contained in it are true to the best of the applicant's knowledge, information, and belief.

(3) Within 5 days after filing of the application, the judge shall hear the application and determine its sufficiency.

(4) If the judge finds there is probable cause to believe that the votes cast for the applicant *or the ballot issue* were not correctly counted, he shall order the *appropriate* county *recount board* to assemble within 5 days after the order is issued at a time and place fixed by the order. The board shall meet and recount the ballots as specified in the order."

Section 175. Section 13-16-303, MCA, is amended to read:

"13-16-303. Presumption of incorrectness from failure to comply with provisions for counting votes. If it appears from a verified application that the election judges failed to comply with the *provisions* of 13-15-202, that is sufficient cause for believing that the election judges did not correctly ascertain the number of votes cast for the applicant *or ballot issue*."

Section 176. Section 13-16-304, MCA, is amended to read:

"13-16-304. Ordering in another judge — jurisdiction. (1) If the judge of the district court in which the *application* is *filed* is for any reason disqualified from acting, the judge or a supreme court justice shall order another district judge to hear and determine the application.

(2) The district court shall not lose jurisdiction of the case by failure to hear and determine the application within the prescribed time but shall retain jurisdiction until the cause is finally determined and the final count is made by the county *recount board*."

Section 177. Section 13-16-305, MCA, is amended to read:

"13-16-305. Limitation of recount to certain counties or precincts. (1) If the application asks for a recount in more than one *county or* precinct but there are not sufficient grounds for a recount in all *counties or* precincts, the court shall order a recount *in* only the *counties or* precincts for which sufficient grounds are stated and shown.

(2) The *county recount* board shall recount votes only in those *counties or* precincts and for those offices *or ballot issues* specified in the court order."

Section 178. Section 13-16-307, MCA, is amended to read:

"13-16-307. Expenses of court-ordered recount. (1) The court *shall* in its order determine the probable expense of making the recount, and the applicant or applicants asking for the recount shall deposit with the board the amount determined, in cash.

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(2) If the recount shows that *an* applicant *has* been elected to office, the deposit of *the* applicant shall be returned to him.

(3) If the recount shows that an applicant has not been elected and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; but if the expense is less than the cost, the difference shall be refunded to the applicant.

(4) *If the recount reverses the results of a ballot issue election, the deposit of the applicant shall be returned to him.*

(5) If the recount does not reverse the results of a ballot issue election and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; but if the expense is less than the cost, the difference shall be refunded to the applicant."

Section 179. Section 13-16-401, MCA, is amended to read:

"**13-16-401. Individuals entitled to appear at recount — opening and recount of ballots.** (1) *Representatives of the news media may be present at the recount. The recount shall be public, but the audience may be limited to prevent interference with the procedures.*

(2) Each candidate involved in a recount may appear, personally or by representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots.

(3) If the recount is upon a *ballot issue*, one qualified elector favoring each side of the question may be present and represent his side.

(4) The recount shall proceed as provided in 13-16-402 and as expeditiously as possible until completed."

Section 180. Section 13-16-402, MCA, is amended to read:

"**13-16-402. Procedure for recounting paper ballots.** The *county recount* board in recounting the ballots shall count, at the same time, the votes cast in the precincts in which a recount is ordered for the several candidates in whose behalf a recount is ordered in the following manner:

(1) The *election administrator* shall produce, unopened, *each* sealed package or envelope received from the election judges of the precinct or precincts in which a recount is ordered, containing all ballots voted in the precinct or precincts.

(2) A member of the *county recount* board shall open *each* sealed package or envelope *and remove the ballots.*

(3) One of the members of the board shall read each ballot aloud. As the ballots are read, two clerks shall write the votes cast for each *individual* in each precinct, at full length, on previously prepared tally sheets. The tally sheets shall show the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct."

Section 181. **Recounts of votes cast by machine.** The recount board shall remove the seals from the voting machines in all precincts

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where a recount is required and proceed to record the votes cast for all candidates or on all ballot issues for which the recount is ordered in the same manner as the count is made after the closing of the polls. Any paper ballots voted in the precincts shall be recounted as prescribed in 13-16-402.

Section 182. **Recounts of votes cast by voting devices.** (1) The recount board shall test the automatic tabulating equipment used for votes cast by voting devices in the same manner provided in 13-16-201 for preelection testing. However, the board shall prepare a new group of preaudited ballots for this test. If the test does not show any errors, the votes cast for the candidates or on the issues for which a recount is ordered shall be recounted by the tabulating equipment.

(2) If any errors are found in the test or if any questions remain as to the accuracy of the count, the board may have the program and equipment checked by a qualified individual who did not participate in the original preparation of the program and equipment.

(3) The board may also order manual counting of the votes cast if they believe it is necessary to resolve all questions relating to the election.

(4) The board may remove the seals from any voting device and check the ballot on the device with the official certification of the ballot arrangement for each precinct.

(5) Any paper ballots voted in a precinct shall be recounted as prescribed in 13-16-402.

(6) Write-in votes shall be recounted in the same manner as the count is made after the closing of the polls.

Section 183. **Recount totals.** After a recount is completed, tally sheets shall be compared and the correctness of all reports of votes cast ascertained. The totals for each candidate or on each issue shall be compiled and checked for accuracy.

Section 184. **Report of recount.** (1) If the recount shows the votes for any candidate or on any ballot issue are more or less than the number shown upon the official returns, the secretary of the recount board shall prepare a corrected report which states the number of votes ascertained by the recount.

(2) The recount board shall direct the secretary to enter the result of the election as determined by the recount in the board records.

Section 185. Section 13-16-403, MCA, is amended to read:

"13-16-403. Sealing ballots, machines, or devices. *(1)* When the recount in a precinct has been finished, *each ballot* shall again be sealed in the same package or envelope in the presence of the *election administrator* and the *county recount* board and shall be delivered to the *election administrator* for custody.

(2) All voting machines or devices from which seals have been removed shall be resealed in the presence of the election administrator

and the recount board and shall be delivered to the election administrator for custody.

(3) All other materials used in the recount that are required to be sealed shall be resealed in the same manner and delivered to the election administrator for custody."

Section 186. Section 13-16-404, MCA, is amended to read:

"13-16-404. Procedure after recount. (1) Immediately after the recount, the county recount board shall certify the result.

(2) At least two members of the board shall sign the certificate, and it shall be attested to under seal by the *election administrator.*

(3) The certificate shall set forth in substance the proceedings of the board and *the* appearance of any candidates or representatives. *The certificate* shall adequately designate each precinct recounted; the vote of each precinct according to the official canvass previously made; the nomination, position, or question involved; and the correct vote of each precinct as determined by the recount.

(4) When the certificate relates to a recount for a congressional office, a state or district office voted on in more than one county, a legislative office, or an office of judge of the district court or a ballot issue voted on in more than one county, the certificate shall be made in duplicate. One copy shall be transmitted immediately to the secretary of state by certified mail.

(5) (a) If the recount relates to a county, *municipal,* or district office voted for in only one county, other than *that of* a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only one county, the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes.

(b) If the corrected abstract shows no change in the result, no further action need be taken.

(c) If there is a change in the result, a new certificate of election or nomination shall be issued to each candidate found to be elected or nominated and the first certificate is void. The *individual* receiving the second certificate shall be elected *or nominated* to the office."

Section 187. Section 13-16-501, MCA, is amended to read:

"13-16-501. Tie vote after recount. *(1)* If the recount shows a tie vote *for any office* and it cannot be determined who has been nominated *by the primary election, the election officer with whom the candidates' nominating declarations or petitions were filed shall determine by lot which candidate shall be nominated. Written notice of the time and place of the drawing shall be given to each candidate involved.*

(2) If the recount after a general election shows a tie vote and it cannot be determined who has been elected, the office or position shall be filled as provided by 13-16-502 through 13-16-506."

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Section 188. Section 13-16-502, MCA, is amended to read:

"13-16-502. Tie vote in election for United States congress. If there is a tie vote for United States representative *or senator*, the secretary of state shall send a certified statement to the governor showing the votes cast and the governor shall order a special election."

Section 189. Section 13-16-503, MCA, is amended to read:

"13-16-503. Tie in election for supreme court justice, district court judge, or state legislator. If there is a tie vote for justice of the supreme court, judge of a district court, or member of the legislature, the secretary of state shall send a certified statement to the governor showing the *votes* cast for each *individual* and the governor shall appoint *one of those candidates* to *the* office."

Section 190. Section 13-16-504, MCA, is amended to read:

"13-16-504. Tie vote in election for state executive officers. If there is a tie vote for governor and lieutenant governor, secretary of state, attorney general, state auditor, clerk of the supreme court, superintendent of public instruction, or any other state executive officer, *the secretary of state shall transmit a certified copy of the statement to the legislature showing the votes cast for the two or more candidates having an equal and the highest number of votes. The* legislature, at its next regular session, shall elect *one of these candidates* to fill the office by joint ballot of the two houses."

Section 191. Section 13-16-505, MCA, is amended to read:

"13-16-505. Tie vote in election for county commissioner. If there is a tie vote for commissioner, the senior district judge shall appoint *one of the candidates who tied* to fill the office as in other cases of vacancy."

Section 192. Section 13-16-506, MCA, is amended to read:

"13-16-506. Tie vote in election for other county officers. If there is a tie vote for clerk of the district court, county attorney, or any county officer except county commissioner, the commissioners shall appoint *one of the candidates who tied to fill the office* as in other *cases of vacancy*."

Section 193. **Tie vote in election for officers of nonspecified political subdivision.** If there is a tie vote for an officer of any political subdivision not specifically provided for in this part, the governing body of that jurisdiction shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

Section 194. Section 13-17-101, MCA, is amended to read:

"13-17-101. Secretary of state to approve voting machines and devices. (1) Before any voting machine *or device* can be used *for any election in this state*, the secretary of state shall:

(a) examine the machine *or device* to determine if it complies with the requirements of this chapter;

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(b) within 30 days after examining a machine *or device*, file a report *of the examination* in his office;

(c) include in the report the reasons for approval or disapproval of the use of the machine or device and his opinion of the economic and procedural impact of the use of the machine or device by the various classes of counties of this state; and

(d) within 5 days after filing the report, transmit to the *election administrator of* each county *a copy of the report.*

(2) *Voting machines and devices may* not be used unless approved by the secretary of state 60 days or more prior to the election *at which they will be used.*"

Section 195. Section 13-17-102, MCA, is amended to read:

"**13-17-102. Use of qualified technicians and advisors.** (1) The secretary of state may employ and compensate qualified *technicians and advisors* who are electors *of this state* to assist him in duties required by *13-17-101. Advisors who are public officers or employees shall serve without additional compensation other than expenses of attending the examination if the examination takes place during their regular working hours.*

(2) The person or company submitting a machine *or device* for examination shall pay the compensation and expenses of *technicians and advisors* connected with the examination to the secretary of state for deposit in the state general fund. *The secretary of state and the person or company shall reach agreement on the number of technicians and advisors to be compensated before the examination is held.*"

Section 196. Section 13-17-103, MCA, is amended to read:

"**13-17-103. Required specifications for equipment.** A *voting machine or device* may not be approved unless:

(1) an elector can vote in secrecy;

(2) an elector is prevented from voting for any candidate or upon any *ballot issue* more than once and is also prevented from voting on any *office or ballot issue for which* he is not entitled to vote;

(3) an elector can secretly select the party for which he wishes to vote in a primary election and the machine or device will count only votes for the candidates of that party by the elector in the primary election;

(4) an elector can vote a split ticket *in a general election* if he desires;

(5) every *valid* vote cast is registered and recorded;

(6) the machine or device is constructed so that it cannot be tampered with for a fraudulent purpose and is also constructed so that during the progress of the voting no individual can see or know the number of votes registered for any candidate or on any ballot issue;

(7) it allows write-in voting; and

(8) a guarantee to provide training and assistance to election officials will be included in each contract for purchase of the machine or device."

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Section 197. Section 13-17-104, MCA, is amended to read:

"13-17-104. Providing voting machines or devices — payment. (1) *The county governing body* may provide approved voting machines *or devices* as practicable.

(2) Funds for voting machines *or devices* may be provided by *the same methods available for other capital equipment purchases by the county.*

(3) The governing body of a county may put the question of purchasing voting machines or devices or the question of which type of voting machine or device to purchase to the registered electors of the county by the same method that any other question is referred to the electors."

Section 198. Section 13-17-105, MCA, is amended to read:

"13-17-105. Experimental use of machines or devices. *The governing body of a county* may provide for the experimental use at an election of a *voting* machine *or device that has been* approved by the secretary of state in one or more precincts without a formal adoption or purchase of the machine *or device. Its* use at *the* election is valid for all purposes as if the *equipment* had been formally adopted *or purchased.*"

Section 199. Section 13-17-106, MCA, is amended to read:

"13-17-106. General election laws to apply. All laws applicable to elections where voting is not done by machine *or device* and all penalties prescribed for violations of those laws apply to elections and precincts where voting machines *or devices* are used if they are not in conflict with the provisions of this chapter."

Section 200. **Secretary of state to prescribe rules.** (1) The secretary of state may prescribe rules for the submission of voting machines and devices for examination and additional requirements for approval of machines and devices.

(2) The secretary of state shall prescribe rules for the complete procedures necessary to use each type of voting machine or device now approved for use in this state and for each type of machine or device approved for use under the provisions of Title 13, chapter 17.

Section 201. Section 13-17-201, MCA, is amended to read:

"13-17-201. Election administrator to instruct election judges. (1) Before each election, the *election administrator* shall instruct all election judges in the use of the *machines or devices.* He shall give to each election judge who has received instruction and is fully qualified to conduct *an* election with the machine a certificate to that effect.

(2) A chief election judge may not serve *in a precinct where* voting machines *or devices* are used unless he has received instruction, is fully qualified to perform duties in connection with the machine *or device*, and has received a certificate to that effect from the *election administrator.*"

Section 202. Section 13-17-203, MCA, is amended to read:

"13-17-203. Publication of information concerning machines or devices. *(1)* Not more than 10 or less than 3 days before an election

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at which voting machines *or devices will be* used, the *election administrator* shall publish *on radio or television as provided in 2-3-105 through 2-3-107 or* in a newspaper of general circulation in the county:

(a) a diagram showing the voting machine *or device and* ballot *arrangement (in newspaper only)*;

(b) a statement of the locations where voting machines *or devices* are on public exhibition;

(c) illustrated instructions on how to vote."

Section 203. Section 13-17-204, MCA, is amended to read:

"13-17-204. Voting machines or devices to be exhibited. A voting machine *or device* shall be on exhibition in the office of the *election administrator of counties* where *such equipment is* used *and may be exhibited at other locations.* The *election administrator* shall demonstrate the voting machine *or device* to any inquiring *elector.*"

Section 204. Section 13-17-206, MCA, is amended to read:

"13-17-206. Arrangement of machine ballot. *The order and arrangement of ballots to be used with voting machines or devices shall be the same as paper ballots insofar as possible and shall be prescribed by the secretary of state before each election.*"

Section 205. Section 13-17-301, MCA, is amended to read:

"13-17-301. Placement of equipment — time for use. (1) The exterior of the voting machines *or devices or the booths in which they are placed* and every part of the polling place shall be in plain view of the election judges.

(2) An elector may not remain within the voting machine *or device* booth or compartment longer than is reasonably necessary to vote. If he refuses to leave, the election judges shall remove him."

Section 206. Section 13-17-305, MCA, is amended to read:

"13-17-305. Request to use paper ballots. Where voting machines *or devices* are used, an elector may request to vote by paper ballot instead of using the *machine or device.* The election judges shall provide the elector with a paper ballot when requested. Paper ballots shall be cast and counted by the election judges in the manner provided by law."

Section 207. Section 13-17-306, MCA, is amended to read:

"13-17-306. Use of separate paper ballots for voting on certain candidates or issues. *Whenever a* voting *machine or device does* not allow proper lockout *or does not allow adequate space for the candidates for all offices or for all ballot issues*, separate paper ballots *may* be *used* for *some or all offices or ballot issues if written authorization is given to the election administrator by the secretary of state.*"

Section 208. Section 13-25-101, MCA, is amended to read:

"13-25-101. Nomination of electors — ballot. (1) Each political party *qualified under 13-10-601* shall nominate presidential electors for

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this state and file *certificates of nomination for these candidates* with the secretary of state *no later than 45 days before the general election,* in the manner and number provided by law.

(2) The secretary of state shall certify to the *election administrator* the names of the candidates for president and vice president of the several political parties, which shall be printed on the ballot.

(3) The names of candidates for electors of president and vice president *may* not be printed upon the ballot."

Section 209. Section 13-25-203, MCA, is amended to read:

"13-25-203. Vacancy in office of United States representative. (1) *If* a vacancy occurs in the office of United States representative, the governor shall immediately *order an* election *to be held* to fill the vacancy, *except as provided in subsection (3) of this section.*

(2) *The election to fill the unexpired term shall be held within 90 days from the time the vacancy occurs, except that if the vacancy occurs 150 days or less before a primary election or between the primary and general elections in odd-numbered years, the election shall be held with the primary or general election.*

(3) If the vacancy occurs between the primary and general election in even-numbered years, the candidate elected to the office for the succeeding full term shall immediately take office to fill the unexpired term."

Section 210. **Nominations for special election.** (1) When a special election is ordered to fill a vacancy in the office of United States senator or United States representative, each political party shall choose a candidate according to the rules of the party. Nominations by parties shall be made no later than 50 days before the date set for the election.

(2) Nominating petitions may be filed by independent candidates for the office up to 5:00 p.m. of the 50th day before the election.

Section 211. Section 13-26-109, MCA, is amended to read:

"13-26-109. Certificate of result — transmission to secretary of state of United States. When the convention has agreed by majority vote of delegates attending the convention, a certificate of the result shall be executed by the president and secretary and transmitted to the secretary of state of the United States. *A duplicate of the certificate shall be filed with the secretary of state of Montana.*"

Section 212. Section 13-27-307, MCA, is amended to read:

"13-27-307. Consideration and tabulation of signatures by secretary of state. (1) The secretary of state shall consider and *tabulate* only such signatures on petitions as are certified by the proper county official, and each such certificate is prima facie evidence of the facts stated therein. However, the secretary of state may consider and *tabulate* any signature not certified by the county official that is certified by a notary public of the county in which the signer resides to be the genuine signature of an elector legally qualified to sign the petition.

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(2) The official certificate of the notary public for any signature not certified as valid by the county official shall be in substantially the following form:

State of Montana)
ss.
County of.....)

I,..... (name), a duly qualified and acting notary public in and for the above-named county and state, do hereby certify that I am personally acquainted with each of the following-named electors whose signatures are affixed to the annexed (petition) (copy of a petition) and I know of my own knowledge that they are registered electors of the state of Montana and of the county and legislative district written after their names in the petition and that their post-office *addresses are* correctly stated therein.

.....(Names of such electors)

In *testimony whereof*, I have hereunto set my hand and official seal this.... day of....., 19...

..... (Signature)
Seal ..... (Notarial information)"

Section 213. Section 13-27-311, MCA, is amended to read:

"13-27-311. Publication of proposed constitutional amendments. *(1)* If a proposed constitutional amendment or amendments are submitted to the people, the secretary of state shall have the proposed amendment or amendments published in full twice each month for 2 months previous to the election at which they are to be voted upon by the people, in not less than one newspaper of general circulation in each county.

(2) The secretary of state may arrange for newspaper, radio, or television publication of proposed constitutional amendments in each county. A summary of the amendment as provided by the attorney general, as described in 13-27-312, or 13-27-315 would suffice for the publication required by this section and should be made at least twice each month for 2 months previous to the election."

Section 214. Section 13-27-402, MCA, is amended to read:

"13-27-402. Committees to prepare arguments for and against ballot issues. The arguments advocating approval or rejection of the ballot issue and rebuttal arguments shall be submitted to the secretary of state by committees appointed as provided in this *section*:

(1) The committee advocating approval of an act referred to the people or a constitutional amendment proposed by the legislature or an act referred to the people by referendum petition shall be composed of one senator known to favor the measure, appointed by the president of the senate; one representative known to favor the measure, appointed by the speaker of the house of representatives; and one *individual* who need not be a member of the legislature, appointed by the first two members.

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(2) The committee advocating rejection of a ballot issue referred to the people or proposed by the legislature shall be composed of one senator appointed by the president of the senate; one representative appointed by the speaker of the house of representatives; and one *individual* who need not be a member of the legislature, appointed by the first two members. Whenever possible, the members shall be known to have opposed the issue.

(3) A three-member committee advocating approval of a ballot issue proposed by any type of initiative petition or advocating rejection of any ballot issue that is a legislative act referred to the people by referendum petition shall be appointed by the *person submitting the petition to the secretary of state under the provisions of 13-27-202.*

(4) A committee advocating rejection of a ballot issue proposed by any type of initiative petition shall be composed of five members. The governor, attorney general, president of the senate, and speaker of the house of representatives shall each appoint one member, and the fifth member shall be appointed by the first four members. All members shall be known to favor rejection of the issue."

Section 215. Section 13-35-106, MCA, is amended to read:

"13-35-106. Ineligibility to hold office because of conviction. In addition to all other penalties prescribed by law:

(1) a candidate who is convicted of violating any provision of this title, except 13-35-207*(9)*, is ineligible to be a candidate for any public office in the state of Montana until his final discharge from state supervision;

(2) a campaign treasurer who is convicted of violating any provision of this title, except 13-35-207*(9)*, is ineligible to be a candidate for any public office or to hold the position of campaign treasurer in any campaign in the state of Montana until his final discharge from state supervision;

(3) if an elected official *or* a candidate *is adjudicated to have violated any provision of this title, except 13-35-207(9),* he shall be removed from *nomination or* office, *as the case may be*, even though he *was* regularly *nominated or* elected."

Section 216. Section 13-35-107, MCA, is amended to read:

"13-35-107. Voiding election. (1) If a court finds that the violation of any provision of this title by any *person* probably affected the outcome of any election, the result of that election may be held void and a special election held within 60 days of that finding. If the violation occurred during a primary election, the court may direct the *selection of* a new candidate according to the provisions of state law *relating to the filling of vacancies on the general election ballot.* Except as provided in subsection (2), an action to void an election shall be commenced within 1 year of the date of the election in question.

(2) An action to void a bond election shall be commenced within 60 days of the date of the election in question."

Section 217. Section 13-35-202, MCA, is amended to read:

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"13-35-202. Conduct of election officials and election judges. *An election* officer or *judge* of *an* election may *not*:

(1) deposit in a ballot box a ballot on which the official stamp, as provided by law, does not appear;

(2) prior to putting the ballot of an elector in the ballot box, attempt to find out any name on the ballot or open or examine the folded ballot of an elector;

(3) look at any mark made by the *elector* upon the ballot;

(4) make or place any mark or device on any folded ballot with the intent to ascertain *how* the elector has voted;

(5) allow any *individual* other than the *elector* to be present at the marking of the ballot except as provided in *[sections 111* and *112]*; or

(6) make a false statement in a certificate regarding affirmation."

Section 218. Section 13-35-207, MCA, is amended to read:

"13-35-207. Deceptive election practices. A person is guilty of false swearing, unsworn falsification, or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-202, 45-7-203, or 45-7-208, as applicable, whenever the person:

(1) falsely represents his name or other information required upon his registry card and causes registration with the card;

(2) signs a registry card knowingly witnessing any false or misleading statement;

(3) knowingly causes a false statement, certificate, or return of any kind to be signed;

(4) falsely makes a declaration or certificate of nomination;

(5) files or receives for filing a declaration or certificate of nomination knowing that all or part of the declaration or certificate is false;

(6) forges or falsely makes the official endorsement of a ballot;

(7) forges or counterfeits returns of an election purporting to have been held at a precinct, municipality, or ward where no election was in fact held;

(8) knowingly substitutes forged or counterfeit returns of election in place of the true returns for a precinct, municipality, or ward where an election was held;

(9) signs a name other than his own to a petition, signs more than once for the same measure, or signs a petition while not being a qualified elector of the state; or

(10) makes a false oath or affidavit where an oath or affidavit is required by law."

Section 219. Section 13-35-211, MCA, is amended to read:

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"13-35-211. Electioneering. (1) No person may do any electioneering on election day within any polling place or any building in which an election is being held or within 200 feet thereof, *which aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election.*

(2) No person may buy, sell, give, *wear, or display* at or about the polls on an election day *any badge, button, or other insignia which is designed or tends to aid or promote the success or defeat of any candidate or ballot issue to be voted upon at the election.*"

Section 220. Section 13-35-215, MCA, is amended to read:

"13-35-215. Illegal consideration for voting. No person, directly or indirectly, by himself or by any other person in his behalf, may:

(1) before or during any election, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at the election or for inducing another to do so:

(a) receive, agree, or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person; or

(b) approach any candidate or agent or person representing or acting on behalf of any candidate and ask for or offer to agree or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person;

(2) after an election, for having voted or refrained from voting or having induced any other person to vote or refrain from voting at the election:

(a) receive any money, gift, loan, valuable consideration, office, place, or employment; or

(b) approach any candidate or any agent or person representing or acting on behalf of any candidate and ask for or offer to receive any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person."

Section 221. Section 13-35-225, MCA, is amended to read:

"13-35-225. Election materials not to be anonymous. *(1) Whenever any person makes an expenditure for the purpose of financing communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising, such communication shall clearly and conspicuously state the name and address of the printer, if printed commercially, and the name and address of the person who made or financed the expenditure for the communication; including, in the case of a political committee, the name and address of the treasurer.*

(2) If any document or other article of advertising is too small for the requirements of subsection (1) to be conveniently included or if necessary

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information is inadvertently omitted, the person financing the communication shall file a copy of the article with the commissioner, together with the required information."

Section 222. Section 13-35-226, MCA, is amended to read:

"**13-35-226. Unlawful acts of employers and employees.** (1) It is unlawful for any employer, in paying his employees the salary or wages due them, to *include with* their pay the name of any candidate or *any* political mottoes, devices, or arguments containing threats or promises (express or implied) calculated or intended to influence the political opinions or actions of *the* employees. It is unlawful for an employer to exhibit in a place where his workers or employees may be working any handbill or placard containing any threat, promise, notice, or information that in case any particular ticket or political party, organization, or candidate is elected, work in his place or establishment will cease, in whole or in part, or will be continued or increased; his place or establishment will be closed; the salaries or wages of his workers or employees will be reduced or increased; or other threats or promises (express or implied) intended or calculated to influence the political opinions or actions of his workers or employees. This section shall apply to corporations, individuals, and public officers and employees.

(2) No person may attempt to coerce, command, or require a public employee to give money, service, or other thing of value to aid or promote any political committee or to aid or promote the nomination or election of any person to public office.

(3) No public employee may solicit any money, influence, service, or other thing of value or otherwise aid or promote any political committee or the nomination or election of any person to public office while on the job or at his place of employment. However, nothing in this section is intended to restrict the right of a public employee to express his personal political views.

(4) Any person who violates the provisions of this section shall be fined not to exceed $1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate offense."

Section 223. Section 13-35-231, MCA, is amended to read:

"**13-35-231. Unlawful for political party to endorse judicial candidate.** A political party *may not endorse, contribute to, or make an expenditure to support or oppose* a *judicial* candidate."

Section 224. Section 13-36-101, MCA, is amended to read:

"**13-36-101. Grounds for contest of nomination or election to public office.** An elector may contest the right of any person to any nomination or *election to public* office for which the elector has the right to vote, for any of the following causes:

(1) on the ground of a deliberate, serious, and material violation of any provision of the law relating to nominations or elections;

(2) whenever the person whose right is contested was not, at the time of the election, eligible to such office;

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(3) on account of illegal votes or an erroneous or fraudulent count or canvass of votes."

Section 225. Section 13-36-102, MCA, is amended to read:

"13-36-102. Time for commencing contest. (1) Five days or less after a *candidate* has been *certified as* nominated, *a* person wishing to contest the nomination to any *public* office shall give notice in writing to the *candidate* whose nomination he intends to contest, briefly stating the cause for the contest. The contestant shall make application to the district court in the county where the contest is to be had. The judge shall then set the time for the hearing. The contestant shall serve notice 3 days before the hearing is scheduled. The notice shall state the time and place of the hearing.

(2) Any action to contest the right of *a candidate* to be declared elected to an office or to annul and set aside such election or to remove from or deprive any person of an office of which he is the incumbent for any offense mentioned in this title must, unless a different time *is* stated, be commenced within 1 year after the return day of the election at which such offense was committed."

Section 226. Section 13-36-103, MCA, is amended to read:

"13-36-103. Court having jurisdiction of proceedings. An application for filing a statement, payment of a claim, or correction of an error or false recital in a filed statement or an action or proceeding to annul and set aside the election of any person declared elected to an office or to remove or deprive any person of his office for an offense mentioned in this title or any petition to excuse any person or candidate in accordance with the power of the court to excuse, as provided in 13-36-209, must be made or filed in the district court of the county in which the certificate, *declaration, or acceptance* of his nomination as a candidate for the office to which he is declared nominated or elected is filed or in which the incumbent resides."

Section 227. Section 13-36-202, MCA, is amended to read:

"13-36-202. Reception of illegal votes — allegations and evidence. When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state generally that in one or more specified voting precincts illegal votes were given to the *candidate* whose nomination or election is contested which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other *candidate* for the same office. No testimony shall be received of any illegal votes unless the party contesting such election delivers to the opposite party, at least 3 days before such trial, a written list of the number of illegal votes (and by whom given) which he intends to prove on such trial. This provision shall not prevent the contestant from offering evidence of illegal votes not included in such statement if he did not know and by reasonable diligence was unable to learn of such additional illegal votes (and by whom they were given) before delivering such written list."

Section 228. Section 13-36-205, MCA, is amended to read:

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"**13-36-205. Recovery of costs.** *In any contest, the prevailing party* may recover his costs, disbursements, and reasonable attorney's fees. Costs, disbursements, and attorney's fees in all such cases shall be in the discretion of the court. In case judgment is rendered against the petitioner, it shall also be rendered against the sureties on the bond."

Section 229. Section 13-36-207, MCA, is amended to read:

"**13-36-207. Hearing of contest.** The petitioner (contestant) and the contestee may appear and produce evidence at the hearing, but no person other than the petitioner and contestee may be made a party to the proceedings on such petition and no person other than the parties and their attorneys may be heard thereon except by order of the court. If more than one petition is pending or the election of more than one person is contested, the court may in its discretion order the cases to be heard together and may apportion the costs, disbursements, and attorney's fees between them and shall finally determine all questions of law and fact, *except* that the judge may in his discretion impanel a jury to decide on questions of fact. In the case of nominations or elections other than for federal congressional offices, the court shall immediately certify its decision to the *governing body* or official issuing certificates of nomination or election and the *governing body* or official shall thereupon issue certificates of nomination or election to the person or persons entitled thereto by the court's decision. If judgment of ouster against a defendant is rendered, the nomination or office shall be by the judgment declared vacant, except as provided in 13-36-212, and shall thereupon be filled by a new election or by appointment as may be provided by law regarding vacancies in such nomination or office."

Section 230. Section 13-37-111, MCA, is amended to read:

"**13-37-111. Investigative powers and duties.** (1) The commissioner of campaign finances and practices shall be responsible for investigating all of the alleged violations of the election laws contained in *chapters 35, 36, or 37 of* this title and shall in conjunction with the county attorneys be responsible for enforcing *these* election laws.

(2) The commissioner may investigate all statements filed pursuant to the provisions of *chapters 35, 36, or 37 of* this title and shall also investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of *chapters 35, 36, or 37 of* this title. Upon the submission of a written complaint by any individual, the commissioner shall also investigate any other alleged violation of the provisions of *chapters 35, 36, or 37 of* this title or any rule adopted pursuant thereto.

(3) The commissioner may inspect any records, accounts, or books that must be kept pursuant to the provisions of *chapters 35, 36, or 37 of* this title which are held by any political committee or candidate, so long as such inspection is made during reasonable office hours.

(4) The commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account

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statements of a political committee or candidate, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of *chapters 35, 36, or 37 of* this title."

Section 231. Section 13-37-112, MCA, is amended to read:

"13-37-112. Personnel and budget. (1) The commissioner shall select an appropriate staff to enforce the provisions of *chapters 35, 36, or 37 of* this title, and he may hire and fire all personnel under his supervision.

(2) The commissioner shall be responsible for preparing, administering, and allocating the budget for his office."

Section 232. Section 13-37-113, MCA, is amended to read:

"13-37-113. Hiring of attorneys — prosecutions. The commissioner may hire or retain attorneys who are properly licensed to practice before the supreme court of the state of Montana to prosecute violations of *chapters 35, 36, or 37 of* this title. Any properly licensed attorney so retained or hired shall exercise the powers of a special attorney general, and he may prosecute, subject to the control and supervision of the commissioner and the provisions of 13-37-124 and 13-37-125, any criminal or civil action arising out of a violation of any provision of *chapters 35, 36, or 37 of* this title. All prosecutions shall be brought in the state district court for the county in which a violation has occurred or in the district court for Lewis and Clark County. The authority to prosecute as prescribed by this section includes the authority to:

(1) institute proceedings for the arrest of persons charged with or reasonably suspected of criminal violations of *chapters 35, 36, or 37 of* this title;

(2) attend and give advice to a grand jury when cases involving criminal violations of *chapters 35, 36, or 37 of* this title are presented;

(3) draw and file indictments, informations, and criminal complaints;

(4) prosecute all actions for the recovery of debts, fines, penalties, or forfeitures accruing to the state or county from persons convicted of violating *chapters 35, 36, or 37 of* this title; and

(5) do any other act necessary to successfully prosecute a violation of any provision of *chapters 35, 36, or 37 of* this title."

Section 233. Section 13-37-114, MCA, is amended to read:

"13-37-114. Rules. The commissioner shall promulgate and publish rules to carry out the provisions of *chapters 35, 36, or 37 of* this title and shall promulgate such rules in conformance with the Montana Administrative Procedure Act."

Section 234. Section 13-37-117, MCA, is amended to read:

"13-37-117. Commissioner to provide forms and manuals. (1) The commissioner shall prescribe forms for statements and other information required to be filed pursuant to *chapters 35, 36, or 37 of* this title and

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furnish forms and appropriate information to persons required to file statements and information.

(2) The commissioner shall prepare and publish a manual prescribing a uniform system for accounts for use by persons required to file statements pursuant to *chapters 35, 36, or 37 of* this title.

(3) The commissioner shall prescribe the manner in which the county clerk and recorders shall receive, file, collate, and maintain reports filed with them under *chapters 35, 36, or 37 of* this title."

Section 235. Section 13-37-118, MCA, is amended to read:

"13-37-118. Information voluntarily supplied. The commissioner shall accept and file any information voluntarily supplied that exceeds the requirements of *chapters 35, 36, or 37 of* this title."

Section 236. Section 13-37-119, MCA, is amended to read:

"13-37-119. Availability of information. (1) The commissioner shall make statements and other information filed with his office available for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed actual cost.

(2) The commissioner shall preserve statements and other information filed with his office for a period of 10 years from date of receipt.

(3) The commissioner shall prepare and publish summaries of the statements received and such other reports as he considers appropriate.

(4) The commissioner shall provide for wide public dissemination of summaries and reports."

Section 237. Section 13-37-120, MCA, is amended to read:

"13-37-120. Reports. The commissioner shall at the close of each fiscal year report to the legislature and the governor concerning the action he has taken, including the names, salaries, and duties of all individuals in his employ and the money he has disbursed. The commissioner shall also make further reports on the matters within his jurisdiction *that* the legislature may prescribe and shall also make recommendations for further legislation *that* may appear desirable."

Section 238. Section 13-37-121, MCA, is amended to read:

"13-37-121. Inspection of statements and reports — issuance of orders of noncompliance. (1) Each statement *and report* filed with the commissioner during an election or within 60 days thereafter shall be inspected within 10 days after *it* is filed. If a person has not satisfied the provisions of this *chapter*, the commissioner shall immediately notify the person of the noncompliance. Such an order of noncompliance shall be issued when:

(a) upon examination of the official ballot, it appears that the person has failed to file a statement *or report* as required by *this chapter* or that a statement *or report* filed by a person does not conform to law; or

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(b) it is determined that a statement *or report* filed with the commissioner does not conform to the requirements of this *chapter* or that a person has failed to file a statement *or report* required by law.

(2) If an order of noncompliance is issued during a campaign period or within 60 days after an election, a candidate or political committee shall submit the necessary information within 5 days after receiving the notice of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner may initiate a civil or criminal action pursuant to the procedures outlined in 13-37-124 and 13-37-125.

(3) If an order of noncompliance is issued during any period other than that described in subsection (2), a candidate or political committee shall submit the necessary information within 10 days after receiving the notice of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner shall initiate a civil or criminal action pursuant to the procedures outlined in 13-37-124 and 13-37-125."

Section 239. Section 13-37-123, MCA, is amended to read:

"13-37-123. Examination of reports after election. Within 120 days after the date of each election, the commissioner shall examine and compare each statement or report filed with the commissioner pursuant to the provisions of this *chapter* to determine whether *the* statement or report conforms to the provisions of the law. The examination shall include a comparison of all reports and statements received by the commissioner pursuant to the requirements of this *chapter*. The commissioner may investigate the source and authenticity of any contribution or expenditure listed in any report or statement filed pursuant to this *chapter* or the alleged failure to report any contribution or expenditure required to be reported pursuant to this *chapter*."

Section 240. Section 13-37-124, MCA, is amended to read:

"13-37-124. Consultation and cooperation with county attorney. (1) Whenever the commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution under *chapters 35, 36, or 37* of this *title*, he shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged violation. If the county attorney fails to initiate the appropriate civil or criminal action within 30 days after he receives notification of the alleged violation, the commissioner may then initiate the appropriate legal action.

(2) A county attorney may, at any time prior to the expiration of the 30-day time period specified in subsection (1), waive his right to prosecute and thereby authorize the commissioner to initiate the appropriate civil or criminal action.

(3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been committed by the county attorney of a county. In this instance, the commissioner is authorized to directly prosecute any alleged violation of *chapters 35, 36, or 37 of* this title.

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(4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution shall be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a prosecution by the commissioner shall be deposited in the state general fund."

Section 241. Section 13-37-125, MCA, is amended to read:

"13-37-125. Powers of county attorney to investigate. (1) Nothing in *chapters 35, 36, or 37 of* this title prevents a county attorney from inspecting any records, accounts, or books which must be kept pursuant to the provisions of *chapters 35, 36, or 37 of* this title that are held by a political committee or candidate involved in an election to be held within the county. However, the inspections must be conducted during reasonable office hours.

(2) A county attorney may:

(a) administer oaths and affirmations;

(b) subpoena witnesses and compel their attendance;

(c) take evidence; and

(d) require the production of any books, correspondence, memoranda, bank account statements of a political committee or candidate, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of *chapters 35, 36, or 37 of* this title."

Section 242. Section 13-37-126, MCA, is amended to read:

"13-37-126. Names not to be printed on ballot. (1) The name of a candidate *may* not be printed on the official ballot for *an* election if the candidate or a political treasurer for a candidate fails to file any statement *or report* as required by this *chapter*.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the name of the same candidate.

(3) In carrying out the mandate of this section, the commissioner must, by a written statement, notify the secretary of state or the *election administrator* that a candidate or a candidate's treasurer has not complied with the provisions of this *chapter*, as described in subsection (1), and that a candidate's name should not be printed on the official ballot."

Section 243. Section 13-37-127, MCA, is amended to read:

"13-37-127. Withholding of certificates of nomination or election. *(1) A* certificate of election shall *not* be granted to any candidate until *he or* his political treasurer has filed the reports and statements that must be filed pursuant to the provisions of this *chapter*. No candidate for an elective office may assume the powers and duties of that office until he has received a certificate of election as provided by law. A certificate of election shall only be issued by the public official responsible for issuing a certificate or commission *of election*.

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(2) In carrying out the mandate of this section, the commissioner must, by written statement, notify the public official responsible for issuing a certificate of nomination or election that a candidate or his treasurer has complied with the provisions of this chapter as described in subsection (1) and that a certificate of nomination or election may be issued."

Section 244. **Cause of action created.** (1) Except as provided in 13-37-306, any person who intentionally or negligently violates any of the reporting provisions of Title 13, chapter 37, shall be liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to $500 or three times the amount of the unlawful contributions or expenditures, whichever is greater.

(2) Any person who makes or receives a contribution or expenditure in violation of 13-35-225, 13-35-227, 13-35-228, or Title 13, chapter 37, is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to $500 or three times the amount of the unlawful contribution or expenditure, whichever is greater.

Section 245. **Liability and disposition of fines.** In determining the amount of liability under [section 244], the court may take into account the seriousness of a violation and the degree of culpability of the defendant. If a judgment is entered against the defendant or defendants in an action brought by a county attorney, the county shall receive 50% of the amount recovered. The remaining 50% shall be deposited in the general fund of the state. In an action brought by the commissioner, the entire amount recovered shall be paid to the general fund of the state.

Section 246. **Limitation of action.** No action may be brought under [sections 244 and 245] more than 4 years after the occurrence of the facts which give rise to the action. No more than one judgment against a particular defendant may be had on a single state of facts. The civil action created in [sections 244 and 245] shall be the exclusive remedy for violation of the contribution, expenditure, and reporting provisions of this chapter, except as provided in 13-37-306. These provisions are not subject to the misdemeanor penalties of 13-35-103 but may be a ground for contest of election or removal from office as provided in 13-35-106(3) and Title 13, chapter 36.

Section 247. Section 13-37-201, MCA, is amended to read:

"13-37-201. Campaign treasurer. Except as provided in 13-37-206, each candidate and each political committee shall appoint one campaign treasurer and *certify* the *full* name and *complete* address of the campaign treasurer pursuant to this section. *A candidate shall file the certification within 5 days after becoming a candidate. A political committee shall file the* certification, which shall include an organizational statement and *set* forth the name and address of all other officers, if any, *within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first. The certification of a candidate or political committee* shall be filed with the commissioner

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and the appropriate county clerk and recorder as specified for the filing of reports in 13-37-225."

Section 248. Section 13-37-202, MCA, is amended to read:

"13-37-202. Deputy campaign treasurers. (1) A campaign treasurer may appoint deputy campaign treasurers, but not more than one in each county in which the campaign is conducted. Each candidate and political committee shall certify the full name and complete address of the campaign treasurer and all deputy campaign treasurers with the office with whom the candidate or the political committee is required to file reports.

(2) Deputy campaign treasurers may exercise any of the powers and duties of a campaign treasurer as set forth in this chapter when specifically authorized in writing to do so by the campaign treasurer and the candidate , in the case of a candidate, or the campaign treasurer and the chairman of the political committee, in the case of a political committee. *The written authorization shall be maintained as a part of the records required to be kept by the treasurer, as specified in 13-37-208.*"

Section 249. Section 13-37-205, MCA, is amended to read:

"13-37-205. Campaign depositories. Except as provided in 13-37-206, each candidate and each political committee shall designate one primary campaign depository for the purpose of depositing all contributions received and disbursing all expenditures made by the candidate or political committee. The candidate or political committee may also designate one secondary depository in each county in which an election is held and in which the candidate or committee participates. Deputy campaign treasurers may make deposits in and expenditures from secondary depositories when authorized to do so as provided in 13-37-202(2). Only a bank authorized to transact business in Montana may be designated as a campaign depository. The candidate or political committee shall file the name and address of each primary and secondary depository so designated at the same time and with the same officer with whom the candidate or committee files the name of his or its campaign treasurer pursuant to 13-37-201. Nothing in this section shall prevent a political committee or candidate from having more than one campaign account in the same depository, *but a candidate may not utilize his regular or personal account in the depository as a campaign account.*"

Section 250. Section 13-37-206, MCA, is amended to read:

"13-37-206. Exception for certain school districts. The provisions of *this part, except 13-37-217,* do not apply to candidates for the office of trustee of a school district, their political committees, and political committees organized to support or oppose a school district issue when the school district is:

(1) a first-class district located in a county having a population *of* less than 15,000;

(2) a second- or third-class district; or

(3) a county high school district having a student enrollment *of* less than 2,000."

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Section 251. Section 13-37-208, MCA, is amended to read:

"13-37-208. Treasurer to keep records. (1) The campaign treasurer of each candidate and each political committee shall keep detailed accounts (current within not more than 10 days after the date of receiving a contribution or making an expenditure, *except that accounts shall be current as of the 5th day before the date of filing of a report as specified in 13-37-226*) of all contributions received and all expenditures made by or on behalf of the candidate or political committee that are required to be set forth in a *report* filed under this chapter.

(2) Accounts of a deputy campaign treasurer shall be transferred to the treasurer of a candidate or political committee before the candidate or political committee finally closes its books or when the position of a deputy campaign treasurer becomes vacant and no successor is appointed.

(3) Accounts kept by a campaign treasurer of a candidate *or political committee* shall be preserved by the campaign treasurer for a period coinciding with the term of office for which the person was a candidate *or for a period of 4 years, whichever is longer.*"

Section 252. Section 13-37-215, MCA, is amended to read:

"13-37-215. Petty cash funds allowed. (1) The campaign treasurer for each candidate or political committee is authorized to withdraw the following amount each week from the primary depository for the purpose of providing a petty cash fund for the candidate or political committee:

(a) for all *statewide* candidates and political committees *filing reports pursuant to 13-37-226(1)*, $100 per week; and

(b) for all other candidates and political committees, $20 per week.

(2) The petty cash fund may be spent for office supplies, transportation expenses, and other necessities in an amount of less than $10. Petty cash shall not be used for the purchase of time, space, or services from any communications medium."

Section 253. Section 13-37-216, MCA, is amended to read:

"13-37-216. Limitations on contributions. (1) Aggregate contributions for all elections in a campaign by an individual, other than the candidate, to a candidate and political committees organized on his behalf are limited as follows:

(a) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed $1,500;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $750;

(c) for a candidate for public service commissioner, *district court judge, or state senator,* not to exceed $400; *and*

(d) for a candidate for *any other public office,* not to exceed *$250.*

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(2) *For the purposes of this subsection, an* independent committee means a committee which is not *specifically* organized on behalf of a *particular* candidate or which is not controlled either directly or indirectly by a candidate or candidate's committee and which does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions. For the purpose of limitation on contributions, political party organizations are independent committees. Aggregate contributions by an independent committee to a candidate and political committees organized on his behalf for all elections in a campaign are limited as follows:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed $8,000;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $2,000;

(c) for a candidate for public service commissioner, not to exceed $1,000;

(d) for a candidate for the *state senate*, not to exceed *$600*;

(e) for a candidate for *any other public* office, not to exceed *$300.*

(3) The limitations imposed by this section do not apply to public funds contributed to a candidate under *part 3* of this *chapter.*"

Section 254. Section 13-37-217, MCA, is amended to read:

"13-37-217. Contributions in name of undisclosed principal. No person may make a *contribution* of his own money or of another person's money to any other person in connection with *any* election in any other name than that of the person who in truth supplies such money. No person may knowingly receive such *a contribution* or enter or cause the same to be entered in his accounts or records in another name than that of the person by whom it was actually furnished."

Section 255. Section 13-37-225, MCA, is amended to read:

"13-37-225. Reports of contributions and expenditures required. (1) Except as provided in *13-37-206*, each candidate and political committee shall file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee. All reports required by this *chapter* shall be filed with the commissioner and with the county clerk and recorder of the county in which a candidate is a resident or the political committee has its headquarters. However, where residency within a district, county, city, or town is not a prerequisite for being a candidate, copies of all reports shall be filed with the county clerk and recorder of the county in which the election is to be held or, if the election is to be held in more than one county, with the clerk and recorder in the county that the commissioner *specifies.*

(2) In lieu of all contribution and expenditure reports required by this chapter, the commissioner shall accept copies of the reports filed by candidates for congress and president of the United States and their political committees pursuant to the requirements of federal law."

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Section 256. Section 13-37-226, MCA, is amended to read:

"13-37-226. Time for filing reports. (1) Candidates for a state office filled by a statewide vote of all the *electors* of Montana and political committees *which are specifically* organized to support or oppose a *particular* statewide *candidate or* issue shall file reports:

(a) on the 10th day of March and September in each year that an election is to be held and on the 15th and 5th days next preceding the date on which an election is held and within 24 hours after receiving a contribution of $500 or more *if received between the 10th day before and the day of the election*;

(b) not more than 20 days after the date of the election; *and*

(c) on the 10th day of March and September of each year following an election *until the candidate or political committee files a closing report as specified in 13-37-228(3).*

(2) Candidates for a state district office, including but not limited to candidates for the legislature, public service commission, or district court judge, and political committees *which are specifically* organized to support or oppose *a particular state* district *candidate or issue* shall file reports:

(a) on the 10th day next preceding the date on which an election is held and within 24 hours after receiving a contribution of $100 or more *if received between the 15th day before and the day of the election*;

(b) not more than 20 days after the date of the election; *and*

(c) whenever a candidate or political committee *files his or its closing report as specified in 13-37-228(3).*

(3) Candidates for any other public office and political committees *which are specifically* organized to support or oppose *a particular* local *issue* shall be required to file the reports specified in subsection (2) only if the total amount of contributions received or the total amount of funds expended for *all elections in a campaign*, excluding the filing fee paid by the candidate, exceeds $500, except *as provided in 13-37-206.*

(4) For the purposes of this subsection, a committee which is not specifically organized to support or oppose a particular candidate or ballot issue and which receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file reports:

(a) on the 10th day next preceding the date of an election in which it participates by making an expenditure;

(b) not more than 20 days after the date of the election in which it participates by making an expenditure; and

(c) a closing report at the close of each calendar year, on a date to be prescribed by the commissioner.

(5) The commissioner may promulgate rules regarding the extent to which organizations that are not primary political committees but are

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incidental political committees shall report their politically related activities in accordance with this chapter.

(6) All reports required by this section shall be complete as of the *5th day* before the date of filing as specified in 13-37-225(2) and subsections (1) through *(5)* of this section."

Section 257. Section 13-37-227, MCA, is amended to read:

"13-37-227. Comprehensive report when several candidates or issues involved. The commissioner shall adopt rules that will permit political committees, including political parties, to file copies of a single comprehensive report when they support or oppose more than one candidate or issue. *The commissioner shall adopt rules under which committees filing periodic reports with the federal election commission and committees headquartered outside the state of Montana shall report in accordance with this title.*"

Section 258. Section 13-37-228, MCA, is amended to read:

"13-37-228. Time periods covered by reports. Reports filed under 13-37-225 *and 13-37-226* shall be filed to cover the following time periods *even though no contributions or expenditures may have been received or made during the period*:

(1) The initial report shall cover all contributions received or expenditures made by a candidate or political committee prior to the time that a person became a candidate *or a political committee* as defined in 13-1-101 until the *5th day before the date of* filing of the appropriate initial report pursuant to subsections (1) through *(4)* of 13-37-226.

(2) Subsequent periodic reports shall cover the period of time from the closing of the previous report to 5 days before the date of filing *of a report pursuant to 13-37-226(1) through (4).*

(3) *Closing* reports shall cover the period of time from the last periodic report to the final closing of the books of the candidate or political committee. *A candidate or political committee shall file a closing report following an election in which he or it participates whenever all debts and obligations are extinguished and no further contributions or expenditures will be received or made which relate to the campaign, unless the election is a primary election and the candidate or political committee will participate in the general election.*"

Section 259. Section 13-37-229, MCA, is amended to read:

"13-37-229. Disclosure of contributions received. Each report required by this chapter shall disclose the following information:

(1) the amount of cash on hand at the beginning of the reporting period;

(2) the full name and mailing address (occupation and the principal place of business, if any) of each person who has made aggregate contributions, other than loans, of $25 or more to the candidate or political committee (including the purchase of tickets *and other items* for events such

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as dinners, luncheons, rallies, and similar fund-raising events), together with the aggregate amount of those contributions *within the reporting period* and the total amount of contributions made by that person;

(3) the total sum of individual contributions made to or for the political committee or candidate and not reported under subsection (2) of this section;

(4) the name and address of each political committee or candidate from which the reporting committee or candidate received any transfer of funds, together with the amount and dates of all transfers;

(5) each loan from any person during the reporting period, together with the full names and mailing addresses (occupation and principal place of business, if any) of the lender and endorsers, if any, and the date and amount of each loan;

(6) the amount and nature of debts and obligations owed to a political committee or candidates, in the form prescribed by the commissioner;

(7) an itemized account of proceeds *which total less than $25 from a person* from mass collections made at *fund-raising events*

(8) each contribution, rebate, refund, or other receipt not otherwise listed under subsections (2) through *(7)* of this section during the reporting period;

(9) the total sum of all receipts received by or for the committee or candidate during the reporting period;

(10) other information that may be required by the commissioner to fully disclose the sources of funds used to support or oppose candidates or issues."

Section 260. Section 13-37-231, MCA, is amended to read:

"13-37-231. Reports to be certified as true and correct. (1) A report required by this chapter to be filed by a candidate or political committee shall be verified as true and correct by the oath or affirmation of the individual filing the report. The individual filing the report shall be the candidate or an officer of a political committee who is on file as an officer of the committee with the commissioner.

(2) A copy of a report or statement *filed by a candidate or political committee* shall be preserved by the individual filing it for a period *coinciding with the term of office for which the person was a candidate or for a period of 4 years, whichever is longer.*"

Section 261. **Party rules to be filed with the secretary of state.** The state central committee of each political party in this state must file a current copy of the rules of government of the party with the secretary of state.

Section 262. **County committee rules to be filed with the election administrator.** The county committee of each political party of this state must file a current copy of its rules of government with the election administrator.

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Section 263. Section 7-2-2203, MCA, is amended to read:

"7-2-2203. Limitation on location of boundary of new county. (1) Except as provided in subsection (2), no line of any new county shall pass within 15 miles of the courthouse situated at the county seat of the county sought to be divided.

(2) Such county line may be run within a distance of 10 miles of a county seat in cases where the natural contour of the county, by reason of mountain ranges or other topographical conditions, is such as to make it difficult to reach the county seat. In such cases, a petition signed by at least 50% of the *registered electors* in the proposed new county shall be presented to the judge of the district court in which the affected county is located, asking for the appointment of a commission of five disinterested *individuals*, who shall determine if the topographical conditions warrant the fixing of the county division lines closer than at 15 miles from the county seat, as such boundaries are legally fixed and determined at the date of the filing of the petition or petitions referred to in 7-2-2205 and 7-2-2212."

Section 264. Section 7-2-2205, MCA, is amended to read:

"7-2-2205. Petition for creation of new county. (1) Whenever it is desired to divide any county or counties and form a new county out of a portion of the territory of *the* then-existing county or counties, a petition shall be presented to the board of county commissioners of the county from which the new county is to be formed, in case said proposed new county is to be formed from but one county, or to the board of county commissioners of the county from which the largest area of territory is proposed to be taken for the formation of such new county, in case said new county is to be formed from portions of two or more existing counties.

(2) (a) *The* petition shall be signed by at least 50% of the *registered* electors of the proposed new county.

(b) In cases where the proposed new county is to be formed from portions of two or more counties, separate petitions shall be presented from the territory taken from each county, and each of *the* petitions shall be signed by at least 50% of the *registered* electors of *the* proposed portions.

(c) *The* signatures need not all be appended to one paper but may be signed to several petitions, which must be similar in form. When so signed, the several petitions may be fastened together and shall be treated and presented as one petition."

Section 265. Section 7-2-2211, MCA, is amended to read:

"7-2-2211. Hearing on petition — protest. (1) At the time fixed for *the* hearing, the board of county commissioners shall proceed to hear the petitioners and any opponents and protestants upon the petition or protests filed on or before the time fixed for the hearing. The board may adjourn such hearing from time to time, but not for more than 10 days after the time fixed for the hearing, and shall receive proof to establish or controvert the facts set forth in *the* petition.

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(2) (a) No petition or protest or petition for the exclusion of territory shall be considered unless *it* is filed at least 1 day before the time fixed for the hearing.

(b) *A* petition for the exclusion of territory shall contain the names of not less than 50% of the *registered* electors who are resident property taxpayers of any territory to be excluded.

(c) All such territory being excluded must be in one block *containing* an area of not less than 36 square miles and be totally within one county and contiguous thereto.

(3) No withdrawals of signatures to the original petition for the creation of a proposed county shall be filed or considered which have not been filed with the county clerk on or before the date fixed for the hearing. No withdrawals of any signatures from the petition for the exclusion of territory shall be received or considered which are not filed within 5 days after the filing of the petition for such exclusion of territory."

Section 266. Section 7-2-2212, MCA, is amended to read:

"7-2-2212. Exclusions and additions of territory upon petition. (1) Except as provided in subsection (3), on final hearing, the board of commissioners, upon petition of not less than 50% of the *registered* electors (as shown by the official registration *records* on the day of the filing of *the* petition) of any territory lying within *the* proposed new county and contiguous to the boundary line of the proposed new county and of the old county from which such territory is proposed to be taken and lying entirely within *the* single old county and described in *the* petition, asking that *the* territory not *be* included within the proposed new county, must make such changes in the proposed boundaries as will exclude *the* territory from *the* new county and shall establish and define *the* boundaries. Petitions for exclusion shall be disposed of in the order in time in which they are filed with the clerk of the board.

(2) Except as provided in subsection (3), on final hearing, the board, upon petition of not less than 50% of the *registered* electors of any territory lying outside *the* proposed new county and contiguous to the boundary line of *the* proposed new county and of the old county or counties from which such territory is proposed to be included, asking that *the* territory be included within the proposed new county, must make such changes in the proposed boundaries as will include such territory in *the* new county and shall establish and define *the* boundaries.

(3) (a) The segregation of *the* territory from any old county or counties *must* not leave *the* county or counties with less than $12 million of assessed valuation, based upon the last assessment roll.

(b) *The* change or changes made *must not* result in reducing the valuation of the proposed new county to less than an assessed valuation of $10 million, inclusive of all assessed valuation.

(c) No change shall be made which *leaves* the territory so excluded separate and apart from and without the county of which it was formerly a part.

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(4) On final determination of boundaries, no changes in the boundaries originally proposed *may* be made except as prayed for in said petition or petitions or to correct clerical errors or uncertainties."

Section 267. Section 7-2-2213, MCA, is amended to read:

"7-2-2213. Resolution of board of county commissioners. The board of county commissioners, on the final hearing of such petition or petitions, shall, by a resolution entered on its minutes, determine:

(1) the boundaries of the proposed new county, and the boundaries so determined by *the* board shall be the boundaries of *the* proposed new county if it *is* created as herein provided;

(2) whether the petition contains the genuine signatures of at least 50% of the *registered* electors of the proposed new county as herein required or, in cases where separate petitions are presented from portions of two or more existing counties as herein required, whether each petition is signed by at least 50% of the *registered* electors of that portion of each of *the* existing counties which is proposed to be taken into the proposed new county;

(3) whether any line of the proposed new county passes within 15 miles of the courthouse situated at the county seat of any county proposed to be divided, except as otherwise provided;

(4) whether the proposed new county will contain property, according to the last preceding assessment, which will equal in amount at least $4 million, inclusive of all assessed valuation;

(5) whether the area of any existing county from which territory is taken to form *the* new county will be reduced to less than 1,200 square miles of surveyed land by taking the territory proposed to be taken therefrom to form *the* new county;

(6) whether the area of the proposed new county will contain at least 1,000 square miles of surveyed land to form *the* new county;

(7) the class to which *the* proposed new county will belong after its creation and the name of *the* proposed new county as stated in *the* petition;

(8) whether the area embraced within the proposed new county will be reasonably compact."

Section 268. Section 7-2-2214, MCA, is amended to read:

"7-2-2214. Division of territory of proposed county into various districts. The board of county commissioners shall divide the proposed new county into a convenient number of township, road, and school districts; define their boundaries; and designate the names of such districts if the board determines that:

(1) the formation of *the* proposed new county will not reduce any county from which any territory is taken to an assessed valuation of less than $12 million, inclusive of the assessed valuation, or the area thereof to less than 1,200 square miles of surveyed land;

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(2) the proposed new county contains property of an assessed valuation of at least $10 million, inclusive of all assessed valuation, and the proposed new county has an area of at least 1,000 square miles of land;

(3) no line of *the* proposed new county passes within 15 miles of the courthouse situated at the county seat of any county proposed to be divided, except as otherwise provided; and

(4) *the* petition contains the genuine signatures of at least 50% of the *registered* electors of the proposed new county or, in cases where separate petitions are presented from portions of two or more existing counties as herein required, each of *the* petitions contains the genuine signatures of at least 50% of the *registered* electors of that portion of the proposed new county from which it is taken."

Section 269. Section 7-2-2215, MCA, is amended to read:

"7-2-2215. Election on question of creating new county — proclamation and notice. (1) Within 2 weeks after its determination of the truth of the allegations of *the* petition, the board of county commissioners shall order and give proclamation and notice of an election to be held on a specified day, not less than 90 days or more than 120 days thereafter, in the territory which is proposed to be taken for the new county, for the purpose of determining whether such territory shall be established and organized into a new county and for the election of officers and location of a county seat therefor in case the vote at *the* election *is* in favor of the establishment and organization of *the* new county.

(2) All *registered* electors residing within the proposed new county who are *registered* electors of the county or counties from which territory is taken to form *the* proposed new county and who are to be registered under the provisions of the registration laws of the state shall be entitled to vote at *the* election. Registration and transfers of registration shall be made and shall close in the manner and at a time provided by law for registration and transfers of registration for a general election in Montana.

(3) *The* proclamation and notice of election shall be published *as provided in [section 6]*, and a copy thereof shall be mailed immediately by the *election administrator* of the county in which the petition is filed to the *election administrator* of each county from which territory is to be taken for the proposed new county.

(4) The proclamation calling the election and the notice thereof provided for in this part shall be made and given exclusively by the board with which the petition for the formation and establishment of *the* new county is filed."

Section 270. Section 7-2-2217, MCA, is amended to read:

"7-2-2217. Appointment of election officials. *The* board of county commissioners shall appoint election *judges* to act at the election provided for in 7-2-2215 and to be paid by *the* board."

Section 271. Section 7-2-2218, MCA, is amended to read:

"7-2-2218. Form of ballot. (1) The proclamation and notice required by 7-2-2215 shall require the *electors* to cast ballots which shall

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contain the words "For the new county of.... (giving the name of the proposed new county) — Yes" and "For the new county of.... (giving the name of the proposed new county) — No", and each *elector* desiring to vote for the establishment and organization of *the* new county shall mark a cross (X) opposite the words "For the new county of.... — Yes" in the manner now required by law in other elections, and each *elector* desiring to vote against the establishment and organization of *the* new county shall mark a cross (X) opposite the words "For the new county of.... — No" in the manner now required by law in other elections.

(2) The ballots shall also contain the names of *individuals* to be voted for to fill the various elective offices designated in *the* proclamation for counties of the class to which *the* proposed county will belong, as determined by the board of county commissioners, as herein otherwise provided.

(3) There shall also be printed upon *the* ballot the words "For the county seat" and the names of all cities or towns which may have filed with the *election administrator* a petition, signed by at least 25 *registered* electors, nominating any city or town within the proposed new county for the county seat. The *elector* shall designate his choice for county seat by marking a cross (X) opposite the name of the city or town for which he desires to cast his ballot."

Section 272. Section 7-2-2219, MCA, is amended to read:

"7-2-2219. Conduct of election. (1) (a) The board issuing the proclamation and notice of election pursuant to 7-2-2215 shall cause the *election administrator* of *the* county to furnish to the *election judges* of each precinct in such proposed new county all election supplies and equipment necessary to conduct *the* election and which are not hereinafter specifically directed to be furnished by the *election administrator* of another county or counties.

(b) The *election administrator* of each county from which territory is taken for the proposed new county shall, not less than 5 days before the date of *the* election, furnish *for* each *precinct* within *the* proposed new county a *precinct* register for the precincts of *the* proposed new county *which* are within their respective counties.

(2) *The* election shall be governed and controlled by the general election laws of the state, so far as the same shall be applicable and except as otherwise provided herein. The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of *the* laws relating to primary elections in this state, shall have application to any election provided for in this part.

(3) The returns of all elections for the creation of the county, for officers, and for location of the county seat as provided for in this part shall be made to and canvassed by the board *of county commissioners* of the county from which the largest area is taken by the proposed county. All returns of election herein provided for shall be made to the board calling such election.

(4) All nominations of candidates for the *offices* required to be filled at *the* election shall be made in the manner provided by law for the nomination of candidates by petition."

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Section 273. Section 7-2-2222, MCA, is amended to read:

"7-2-2222. Effect of election — resolution by county commissioners. (1) If, upon the canvass of the votes cast at *the* election, it appears that more than 50% of the votes cast *on the issue* are "For the new county of.... — Yes", the board of county commissioners shall, by a resolution entered upon its minutes, declare such territory duly formed and created as a county of this state, of the class to which the same *belongs* and under the name of.... County, and that the city or town receiving the highest number of votes cast at *the* election for county seat shall be the county seat of *the* county until removed in the manner provided by law and designate and declare the *individuals* receiving, respectively, the highest number of votes for the several offices to be filled at *the* election to be duly elected to *the* offices.

(2) However, if upon such canvass it appears that more than 50% of the votes cast *on the issue* at *the* election are "For the new county of.... — No", the board canvassing *the* vote as provided herein shall pass a resolution in accordance therewith, and thereupon the proceedings relating to division of such county or counties shall cease. No other proceedings in relation to any other division of *the* old county or counties shall be instituted for at least 2 years after such determination."

Section 274. Section 7-2-2223, MCA, is amended to read:

"7-2-2223. Procedure to complete creation of county. (1) The board of county commissioners shall forthwith cause a copy of its resolution, authorized by 7-2-2222(1) and duly certified, to be filed in the office of the secretary of state. Ninety days after the date of such filing:

(a) said new county shall be *considered* to be fully created;

(b) the organization thereof shall be *considered* completed; and

(c) *the* officers shall be entitled to enter immediately upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties as required by the laws of the state.

(2) (a) The *election administrator* of the *county* with which *the* petition was filed as herein provided must immediately make out and deliver to each of *the individuals* declared and designated to be elected a certificate of election authenticated by his signature and the seal of *the* county. The *individuals* elected members of the board and the county clerk shall, immediately upon receiving their certificates of election, assume the duties of their respective offices.

(b) All other officers take office 90 days after the filing of the resolution herein provided for with the secretary of state."

Section 275. Section 7-2-2302, MCA, is amended to read:

"7-2-2302. Role of county clerk of county created by legislature. (1) The *individual* appointed to the office of county clerk in the bill creating the county shall be notified in writing, by the county commissioners or some one of them, of the time and place of the meeting required

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by 7-2-2301. He must attend the meeting and act as the clerk thereof and keep a record of the proceedings.

(2) If no *individual* is appointed to the office of county clerk by the act creating the county, the commissioners shall at *the* meeting select some *individual* qualified to hold the office of county clerk to act as clerk of *the* meeting.

(3) The individual appointed county clerk shall also serve as election administrator."

Section 276. Section 7-2-2312, MCA, is amended to read:

"7-2-2312. Election on question of locating permanent county seat. (1) Except as provided in subsection (2), at *the* first general election after the creation of the county, it shall be the duty of the board of county commissioners and *election administrator* to have separate official ballots printed and distributed for the use of the electors at said election. The ballots shall be in the form and contain the same matter as the ballots provided for in 7-2-2316, and the provisions of 7-2-2316(4) and 7-2-2318 shall apply to and govern the manner of voting and of canvassing said ballots. The board shall declare the result of such election and the location of the permanent county seat, and said county seat shall be located in the manner and according to the provisions of 7-2-2318.

(2) (a) At any time within 6 months after the passage of an act creating a new county, a petition or petitions may be filed with the *election administrator* of such county asking the board to submit the question of the location of the permanent county seat to the electors of the county at a special election to be called and held in the manner provided in this part.

(b) Said petition or petitions must contain in the aggregate the names of at least 100 qualified electors whose names also appear as registered electors in some registration district established and existing in the territory embraced in the new county at the last general election held therein. The petition or petitions, when filed with the board, must also have certificates attached thereto from the *election administrator* of the county in which the *individual* or *individuals* signing the petition resided before the creation of the new county, certifying that the names of the *individuals* signing said petition or petitions appear in the registration books of his county containing the names of the electors registered in the last general election in the districts now embraced in the new county."

Section 277. Section 7-2-2313, MCA, is amended to read:

"7-2-2313. Procedure to hold special election. (1) Upon filing *the* petition or petitions, duly certified as provided in 7-2-2312, with the *election administrator* of the new county, he must immediately notify the chairman of the board of county commissioners who, upon receipt of such notice, must call a meeting of the board, to be held within 10 days after the filing of *the* petition, for the purpose of considering the same. If the board at such meeting finds that said petition conforms to the requirements of and is in accordance with the provisions of 7-2-2312, it shall at *the* meeting, by a resolution *entered in* its minutes, call a special election

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of the *registered* electors of said county for the purpose of voting upon the question of the location of the permanent county seat.

(2) *The* election shall be held on Tuesday and not less than 40 or more than 60 days after the date of calling the same. The board must issue an election proclamation containing a statement of the time of the election and the question to be submitted. A copy of this proclamation must be published in some newspaper printed in the county, if any, and posted at each place of election at least 10 days before the election."

Section 278. Section 7-2-2314, MCA, is amended to read:

"7-2-2314. Establishment of precincts and polling places — appointment of deputy registrars. (1) At the meeting of the board at which the special election is called for the purpose of locating the permanent county seat, the board shall, by resolution *entered in* its minutes, divide the county into *precincts* and establish polling *places* in the manner provided by law.

(2) It must also, at the same session of the board, appoint *deputy registrars* for the several *precincts* established by it, who must possess the qualifications required by law for *deputy registrars*."

Section 279. Section 7-2-2315, MCA, is amended to read:

"7-2-2315. Appointment of election judges. (1) At the same meeting of the board of county commissioners at which the special election for the location of the permanent county seat is called, the board shall appoint three judges of election for each precinct in the county, who shall act as the judges at *the* election. The judges appointed for *the* special election must qualify as required by the general election law.

(2) It shall be the duty of the *election administrator* to have printed and distributed to the *election* judges the necessary ballots, the form of which shall be as provided in 7-2-2316 and 7-2-2319, and also supply the judges with the necessary *supplies* required to hold such election in the manner provided by law."

Section 280. Section 7-2-2702, MCA, is amended to read:

"7-2-2702. Petition for abandonment of county. (1) A petition may be filed with the county clerk of a county asking that the question of abandoning and abolishing the organization and corporate existence of *the* county and attaching its territory to and making the same a part of some adjoining county be submitted to the qualified electors of *the* county at an election. *The* petition shall state the name of the adjoining county to which the territory of *the* county to be abandoned and abolished shall be attached and made a part.

(2) *The* petition shall be signed by not less than 35% of the qualified electors of the county whose names appear upon the registration records of such county, shall contain the post-office address and voting precinct of each *individual* signing *it*, and shall state the name and address of three *individuals* to whom notice of the insufficiency of the petition shall be sent in the event that the petition *does* not have the required number of signatures of *registered* electors signed thereto. No person, after signing

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any such petition, shall be allowed or permitted to withdraw his signature or name therefrom."

Section 281. Section 7-2-2703, MCA, is amended to read:

"7-2-2703. Processing of petition — certification to county commissioners. (1) It shall be the duty of the *election administrator*, within 30 days after the filing of *the* petition, to examine *it* and to ascertain and determine from the registration records of the county whether *the* petition is signed by the required number of *registered* electors. *The election administrator* may be authorized by the board of county commissioners to employ additional help in his office to assist him in the work of examining *the* petition, and *the* board shall provide for their compensation.

(2) When *the* examination is completed, *the election administrator* shall forthwith attach to *the* petition his certificate, properly dated and signed, showing the result of his examination. If *the* certificate shows that *the* petition is signed by the required number of *registered* electors, *the election administrator* shall immediately present *the* petition to the board if *the* board *is* then in session; otherwise, at its first regular meeting after the date of *the* certificate."

Section 282. Section 7-2-2704, MCA, is amended to read:

"7-2-2704. Hearing on petition by county commissioners — notice. (1) Whenever any such petition is presented to the board of county commissioners of a county with a certificate of the *election administrator* attached thereto and showing that *the* petition has been signed by not less than 35% of the *registered* electors of *the* county whose names appear upon the registration records of *the* county, as provided in 7-2-2702 and 7-2-2703, *the* board shall, immediately upon presentation of *the* petition, make and enter an order in its minutes fixing a day for considering and taking final action on *the* petition. The date for final action shall be not less than 30 or more than 35 days after the date when *the* order is made.

(2) The board shall cause a notice to be published in the official newspaper of the county to the effect that *the* petition has been presented to *the* board asking for the abandonment and abolishment of the county and that *the* board will meet at the time specified in *the* order for considering and taking final action on *the* petition, at which time any registered electors of the county interested therein may appear and be heard thereon. *The* notice shall be published once a week for 2 successive weeks immediately following the making of *the* order."

Section 283. Section 7-2-2706, MCA, is amended to read:

"7-2-2706. Processing of petition to amend proposed consolidation — certification to county commissioners. Whenever any petition is filed under 7-2-2705, the *election administrator* shall immediately examine the same and determine from the registration records of the county whether *the* petition has been signed by the required number of registered electors and shall attach thereto his certificate showing the total number of registered electors residing within the boundaries described in

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the petition and the number thereof whose names appear on said petition and shall deliver *the* petition, with *the* certificate attached, to the board of county commissioners when *the* board meets to consider and take final action on *the* petition for abandonment."

Section 284. Section 7-2-2708, MCA, is amended to read:

"7-2-2708. Form of resolution. The resolution authorized by 7-2-2707 shall be in substantially the following form:

Whereas, there has been filed with the *election administrator* of (name) county, Montana, a petition asking that the organization and corporate existence of *the* county be abandoned and abolished and its territory attached to and made a part of an adjoining county, the county of (name), Montana; and

Whereas, *the* petition has been presented to the board of county commissioners of (name) County, with a certificate of the *election administrator* of *the* county attached thereto showing that *the* petition has been signed by not less than 35% of the registered electors of *the* county; and

(If *a* petition for attaching any part or portion of the county, in case of abandonment, to an adjoining county or counties other than the county named in the petition for abandonment and found to have been signed by the required number of registered electors, insert the following for each petition):

Whereas, there has been filed a petition signed by not less than 50% of the registered electors residing within that part or portion of *the* county described as (give description as contained in petition), praying that the part or portion of *the* county within *the* boundaries be attached to and made a part of the county of (name of county given in petition) if *the* county *is* abandoned.

Now, therefore, be it resolved that if (name) County shall be abandoned and abolished, the territory embraced within its boundaries shall be attached to and become part of the following: (if all to be attached to one adjoining county so state, but if parts or portions to any other county or counties, then describe the part or portion to go to each adjoining county as well as to the county named in the petition for abandonment).

Be it further resolved that the county clerk of (name) County, Montana, make copies of this resolution, each with a copy of said petition for abandonment with the signatures omitted therefrom (and copies of petitions for attaching parts or portions of said county to adjoining county or counties other than the county named in the petition for abandonment, if any were filed and found sufficient, with signatures omitted), and certify to the same and affix the seal of the county thereto and transmit one of *the* copies to the governor of Montana and one of *the* copies to the clerk of each county to which any part of *the* county is to be attached if abandoned."

Section 285. Section 7-2-2709, MCA, is amended to read:

"7-2-2709. Special election on question of abandonment and consolidation. (1) (a) Upon receipt of a certified copy of the resolution

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provided for in 7-2-2707, the governor shall, within 10 days thereafter, issue his proclamation calling a special election in the county in which the petition referred to in *the* resolution was filed and in each county designated in *the* resolution as a county to which any of the territory of *the* county, if abandoned and abolished, shall be attached and made a part.

(b) *The* proclamation shall fix a day for holding *the* election in such counties, which shall be not less than 90 days or more than 120 days after the date of the governor's proclamation calling the same, provided that if a general election will be held in *the* counties *not less than 90 days or more than* 120 days after the date of such proclamation, the governor, in *the* proclamation, shall direct that *the* question be submitted to the *registered* electors of *the* counties at *the* general election. *The* proclamation shall be filed in the office of the secretary of state, and copies thereof shall be transmitted by the governor to the *election administrator* of each of the counties in which *the* election is to be held.

(2) At the election there shall be submitted:

(a) to the *registered* electors of the county in which *the* petition was filed, the question of whether or not *the* county shall be abandoned and abolished and its territory attached to and made a part of the county designated and named for *the* purpose in *the* petition; and

(b) to the *registered* electors of each county named and designated in *the* resolution as a county to which a part of the territory of the county proposed to be abandoned and abolished shall be attached and made a part if *the* county shall be so abandoned and abolished, the question of whether or not *the* part of the territory of *the* county, if abandoned and abolished, described in *the* resolution shall be attached to and become a part of *the* county."

Section 286. Section 7-2-2710, MCA, is amended to read:

"7-2-2710. Procedure to hold election. (1) The *election administrator* of each of *the* counties, after receiving a copy of *the* election proclamation, shall present *it* to the board of county commissioners if *the* board is then in session or, if not in session, then at the first meeting held *thereafter*. The board of county commissioners of each of *the* counties shall issue *the* proclamations and give *the* notices of election *which* are required by the general laws of this state when questions are to be submitted to the qualified electors of a county at an election. The proclamation and notices shall include a description of the boundaries of that part of the county proposed to be abandoned and attached to and made a part of such county if *the* county *is* abandoned.

(2) The *election administrator* of each of *the* counties shall give notice of the closing of the registration books and shall cause the same to be closed at the time and in the manner provided by the general registration and election laws of this state.

(3) *The* election shall be held, voted, counted, and returns made and canvassed in the manner provided by the general election laws of this state."

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Section 287. Section 7-2-2712, MCA, is amended to read:

"7-2-2712. Canvass of returns — proclamation of results. (1) The board of county commissioners of each county, acting as a canvassing board, must, within 10 days after the holding of *the* election, canvass the returns of *the* election. Within 5 days thereafter, the *election administrator* of each county must make and enter in the records of *the* board a statement of the vote in *the* county and transmit to the secretary of state, by registered or certified mail, an abstract thereof, which shall be marked "election returns".

(2) Within 10 days after receiving *the* abstracts from all counties in which *the* election was held and on notice from the secretary of state, the board of state canvassers shall meet and canvass, compute, and determine the vote. The secretary of state, as secretary of *the* board, must make and file in his office a statement *of it* and transmit a copy thereof to the governor.

(3) Upon receipt of *the* copy, the governor shall issue a proclamation declaring the result of *the* election and shall file a copy of *the* proclamation in the office of the secretary of state and transmit a copy of *the* proclamation to the county clerk of each of the counties in which such election was held. Each county clerk shall file the same in his office and present the same to the board of county commissioners of his county if *the* board is then in session; otherwise, at the first meeting of the board after the *copy* has been received by *the* clerk."

Section 288. Section 7-2-2726, MCA, is amended to read:

"7-2-2726. Status of printing contracts. (1) If the abandoned and abolished county *has* theretofore entered into a printing contract in accordance with the provisions of part 24 of chapter 5 and *the* contract *is* in full force and effect on the date when *the* county ceases to exist, all supplies and printing for the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is attached and made a part shall be divided by the board of county commissioners of *the* county between *the* contract and any similar existing contract entered into by the board in such manner as *the* board *considers* equitable and just to the holders of both such contracts until the contract entered into by the abandoned and abolished county *expires.*

(2) When a petition has been filed with the *election administrator* of a county for the abandonment and abolishment of *the* county in accordance with the provisions of 7-2-2702 and 7-2-2703, the board of county commissioners of *the* county shall not thereafter enter into any contract under the provisions of part 24 of chapter 5 until the time has expired when *the* petition may be presented to *the* board by the county clerk as provided in 7-2-2702 and 7-2-2703."

Section 289. Section 7-2-4101, MCA, is amended to read:

"7-2-4101. Petition to organize municipalities. (1) Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less than two-thirds of the *registered* electors but not more than 300 such electors,

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who are residents of the state and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated.

(2) (a) The petition must describe the limits of the proposed city or town and of the several wards thereof, each of which shall contain 150 or more *registered* electors and must not exceed 1 square mile for each 500 inhabitants resident therein.

(b) The petitioners must annex to the petition a map of the proposed territory to be incorporated and state the name of the city or town.

(3) The petition and map must be filed in the office of the *election administrator.*"

Section 290. Section 7-2-4104, MCA, is amended to read:

"7-2-4104. Election on question of organization. (1) After filing the petition and census, if there *is* the requisite number of inhabitants for the formation of a municipal corporation as required in 7-2-4103, the county commissioners must call an election of all the *registered* electors residing in the territory described in the petition.

(2) *The* election must be held at a convenient place within the territory described in the petition, to be designated by the board.

(3) The ballots used at the election must *contain the words* "For incorporation" or "Against incorporation", and all elections must be conducted as provided in Title 13."

Section 291. Section 7-2-4105, MCA, is amended to read:

"7-2-4105. Notice of election on question of organization. Notice of the election *shall be published as provided in [section 6].* The notice *shall* contain a description of the boundaries of the city or town."

Section 292. Section 7-2-4106, MCA, is amended to read:

"7-2-4106. First election for officers. (1) When the incorporation of a city or town is completed, the board of county commissioners must give notice for 30 days in a newspaper published within the limits of the city or town or, if none *is* published therein, by posting notices in six public places within the limits of the corporation of the time and place or places of holding the first election for offices of the corporation.

(2) At such election all the electors qualified by the general election laws of the state who have resided within the limits of the city or town for 6 months and within the limits of the ward for 30 days preceding the election are qualified electors and may choose officers for the city or town, to hold office as prescribed in 7-2-4107.

(3) The board must appoint *election* judges and canvass and declare the result thereof. The election must be conducted in the manner required by law for the election of county officers."

Section 293. Section 7-2-4601, MCA, is amended to read:

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"7-2-4601. Annexation by petition. (1) The boundaries of any incorporated city or town, whether heretofore or hereafter formed, may be altered and new territory or territories annexed thereto, incorporated and included therein, and made a part thereof upon proceedings being had and taken as provided in this part.

(2) The council or other legislative body of any such municipal corporation, upon receiving a written petition therefor containing a description of the new territory or territories asked to be annexed to *the* corporation and signed by not less than 33 ⅓% of the *registered* electors of the territory proposed to be annexed, must without delay submit to the electors of *the* municipal corporation and to the *registered* electors residing in the territory or territories proposed by *the* petition to be annexed to *the* corporation, the question whether *the* new territory or territories shall be annexed to, incorporated in, and made a part of *the* municipal corporation."

Section 294. Section 7-2-4602, MCA, is amended to read:

"7-2-4602. Election on question of annexation by petition. (1) The question of annexation may be submitted at the next general municipal election to be held in *the* municipal corporation or it may be submitted prior to *the* general election, either at a special election called for that purpose or at any other municipal election, except an election at which the submission of such question is prohibited by law.

(2) The election shall be conducted and the returns made in the same manner as other city or town elections. All election laws governing city and town elections shall govern, insofar as they are applicable.

(3) Whenever the question of annexation under this title is submitted at either a general city or town election or at a special election, separate ballots, shall be provided therefor."

Section 295. Section 7-2-4603, MCA, is amended to read:

"7-2-4603. Notice of election. (1) The council or legislative body *shall publish notice of the election as provided in [section 6].*

(2) Such notice shall distinctly state the proposition to be submitted, i.e., that it is proposed to annex to, incorporate in, and make a part of such municipal corporation the territory or territories sought to be annexed, specifically describing the boundaries thereof.

(3) *The* notice of election *shall* designate the date of *the* election."

Section 296. Section 7-2-4902, MCA, is amended to read:

"7-2-4902. Disincorporation by election. (1) Any city or town may be disincorporated in the manner hereafter provided.

(2) If the *registered* electors of a city or town equal in number to 20% of the number of *electors* voting at the last regular municipal election petition the board of county commissioners of the county where the city or town is situated to disincorporate the city or town, the board shall order, within 60 days, that a special election be held within the city or town on

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the question of disincorporating the city or town. The day for holding the election shall *be* not less than *60* days or more than *120* days after the board orders the election."

Section 297. Section 7-2-4903, MCA, is amended to read:

"7-2-4903. Notice of election on question of disincorporation. Notice of the election provided for in 7-2-4902 shall be published *as provided in [section 6].*"

Section 298. Section 7-2-4904, MCA, is amended to read:

"7-2-4904. Details of election on disincorporation. (1) The election shall be conducted in the same manner as a regular city or town election. The election returns *shall be* made and canvassed in the same manner as are general election returns.

(2) The form of the ballot *shall be*:

☐ FOR the disincorporation of.... (insert name of city or town)

☐ AGAINST the disincorporation of.... (insert name of city or town)."

Section 299. Section 7-5-132, MCA, is amended to read:

"7-5-132. Procedure to exercise right of initiative or referendum. (1) The electors may initiate and amend ordinances and require submission of existing ordinances to a vote of the people by petition. If submitted prior to the ordinance's effective date, a petition requesting a referendum on the ordinance shall delay the ordinance's effective date until the ordinance is ratified by the electors. A petition requesting a referendum on an emergency ordinance filed within 30 days of its effective date shall suspend the ordinance until ratified by the electors.

(2) The governing body may refer existing or proposed ordinances to a vote of the people by resolution.

(3) A petition or resolution for initiative or referendum shall:

(a) embrace only a single comprehensive subject;

(b) set out fully the ordinance sought by petitioners or, in the case of an amendment, set out fully the ordinance sought to be amended and the proposed amendment or, in the case of referendum, set out the ordinance sought to be repealed;

(c) be in the form prescribed in Title 13, chapter 27, except as specifically provided in this part; and

(d) contain the signatures of 15% of the *registered* electors of the local government."

Section 300. Section 7-5-136, MCA, is amended to read:

"7-5-136. Submission of question to electors. (1) Any ordinance proposed by petition or any amended ordinance proposed by petition or any referendum on an ordinance which is entitled to be submitted to the

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electors shall be voted on at the next regular election to be held in the local government unless:

(a) the petition asks that the question be submitted at a special election and is signed by at least 25% of the electors of the local government, in which case the governing body shall call a special election; or

(b) the governing body calls for a special election on the question.

(2) A special election may not be held sooner than 60 days after the adequacy of the petition is determined by the election administrator or the governing body orders a special election.

(3) If the adequacy of the petition is determined by the *election* administrator less than 45 days prior to the next regular election, the election shall be delayed until the following regular election unless a special election is called.

(4) Whenever a measure is ready for submission to the electors, the appropriate election *administrator* shall in writing notify the governing body and shall publish notice of the election and the ordinance which is to be proposed or amended. In the case of a referendum, the ordinance sought to be repealed shall be published.

(5) The question shall be placed on the ballot, giving the electors a choice between accepting or rejecting the proposal.

(6) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared unless otherwise stated in the proposal."

Section 301. Section 7-3-4334, MCA, is amended to read:

"7-3-4334. Procedure to abandon commission-manager form of government. (1) Any municipality which shall have operated for more than 2 years under the provisions of this part and part 44 may abandon *its* organization hereunder and accept the provisions of the general law of the state applicable to municipalities of its population.

(2) Upon the petition of the *registered* electors of such municipality *equal to 25% of the number* registered for the last preceding general election, a special election shall be called, at which the following proposition only shall be submitted:

"Shall the (city or town) of (name of city or town) abandon its organization under parts 43 and 44 of chapter 3 of Title 7 and become a (city or town) under the general law governing (cities or towns) of like population or, if formerly organized under special charter, resume said special charter?"

(3) If the majority of the votes cast at *the* special election *are* in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general laws of the state for municipalities of like population, and upon the qualification of *the* officers, *the* municipality shall become a municipality under *the* general law of the

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state, but *the* change shall not in any manner or degree affect the property, rights, or liabilities of any nature of *the* municipality but shall merely extend to each change in its form of government.

(4) The sufficiency of *the* petition shall be determined, the election ordered and conducted, and the results declared as provided for by the provisions of *Title 13* insofar as the provisions thereof are applicable. Whenever the form of government of a municipality is determined by a vote of the people under the provisions of this section, the same question *may* not be submitted again for a period of 2 years and any ordinance adopted by the vote of the people shall not be repealed or the same question submitted for a period of 2 years."

Section 302. Section 7-3-4341, MCA, is amended to read:

"7-3-4341. General provisions relating to elections. (1) Except as otherwise provided in this part and part 44, *all elections shall be conducted as provided in Title 13.*

(2) *Elected officials provided for in this part and part 44 shall be nominated and elected under the provisions of [sections 139 through 146].*

Section 303. Section 7-4-2611, MCA, is amended to read:

"7-4-2611. Role and duties of county clerk. (1) The county clerk of any county is also clerk of the county commissioners and ex officio recorder. Any duty imposed by law upon such officer, either as county clerk, clerk of the county commissioners, or recorder, shall be performed by the county clerk, and any official act performed or certified by the county clerk shall be as valid and effectual as if performed and certified to by him as clerk of the county commissioners or as recorder.

(2) The county clerk must:

(a) take charge of and safely keep or dispose of according to law all books, papers, maps, and records which may be filed or deposited in his office;

(b) record all the proceedings of the board;

(c) make full entries of all its resolutions and decisions on all questions concerning the raising of money for and the allowance of accounts against the county;

(d) record the vote of each member on any question upon which there is a division or at the request of any member present;

(e) sign all orders made and warrants issued by order of the board for the payment of money and certify the same to the county treasurer;

(f) record the reports of the county treasurer of the receipts and disbursements of the county;

(g) preserve and file all accounts acted upon by the board;

(h) preserve and file all petitions and applications for franchises and record the action of the board thereon;

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(i) record all orders levying taxes;

(j) designate upon every account allowed by the board the amount allowed and deliver to any person who may demand it a certified copy of any record in his office or any account on file therein;

(k) as often as a new township is organized or the boundaries of any township are altered, immediately make out and transmit to the secretary of state a certified statement of the names and boundaries and the boundaries of any township altered;

(l) keep such other records and books and perform such other duties as are prescribed by law or by rule or order of the board.

(3) A county clerk and recorder shall file, code, and cross-index all reports and statements filed as prescribed by the commissioner of campaign finances and practices.

(4) A county clerk and recorder shall make statements and other information filed with his office available for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed actual cost."

Section 304. Section 7-5-4322, MCA, is amended to read:

"7-5-4322. Election on question of granting franchise. (1) *Notice of the election shall be published as provided in [section 6].* The notice must state the time and place of holding the election, the character of any such franchise applied for, and the valuable consideration, if there is any, to be derived by the city.

(2) At such election the ballots must contain the words "For granting franchise" and "Against granting franchise", and in voting, the elector must make a cross (X) opposite the answer he intends to vote for. *The* election must be conducted and canvassed and the return made in the same manner as other city or town elections.

(3) If the majority of the votes cast at the election *are* "For granting franchise", the mayor and city council must thereupon grant the same by the passage and approval of a proper ordinance."

Section 305. Section 7-6-4434, MCA, is amended to read:

"7-6-4434. Notice of election on question of additional mill levy. Where the question of making such additional levy is so submitted, notice thereof shall be given *as provided for in [section 6].*"

Section 306. Section 7-6-4436, MCA, is amended to read:

"7-6-4436. Conduct of election. *The election will be conducted as provided by Title 13.*"

Section 307. Section 7-7-2223, MCA, is amended to read:

"7-7-2223. Petition and election required for issuance of certain bonds. (1) County bonds for any purpose other than those enumerated in 7-7-2221 and 7-7-2311 *may* not be issued unless authorized at a duly called special or general election at which the question of issuing such

bonds is submitted to the *registered* electors of the county and approved as provided in 7-7-2237.

(2) No bond election may be called unless the board of county commissioners receives a petition, delivered and certified by the *election administrator*, asking that such election be held and *the* question be submitted. The petition must be signed by at least 20% of the *registered* electors of the county."

Section 308. Section 7-7-2224, MCA, is amended to read:

"7-7-2224. Form and contents of petition. (1) Every petition for the calling of an election to vote upon the question of issuing county bonds shall plainly and clearly state the purpose or purposes for which the proposed bonds are to be issued and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two or more purposes may be combined in one petition if each purpose, with an estimate of the amount of bonds necessary to be issued therefor, is separately stated in the petition.

(2) *The petition shall be in the form provided in Title 13, chapter 27.*

Section 309. Section 7-7-2225, MCA, is amended to read:

"7-7-2225. Filing of petition with election administrator — certificate. (1) The completed petition shall be filed with the *election administrator*. The *election administrator* shall, within 15 days thereafter, carefully examine the petition and the county records showing the qualifications of the petitioners and attach a certificate, under his official signature and the seal of his office.

(2) The certificate shall set forth:

(a) the total number of *individuals* who are registered electors;

(b) which and how many of the *individuals* whose names are subscribed to the petiton possess all of the qualifications required of signers of such a petition;

(c) whether such qualified signers constitute more or less than 20% of the registered electors of the county."

Section 310. Section 7-7-2226, MCA, is amended to read:

"7-7-2226. Delivery of certified petition to board of county commissioners. (1) After completing the certificate required by 7-7-2225, the *election administrator* shall deliver the certified petition to the board of county commissioners.

(2) When *the* petition has been filed with the *election administrator* and he has found that it has a sufficient number of signers qualified to sign *it*, he shall place *it* before the board at its first meeting held after he has attached his certificate thereto."

Section 311. Section 7-7-2227, MCA, is amended to read:

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"7-7-2227. Examination of petition — resolution calling for election. (1) Upon delivery of the certified petition, the board shall carefully examine the petition and make such other investigation as it may *consider* necessary. If it is found that the petition is in proper form, bears the requisite number of signers of qualified petitioners, and is in all other respects sufficient, the board shall pass and adopt a resolution.

(2) The resolution shall:

(a) recite the essential facts in regard to the petition and its filing and presentation and the purpose or purposes for which the bonds are proposed to be issued;

(b) fix the exact amount of bonds proposed to be issued for each purpose, which amount may be less than but must not exceed the amount set forth in the petition;

(c) determine the number of years through which such bonds are to be paid, not exceeding the limitations fixed in 7-7-2206; and

(d) make provision for having *the* question submitted to the *registered* electors of the county at the next general election or at a special election which the board may call for *that* purpose."

Section 312. Section 7-7-2228, MCA, is amended to read:

"7-7-2228. Time of holding election on question of issuing bonds. The bond election required by 7-7-2223 may not be held any sooner than *90* days after receipt of the petition by the county commissioners and must be held no later than the first general election following the *90*-day period."

Section 313. Section 7-7-2229, MCA, is amended to read:

"7-7-2229. Notice of election. (1) Whether such election is held at the general election or at a special election, separate notice shall be given thereof.

(2) (a) *The* notice shall state:

(i) the date when *the* election will be held;

(ii) the hours between which the polls will be open;

(iii) the amount of bonds proposed to be issued;

(iv) the purpose of the issue;

(v) the term of years through which the bonds are to be paid; and

(vi) such other information regarding the holding of the election and the bonds proposed to be issued as the board may *consider* proper.

(b) If bonds are to be issued for two or more purposes, each purpose and the amount therefor must be separately stated.

(3) *The* notice *shall be published as provided in [section 6].*"

Section 314. Section 7-7-2237, MCA, is amended to read:

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"7-7-2237. Percentage of electors required to authorize bond issue. (1) Whenever the question of issuing county bonds for any purpose is submitted to the *registered* electors of a county at either a general or special election, not less than 40% of the *registered* electors entitled to vote on *the* question must vote thereon; otherwise, *the* proposition shall be *considered* to have been rejected.

(2) If 40% or more of *the registered* electors do vote on *the* question at *the* election and a majority of *the* votes shall be cast in favor of *the* proposition, then *the* proposition shall be *considered* to have been approved and adopted."

Section 315. Section 7-7-4221, MCA, is amended to read:

"7-7-4221. Election on question of incurring indebtedness — exception. (1) Except as provided in subsection (2), whenever the council or commission of any city or town having a corporate existence in this state or hereafter organized under any of the laws thereof shall *consider* it necessary to issue bonds pledging the general credit of the municipality for any purpose whatever under its powers as set forth in any statute or statutes of this state or amendments thereto, the question of issuing such bonds shall first be submitted to the *registered* electors of *the* city or town in the manner hereinafter set forth.

(2) It shall not be necessary to submit to *the* electors the question of issuing refunding bonds to refund bonds theretofore issued and then outstanding or the question of issuing revenue bonds not pledging the general credit of the municipality under any laws of this state.

(3) No bonds shall be issued by a city or town pledging the general credit of the municipality for any purpose except to fund or refund warrants or bonds issued prior to and outstanding on July 1, 1942, as authorized in this section, unless authorized at a duly called special or general election at which the question of issuing such bonds is submitted to the *registered* electors of the city or town and approved as hereinafter provided."

Section 316. Section 7-7-4226, MCA, is amended to read:

"7-7-4226. Resolution to submit question of issuing bond to voters. (1) When the council or commission of any city or town *considers* it necessary to issue bonds pledging the general credit of the municipality pursuant to any statute of this state, the council shall pass and adopt a resolution.

(2) The resolution shall:

(a) recite the purpose or purposes for which it is proposed to issue such bond;

(b) fix the amount of bonds to be issued for each purpose;

(c) determine the number of years through which *the* bonds are to be paid, not exceeding the limits fixed in 7-7-4201; and

(d) unless *the* bonds are revenue bonds not pledging the general credit of the municipality, make such provisions as are necessary for having the

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question submitted to the *registered* electors of the city or town at the next general city or town election or at a special election which the council or commission may call for *the* purpose.

(3) In cases where the bond issuance is proposed by petition, the council or commission shall, before submitting the measure to the electorate, pass a resolution containing the information herein required and, in addition thereto, setting forth the essential facts in regard to the filing and presentation of the petition."

Section 317. Section 7-7-4227, MCA, is amended to read:

"7-7-4227. Notice of election. (1) Whether such election is held at the general city or town election or at a special election, separate notice shall be given thereof.

(2) (a) *The* notice shall state:

(i) the date when *the* election will be held;

(ii) the hours between which the polls will be open;

(iii) the amount of bonds proposed to be issued;

(iv) the purpose thereof;

(v) the term of years through which the bonds will be paid; and

(vi) such other information regarding the election and the proposed bonds as the board may *consider* proper.

(b) If the bonds proposed to be issued are for two or more purposes, each purpose and the amount thereof must be separately stated.

(3) *The* notice *shall be*:

(a) posted in each voting precinct in the city or town at least 10 days prior to the date for holding *the* election; and

(b) published *as provided in [section 6].*"

Section 318. Section 7-7-4235, MCA, is amended to read:

"7-7-4235. Percentage of electors required to authorize the issuing of bonds. (1) Wherever the question of issuing bonds for any purpose is submitted to the *registered* electors of a city or town at either a general or special election, not less than 40% of the *registered* electors entitled to vote on *the* proposition or question must vote thereon; otherwise, *the* proposition shall be *considered* to have been rejected.

(2) If 40% or more of *the registered* electors do vote on *the* proposition or question at *the* election and a majority of *the* votes *are* cast in favor of *the* question or proposition, then *the* proposition or question shall be *considered* to have been adopted and approved."

Section 319. Section 7-13-2210, MCA, is amended to read:

"7-13-2210. Notice of election. (1) The notice of election required by 7-13-2208 shall describe the boundaries established and shall state the

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proposed name of the proposed incorporation (which name shall contain the words ".... *County* water and/or sewer district").

(2) This notice shall be published *as provided in [section 6].*"

Section 320. Section 7-13-2211, MCA, is amended to read:

"7-13-2211. Conduct of election on question of creating district. (1) The election on the question of creating the district shall be conducted, the vote canvassed, and the result declared in the same manner as provided by *Title 13* in respect to general elections, so far as *it is* applicable, except as otherwise provided in this part and part 23.

(2) At *the* election the proposition to be submitted shall be: "Shall the proposition to organize .... *County* water and/or sewer district under parts 22 and 23 of chapter 13 of Title 7 be adopted?""

Section 321. Section 7-13-2212, MCA, is amended to read:

"7-13-2212. Qualifications to vote on question of creating district. (1) Except as provided in subsection (2), no *individual* shall be entitled to vote at any election under the provisions of this part and part 23 unless such *individual* possesses all the qualifications required of *electors* under the general election laws of the state and is a resident of the proposed district or the owner of taxable real property located within the county in which he proposes to vote and situated within the boundaries of the proposed district.

(2) *An individual* who is the owner of such real property need not possess the qualifications required of *an elector* in 13-1-111(1)(c), provided that such *elector is* qualified if he is registered to vote in any state of the United States *and files proof of such registration with the election administrator.*"

Section 322. Section 7-13-2231, MCA, is amended to read:

"7-13-2231. District to be governed by board of directors. (1) At an election to be held within *a* district under the provisions of this part and part 23 and the laws governing general elections not inconsistent therewith, the district thus organized shall proceed, within *120* days after its formation, to the election of a board of directors.

(2) The board of directors *is* the governing body of such district."

Section 323. Section 7-13-2234, MCA, is amended to read:

"7-13-2234. Term of office. (1) All directors elected or appointed shall hold office until the election and qualification or appointment and qualification of their successors.

(2) The term of office of directors elected under the provisions of this part and part 23 shall be 4 years from and after the date of their election, provided that the directors first elected after *formation of a new district* shall hold office only until the election and qualification of their successors *at the first regular election which shall be held in November of the next odd-numbered year.*

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(3) The term of office of directors appointed by *the* mayor or mayors or by *the* board of commissioners shall be 6 years from and after the date of appointment. Directors to be first appointed under the provisions of this part and part 23 shall be appointed within 90 days after the formation of the district."

Section 324. Section 7-13-2236, MCA, is amended to read:

"7-13-2236. General district election. The election of directors of *the* district shall be *held every 4 years with the election for local government officials provided for in 13-1-104(2)."*

Section 325. Section 7-13-2238, MCA, is amended to read:

"7-13-2238. Form of petition. (1) The petition of nomination shall consist of not less than five individual certificates, which shall read substantially as follows:

PETITION OF NOMINATION
Individual Certificate

State of....
County of....

Prect. No.....

I, the undersigned, certify that I do hereby join in a petition for the nomination of...., whose residence is at...., for the office of.... of the.... district, to be voted for at the district election to be held in the.... district on the.... day of...., 19..; and I further certify that I am a *registered* elector and an owner or lessee of real property within said district or a resident therein and am not at this time a signer of any other petition nominating any other candidate for the above-named office or, in case there are several places to be filled in the above-named office, that I have not signed more petitions than there are places to be filled in the above-named office; that my residence is at No..... street,...., and that my occupation is....

(Signed).....

State of Montana
County of.....

...., being duly sworn, deposes and says that he is the *individual* who signed the foregoing certificate and that the statements therein are true and correct.

(Signed).....

Subscribed and sworn to before me this.... day of....., 19...

.....
Notary Public

The petition of nomination of which this certificate forms a part shall, if found insufficient, be returned to...., at...., Montana.

(2) It shall be the duty of the *election administrator* to furnish, upon application, a reasonable number of forms of individual certificates of the above character. If the district lies in more than one county, the *election*

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administrator whose county contains the largest percentage of the territory of *the* district shall fulfill this function."

Section 326. Section 7-13-2239, MCA, is amended to read:

"7-13-2239. Details relating to petition certificates. (1) Each certificate must be a separate paper.

(2) All certificates must be of uniform size as determined by the *election administrator.*

(3) Each certificate must contain the name of one signer thereto and no more. Each certificate shall contain the name of one candidate and no more.

(4) Each certificate shall contain the name and address of the person to whom the petition is to be returned in case *the* petition is found insufficient."

Section 327. Section 7-13-2240, MCA, is amended to read:

"7-13-2240. Qualifications to sign petition. (1) Each signer must be a *registered* elector owning real property or residing within *the* district.

(2) *No* signer *may* at the time of signing a certificate have his name signed to any other certificate for any other candidate for the same office or, in case there are several places to be filled in the same office, signed to more certificates for candidates for that office than there are places to be filled in *the* office. In case an elector has signed two or more conflicting certificates, all such certificates shall be rejected.

(3) Each signer must verify his certificate and make oath that the same is true before a notary public."

Section 328. Section 7-13-2241, MCA, is amended to read:

"7-13-2241. Presentation of petition of nomination. (1) A petition of nomination, consisting of not less than five individual certificates for any one candidate, may be presented to the *election administrator* not earlier than *65* days or later than *50* days before the election. The *election administrator* shall endorse thereon the date upon which the petition was presented to him.

(2) If the district lies in more than one county, *the* petition for nomination shall be presented to the *election administrator* whose county contains the largest percentage of the territory of *the* district and *the election administrator* shall fulfill all duties assigned to *election administrators* in elections under this part and part 23."

Section 329. Section 7-13-2242, MCA, is amended to read:

"7-13-2242. Examination of petition. (1) When a petition of nomination is presented for filing to the *election administrator*, he shall examine the same and ascertain whether or not it conforms to the provisions of 7-13-2237 through 7-13-2247. If found not to conform thereto, he shall in writing designate on *the* petition the defect or omission or reason why *the* petition cannot be filed and shall return the petition to the *individual*

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named as the *individual* to whom *it* may be returned in accordance with 7-13-2240.

(2) The petition may then be amended and again presented to the *election administrator* as in the first instance *but in no case may a petition be presented later than 50 days before the election.* The *election administrator* shall proceed to examine the petition as hereinbefore provided."

Section 330. Section 7-13-2243, MCA, is amended to read:

"7-13-2243. Assistance for election administrator. If necessary, the board of commissioners shall provide extra help to enable the *election administrator* to perform satisfactorily and promptly the duties imposed by 7-13-2235 through 7-13-2253."

Section 331. Section 7-13-2244, MCA, is amended to read:

"7-13-2244. Filing of petitions. (1) If either the original or amended petition of nomination *is* found sufficiently signed as hereinbefore provided, the *election administrator* shall file *it.*

(2) When a petition of nomination *has* been filed by the *election administrator*, it *may* not be withdrawn or added to, and no signatures *may* be revoked thereafter."

Section 332. Section 7-13-2246, MCA, is amended to read:

"7-13-2246. Withdrawal of candidacy. (1) Any *individual* whose name has been presented under 7-13-2235 through 7-13-2248 as a candidate may, not later than *30* days before the day of election, cause his name to be withdrawn from nomination by filing with the *election administrator* a request therefor in writing, and no name withdrawn *may* be printed upon the ballot.

(2) If, upon such withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions therefor not later than *30* days prior to *the* election."

Section 333. Section 7-13-2261, MCA, is amended to read:

"7-13-2261. Recall of officers. Every incumbent of an elective office, whether elected by popular vote for a full term or elected by the board of directors to fill a vacancy or appointed by a mayor or board of commissioners for a full term, is subject to recall by the *electors* of any district organized under the provisions of this part and part 23 in accordance with *Title 2, chapter 16, part 6.*"

Section 334. Section 7-13-2323, MCA, is amended to read:

"7-13-2323. Election on question of incurring bonded indebtedness. The board of directors shall fix a date upon which an election shall be held for the purpose of authorizing *the* bonded indebtedness to be incurred."

Section 335. Section 7-13-2324, MCA, is amended to read:

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"**7-13-2324. Notice of election on incurring bonded indebtedness.** (1) *The* board of directors shall give notice of the holding of *the* election. The notice shall contain the resolution adopted by the board *of directors* of the district, boundaries of voting precincts, which shall include only the lands to be benefited as stated in *the* resolution, *and* the location of polling places.

(2) *The* notice shall be published *as provided in [section 6].*"

Section 336. Section 7-13-2325, MCA, is amended to read:

"**7-13-2325. Qualifications to vote on question of incurring bonded indebtedness.** Every *registered* elector owning or residing upon real property within such voting precincts, but no others, shall be entitled to vote at *the* election."

Section 337. Section 7-13-2328, MCA, is amended to read:

"**7-13-2328. Sufficient vote required to issue bonds.** If from such returns it appears that 60% or more of the votes cast *on the question* at such election were in favor of and assented to the incurring of such indebtedness, then the board of directors may by resolution, at such time or times as it *considers* proper, provide for the form and execution of *the* bonds and for the issuance of any part thereof."

Section 338. Section 7-14-203, MCA, is amended to read:

"**7-14-203. Petition to create urban transportation district.** Proceedings for creation of a transportation district may be initiated by a petition signed by not less than 20% of the *registered* electors who reside within the proposed district."

Section 339. Section 7-14-204, MCA, is amended to read:

"**7-14-204. Details relating to petition.** The petition shall include a map showing the limits of the proposed district *and shall be in the form provided in Title 13, chapter 27.*"

Section 340. Section 7-14-205, MCA, is amended to read:

"**7-14-205. Petition to be filed with election administrator certificate.** (1) The complete petition shall be filed with the *election administrator.*

(2) The *election administrator* shall, within 30 days thereafter, carefully examine the *petition* and attach to it a certificate under his official signature and the seal of his office. The certificate shall set forth:

(a) the total number of *individuals* who are registered electors within the proposed transportation district; and

(b) which and how many of the *individuals* whose names are on the petitions are qualified to sign *the* petition."

Section 341. Section 7-14-206, MCA, is amended to read:

"**7-14-206. Effect of insufficient number of signatures.** If the petition is found to contain less than 20% of the signatures of the *registered* electors of the transportation district, the petition shall be declared void."

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Section 342. Section 7-14-211, MCA, is amended to read:

"7-14-211. Conduct of election on question of creating district. (1) The election shall be held in all respects, as nearly as practicable , in conformity with the general election laws.

(2) At the election, the ballots shall contain the words:

☐ Transportation *district* — YES

☐ Transportation *district* — NO"

Section 343. Section 7-14-214, MCA, is amended to read:

"7-14-214. Election of members of transportation board. (1) Any *registered* elector in the district may file a petition of candidacy with the *election administrator* of the county where the district is located. No filing fee shall be required. All candidates shall file a nonpartisan petition for candidacy *as provided in [section 141].*

(2) The names of the six candidates receiving the highest number of votes in the primary election shall be placed on the ballots in the county general election."

Section 344. Section 7-15-4408, MCA, is amended to read:

"7-15-4408. Voter approval required to create housing authority. The ordinance authorized by 7-15-4406(2) shall not be effective until it has been approved by a majority vote of the *registered* electors within the city limits voting at either a special or general election."

Section 345. Section 7-34-2110, MCA, is amended to read:

"7-34-2110. Resolution calling for election. (1) The board of county commissioners in its resolution of reference may make such changes in the boundaries of the proposed district as it *considers* advisable, without including any additional lands not described in the petition, and it shall call an election upon the question of the creation of the district.

(2) The board must designate in its resolution whether a special election shall be held or whether the matter shall be determined at the next general election. If a special election is ordered, the board must specify in its order the date for such election."

Section 346. Section 7-34-2112, MCA, is amended to read:

"7-34-2112. Conduct of election on question of creating district. (1) The election shall be held in all respects, as nearly as practicable, in conformity with the general election laws.

(2) At *the* election, the ballots must contain the words "Hospital *district — Yes*" and "Hospital *district — No*"."

Section 347. Section 7-34-2116, MCA, is amended to read:

"7-34-2116. Election of first board of trustees. (1) The first board of trustees shall be elected at the same election held upon the creation of the district, subject to the creation thereof, and shall qualify upon the organization of the district if created.

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(2) The trustees may be nominated and have their names appear upon the ballots *as provided in [section 141].*"

Section 348. Section 7-34-2117, MCA, is amended to read:

"**7-34-2117. Procedure for the conduct of election for trustees.** (1) All elections and nominations for election of trustees following the election of the first board of trustees shall be conducted *at the time and in the manner provided by Title 13.*

(2) If there is no nomination petition filed, it shall not be necessary to hold an election but the board of county commissioners shall appoint a trustee to fill the term, the term to be the same as if the trustee were elected."

Section 349. Section 7-34-2414, MCA, is amended to read:

"**7-34-2414. Election required on question of issuance of bonds.** (1) No bonds may be issued by any county until the question of approval of the issuance of such bonds has been submitted to the *registered* electors of the county at a general election or a special election called for that purpose by the governing body of the county and the majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election shall be governed, to the extent applicable, by 7-7-2229 through 7-7-2231, 7-7-2233, and 7-7-2234.

(2) If a majority of the electors voting thereon vote against the issuance of *the* bonds, the county shall have no authority to issue *the* bonds under 7-34-2411 through 7-34-2418."

Section 350. Section 7-35-2106, MCA, is amended to read:

"**7-35-2106. Election details.** (1) In its order the board must designate whether a special election shall be held or whether the matter shall be determined at the next general election. If a special election is ordered, the board must in its order specify the time.

(2) The election shall be held in all respects, as nearly as practicable, in conformity with the general election laws.

(3) At such election, the ballots must contain the words "Cemetery *district* — Yes" and "Cemetery *district* — No"."

Section 351. Section 20-3-106, MCA, is amended to read:

"**20-3-106. Supervision of schools — powers and duties.** The superintendent of public instruction has the general supervision of the public schools and districts of the state, and he shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment and give notice of teacher certification suspension or revocation proceedings to be conducted by the board of public education in accordance with the provisions of the teacher certification part of this title;

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(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) serve on the teachers' retirement board in accordance with the provisions of 2-15-1010;

(5) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311;

(6) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(7) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(8) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-505;

(9) establish a system of communication for calculating joint district revenues in accordance with the provisions of 20-9-151;

(10) approve or disapprove the adoption of a district's emergency budget resolution under the conditions prescribed in 20-9-163 and publish rules for an application for additional state aid for an emergency budget in accordance with the approval and disbursement provisions of 20-9-166;

(11) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(12) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(5) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(13) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(14) distribute state equalization aid in support of the foundation program in accordance with the provisions of 20-9-342, 20-9-346, and 20-9-347;

(15) estimate the statewide equalization level for the foundation program in accordance with the provisions of 20-9-348;

(16) distribute state impact aid in accordance with the provisions of 20-9-304;

(17) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(18) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705;

(19) request, accept, deposit, and expend federal moneys in accordance with the provisions of 20-9-603;

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(20) authorize the use of federal moneys for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(21) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(22) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of 20-1-303 and 20-1-304;

(23) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with such standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(24) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(25) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(26) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(27) administer and perform the duties as the executive officer of the board of public education for vocational education in accordance with the provisions of 20-7-302;

(28) consider applications for the designation of a postsecondary vocational-technical center in accordance with the provisions of 20-7-311;

(29) establish a fund for the handling of postsecondary vocational-technical center fees in accordance with the provisions of 20-7-333;

(30) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(31) administer the traffic education program in accordance with the provisions of 20-7-502;

(32) administer the school food services program in accordance with the provisions of 20-10-201, 20-10-202, and 20-10-203;

(33) review school building plans and specifications in accordance with the provisions of 20-6-622;

(34) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408; and

(35) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

Section 352. Section 20-3-306, MCA, is amended to read:

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"20-3-306. Conduct of election. (1) The trustees of each district shall call a trustee election on the regular school election day of each school fiscal year under the provisions of 20-20-201, except as provided in 20-3-344. The trustees shall call and conduct the trustee election in the manner prescribed in this title for school elections *and Title 13.* Any elector qualified to vote under the provisions of 20-20-301 may vote at a trustee election.

(2) The trustee election ballots shall be substantially in the following form:

OFFICIAL BALLOT
SCHOOL TRUSTEE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the name of the candidate for whom you wish to vote.

Vote for (indicate number to be elected) for a 3-year term:

☐ (List the names of the candidates for a 3-year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a 2-year term:

☐ (List the names of the candidates for a 2-year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a 1-year term:

☐ (List the names of the candidates for a 1-year term with a vacant square in front of each name.)"

Section 353. Section 20-3-304, MCA, is amended to read:

"20-3-304. Annual election. In each district an election of trustees shall be conducted annually on the regular school election day, the first Tuesday of April. Election of trustees shall comply with the election provisions of *Title 13 and* this title."

Section 354. Section 20-9-424, MCA, is amended to read:

"20-9-424. Validation of petition — election administrator's certificate. (1) The petitioners for a school district bond election shall submit their petition to the county *election administrator* of the county where the school district is located for validation of the signatures on the petition. The county *election administrator* shall examine the petition and attach or endorse thereon a certificate which shall state:

(a) the total number of electors of the school district who are, at the time, qualified to vote under the provisions of 20-20-301;

(b) which and how many of the *individuals* whose names are subscribed to the petition possess the qualifications to vote on a bond proposition; and

(c) whether the number of qualified signers established in subsection (1)(b) is more or less than 20% of the total number of *registered* electors established in subsection (1)(a).

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(2) After completing the examination, the county *election administrator* shall immediately send the petition and his certificate to the school district. The county *election administrator* shall not receive compensation for the examination of school district bond petitions."

Section 355. Section 20-20-102, MCA, is amended to read:

"20-20-102. Precedence of school election provisions. *Except as otherwise provided in this title, school elections shall be conducted and canvassed and the results shall be returned in the same manner as provided for general elections in Title 13.* Should there be a conflict between the requirements of Title 13 and the provisions of this title regulating school elections, the provisions of this title shall govern. *The superintendent of public instruction may make any necessary rules to clarify Title 13 provisions for use in school elections.*"

Section 356. Section 20-20-104, MCA, is amended to read:

"20-20-104. Forms. The forms necessary for school district elections *shall be the same as those prescribed by law or the secretary of state. The superintendent of public instruction may issue prescribed forms for school elections with any necessary revisions of prescribed or statutory forms.*"

Section 357. Section 20-20-106, MCA, is amended to read:

"20-20-106. Poll hours. (1) The polls for any school election in any district shall open not later than 12 noon. The trustees may order the polls to open earlier, but no earlier than 8 a.m.

(2) If the school election is held on the same day as a general, primary, *or special election for another political subdivision, the polls shall be opened and closed at the times required for that* election.

(3) Once opened, the polls shall be kept open continuously until 8 p.m., except that whenever all the registered electors at any poll have voted, the poll shall be closed immediately."

Section 358. Section 20-20-201, MCA, is amended to read:

"20-20-201. Calling of school election. (1) At least *40* days before any school election, the trustees of any district shall call such school election by resolution, stating the date and purpose of such election, and *shall* conduct it in accordance with the procedures required by law, when:

(a) an election must be held on the regular school election day;

(b) in their discretion, *the* trustees order an election for a purpose authorized by law;

(c) the county superintendent orders an election in accordance with the law authorizing such an order;

(d) the board of public education orders an election in accordance with the law authorizing such an order;

(e) the county commissioners order an election in accordance with the law authorizing such an order;

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(f) the board of trustees of a community college district orders an election in accordance with the law authorizing such an order (in which case the community college district shall bear its share of the cost of such election); or

(g) a school election is required by law under any other circumstances.

(2) The resolution calling any school election shall be transmitted to the county *election administrator no later than 35 days before the election* in order to enable him to close the registration and prepare the lists of registered electors as required by school election laws."

Section 359. Section 20-20-203, MCA, is amended to read:

"20-20-203. Resolution for poll hours, polling places, and judges. (1) At the trustee meeting when a school election is called, the trustees shall:

(a) *except as provided in 20-20-106(2),* establish the time at which the polls are to open if in their discretion they determine that the polls shall be open before 12 noon;

(b) establish the polling places for such election, *using the established polling places for general elections within the district wherever possible;*

(c) appoint, from among the qualified electors of the district, *at least* three judges for each polling place for such election and notify each judge of such appointment not less than 10 days before the election.

(2) There shall be one polling place in each district unless the trustees establish additional polling places. If more than one polling place is established, the trustees shall define the boundaries for each polling place, and such trustee-defined polling place boundaries shall be coterminous with county precinct boundaries existing within a district. If the site of a polling place is changed from the polling place site used for the last preceding school election, special reference to the changed site of the polling place shall be included in the notice for such election."

Section 360. 20-20-204, MCA, is amended to read:

"20-20-204. Election notice. (1) When the trustees of any district call a school election, they shall give notice of the election not less than 20 days or more than 30 days before the day of the election by posting notices in three public places in the district, provided that in incorporated cities and towns at least one notice shall be posted at a public place in each ward *or precinct*. Whenever, in the judgment of the trustees, the best interest of the district will be served by the supplemental publication of the school election notice in a newspaper or by a radio or television broadcast, the trustees may cause such notification to be made.

(2) The notice of a school election, unless otherwise required by law, shall specify:

(a) the date and polling places of the election;

(b) the hours the polling places will be open;

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(c) each proposition to be considered by the electorate;

(d) if there are trustees to be elected, the number of positions subject to election and the length of term of each position; *and*

(e) where and how absentee ballots may be obtained.

(3) If more than one proposition is to be considered at the same school election, each proposition *must* be set apart and separately identified in the same notice or published in separate notices."

Section 361. Section 20-20-301, MCA, is amended to read:

"20-20-301. Qualifications of elector. *An individual* is entitled to vote at school elections if he has *the* qualifications *set forth in 13-1-111 and is a resident of the school district.*"

Section 362. Section 20-20-312, MCA, is amended to read:

"20-20-312. Listing of registered electors. After closing registration, the county *election administrator* shall prepare a list of registered electors for each polling place established by the trustees. The list for each polling place shall be prepared in the format of a precinct register book."

Section 363. Section 20-20-313, MCA, is amended to read:

"20-20-313. Delivery and charge for lists of registered electors. Before the day of the election, the *election administrator* shall deliver a certified copy of the lists of registered electors for each polling place to the district. The district shall deliver them to the election judges prior to the opening of the polls. *The district shall reimburse the county for the actual costs of preparing the lists of registered electors.*"

Section 364. Section 20-20-401, MCA, is amended to read:

"20-20-401. Trustees' election duties — ballot certification. *(1)* The trustees are the general supervisors of school elections.

(2) Not less than 15 days before an election, the clerk of the district shall prepare a certified list of the names of all candidates entitled to be on the ballot and the official wording for each ballot issue. The clerk shall arrange for printing the ballots. Names of candidates on school election ballots need not be rotated.

(3) The trustees are authorized to and shall administer oaths to election judges.

(4) Before the opening of the polls, the trustees shall cause each polling place to be supplied with *the ballots and supplies necessary to conduct the election.*"

Section 365. Section 20-20-411, MCA, is amended to read:

"20-20-411. Conduct of election. Election judges shall conduct school elections in a manner that ensures a fair and unbiased determination of the matters put before the electorate and see that each elector has an adequate opportunity to cast his vote."

Section 366. Section 20-20-415, MCA, is amended to read:

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"20-20-415. Trustees to canvass votes. At the first regular or special meeting of the trustees conducted after the receipt of the certified tally sheets of any school election from all the polls of the district, the trustees shall canvass the vote."

Section 367. Section 20-20-416, MCA, is amended to read:

"20-20-416. Certificate of election. After the *canvass* of the total votes cast, the trustees shall issue a certificate of election. In the case of a trustee election, the certificate shall be issued to the elected trustee and the county superintendent designating the term of the trustee position to which he has been elected. In the case of an election on a proposition, the trustees shall issue a certificate specifying the outcome of the election. The certificate shall be issued to *the* official or public body which ordered the election within 15 days after the election. When the election has been ordered by resolution of the trustees, the canvassed results shall be published immediately in a newspaper that will give notice to the largest number of people of the district."

Section 368. Section 20-20-421, MCA, is amended to read:

"20-20-421. Voting machines and electronic voting systems. Whenever voting machines or electronic voting systems are available to a district, such voting devices may be used for a school election. Any district that uses a voting machine or an electronic voting system shall do so in accordance with the provisions of chapters 17 or 18 of Title 13. In construing the provisions of those chapters, the "county *governing body*" and the "*election administrator*" shall, for the purposes of this section, be considered to refer to trustees, and "county" shall be considered to refer to district."

Section 369. Section 76-15-303, MCA, is amended to read:

"76-15-303. General election. (1) All qualified electors within the district are eligible to vote in the election.

(2) The three candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district.

(3) In the general election, the names of all *individuals* nominated by petition (if six or fewer) or by election shall be printed, arranged in a rotating order of the surnames, as provided under 13-12-205, upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three names to indicate the *elector's* preference.

(4) The *election administrator* in each county shall prepare suitable nonpartisan ballots *or place the names of candidates on the regular general election ballot in the same manner as other nonpartisan candidates* for the election of supervisors, which ballots shall be delivered to the election judges in those precincts which contain *registered electors* prior to each general election and each primary election in which more than four candidates are nominated. The election judges and other election officials in such precincts shall submit such ballots to qualified electors, conduct the election, and tabulate the results of such election in the manner provided *in Title 13.*"

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Section 370. Section 85-7-1702, MCA, is amended to read:

"85-7-1702. Regular election — term of office. The regular election for commissioners in each district shall be held annually *in accordance with 13-1-104,* and within 40 days following their election the commissioners shall meet and organize as a board by electing a president from their number and a secretary, who may or may not be a commissioner, and who shall each hold office during the pleasure of the board. The term of office of each commissioner shall begin on the date of the organizational meeting after the regular election and shall continue for 3 years and until the election and qualification of his successor. Commissioners are elected by the electors of the entire district."

Section 371. Section 85-7-1710, MCA, is amended to read:

"85-7-1710. Qualification of electors and nature of voting rights. (1) At all elections held under the provisions of this part, except as otherwise expressly provided, the following holders of title or evidence of title to lands within the district, herein designated electors, are entitled to vote:

(a) all *individuals* having the qualifications of electors under the constitution and general and school laws of the state;

(b) guardians, executors, administrators, and trustees residing in the state;

(c) domestic corporations, by their duly authorized agents.

(2) In all elections held under this part, each elector is permitted to cast one vote for each 40 acres of irrigable land or major fraction thereof owned by the elector within the district, irrespective of the location of the irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within congressional subdivisions, platted lots or blocks (except as hereinafter provided for), election precincts, or district divisions, but any elector owning any less than 40 acres of irrigable land is entitled to one vote. Until the irrigable area under the proposed plan of reclamation is determined, all land included within the boundaries of the district shall be considered irrigable land for election purposes.

(3) Whenever land is owned by co-owners, the owners may designate one of their number or an agent to cast the vote for the owners, and one vote only for each 40 acres of irrigable land or major fraction thereof may be cast by the voting co-owner or agent. Whenever land is under contract of sale to a purchaser residing within the state, the purchaser may vote on behalf of the owner of the land. When voting, the agent of a corporation or co-owners, the co-owner designated for purpose of voting, or the purchaser of land under contract of sale, as the case may be, shall file with the secretary of the district or with the election officials a written instrument of his authority, executed and acknowledged by the proper officers of the corporation, by the co-owners, or by the owner of land under contract of sale, as the case may be, and thereupon the agent or co-owner or purchaser, as the case may be, is an elector within the meaning of this part. Whenever the total irrigable acreage within any one district has been

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platted or subdivided into lots or blocks to the extent of 5% or more of the total acreage of the district, each elector is permitted to cast one vote for each acre of irrigable land or major fraction thereof owned by the elector within the district, irrespective of the location of such irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within the congressional subdivisions, but any elector owning any less than 1 acre of irrigable land within the district is entitled to one vote. The balloting shall take place in the following manner: 10 votes or less, separate ballots will be used; more than 10 votes, the elector shall vote in blocks of 10 using one ballot for each 10 votes and separate ballots for odd votes over multiples of 10. The election shall otherwise conform with the provisions of *Title 13.*"

Section 372. Section 85-7-1712, MCA, is amended to read:

"**85-7-1712. Special elections.** The board of commissioners may at any time call a special election and submit to the qualified electors of the district any question which under the provisions of this chapter is required or which, in the judgment of the board, is proper to be submitted to popular vote. Such election shall be called, noticed, and conducted and the result thereof determined and declared in the manner provided in *Title 13.*

Section 373. Section 85-9-206, MCA, is amended to read:

"**85-9-206. Court hearing on petition — election — limits on court jurisdiction.** (1) Upon receipt of a petition for organizing a district, the court shall give notice and hold a hearing on the petition. If the court shall find that the prayer of the petition should be granted, it shall:

(a) make and file findings of fact specifying those lands that will be directly or indirectly benefited by the proposed district and exclude those lands which will not be so benefited;

(b) make an order fixing the time and place of an organizing election;

(c) order the *election administrator to conduct the election in accordance with the provisions of Title 13;*

(d) order and decree the district organized if the requisite number of eligible electors vote in favor of organization.

(2) In order for the district to be organized, 51% or more of the eligible electors must vote in the election, and a majority of those voting must vote in favor of organization.

(3) This chapter shall not confer upon the court jurisdiction to hear, adjudicate, and settle questions concerning the priority of appropriation of water between districts and other persons. Jurisdiction to hear and determine priority of appropriation and questions of right growing out of or in any way connected with a priority of appropriation is expressly excluded from this chapter and shall be determined as otherwise provided by the laws of Montana."

Section 374. Section 85-9-422, MCA, is amended to read:

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"85-9-422. Election procedures. *The election* procedures after organization *will conform to the requirements of Title 13.*"

Section 375. Section 2-16-615, MCA, is amended to read:

"2-16-615. Filing of recall petitions — mandamus for refusal. (1) Recall petitions for elected officers shall be filed with the official who is provided by law to accept the declaration of nomination or petition for nomination for such office. Recall petitions for appointed *state officers shall be filed with the secretary of state and for appointed county or municipal officers shall be filed with the county election administrator.* Recall petitions for appointed officers from other political subdivisions shall be filed with the county *election administrator* if the boundaries of the political subdivisions lie wholly within one county or otherwise with the secretary of state.

(2) If the secretary of state, county *election administrator* or other filing official refuses to accept and file any petition for recall with the proper number of signatures of qualified electors, any elector may within 10 days after such refusal apply to the district court for a writ of mandamus. If it is determined that the petition is sufficient, the district court shall order the petition to be filed with a certified copy of the writ attached thereto, as of the date when it was originally offered for filing. On a showing that any filed petition is not sufficient, the court may enjoin certification, printing, or recall election.

(3) All such suits or appeals therefrom shall be advanced on the court docket and heard and decided by the court as expeditiously as possible.

(4) Any aggrieved party may file an appeal within 10 days after any adverse order or decision as provided by law."

Section 376. Section 3-6-201, MCA, is amended to read:

"3-6-201. Election — term of office. (1) One judge of each municipal court shall be elected at the general city election. The judge's term shall commence on the first Monday in *January* following the election. The judge shall hold office for the term of 4 years and until his successor is elected and qualified.

(2) All elections of municipal judges are governed by the laws applicable to the election of *nonpartisan* city officials."

Section 377. Section 3-11-201, MCA, is amended to read:

"3-11-201. Term of office. In cities of the first, second, and third class, the city judge shall hold office for a term of 4 years and until the qualification of his successor."

Section 378. Section 3-12-103, MCA, is amended to read:

"3-12-103. Creation of court. (1) A small claims court may be created by a resolution passed by the board of county commissioners after consultation with the district court judges of the judicial district in which such county is located or by county initiative as provided in Title 7, chapter 5, part *1*.

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(2) Upon such order or passage of the resolution or initiative, the judge of the appropriate judicial district shall, by court order, establish a small claims court under the provisions of this chapter.

(3) When the order is filed with the clerk of the district court of the appropriate county, the clerk of the district court becomes the clerk of the small claims court."

Section 379. Section 7-2-2316, MCA, is amended to read:

"7-2-2316. Form of ballot. (1) The form of the ballot used at such elections shall be as follows: there shall be a stub across the top of each ballot and separated therefrom by a perforated line.

(2) Upon the face of the stub there shall be printed the following instructions:

"To vote this ballot the elector will write in the blank space on the ballot the name of the town or place at which he desires the permanent county seat to be located."

(3) The ballot below the perforated line shall be in the following form:

"For the permanent county seat of .... County (here insert name of county) my choice is ...."

(4) When the name of a town or place in a county shall be so inserted in the blank space on such ballot by an elector and the ballot has been cast as provided by law, the same shall be deemed a vote for the designated town or place as the location of the permanent county seat of said county."

Section 380. Section 7-2-4107, MCA, is amended to read:

"7-2-4107. Officers elected at first election. (1) At such election there must be elected:

(a) in a city of the first class, a mayor, a city judge, a city attorney, a city treasurer, a city marshal, and two aldermen from each ward into which the city may be divided;

(b) in a city of the second class, a mayor, a city judge, a city treasurer, a city marshal, and two aldermen from each ward;

(c) in a town, a mayor and two aldermen from each ward.

(2) Those elected hold office until the first Monday of *January* after the first annual election and until their successors are elected and qualified. The persons so elected must qualify in the manner prescribed by law for county officers."

Section 381. Section 7-3-1204, MCA, is amended to read:

"7-3-1204. Petition for city-county consolidated government — election required. (1) The question of the abandonment and termination of the separate corporate existence and government of a county and of each and every city and town therein and the consolidation and merging

of the existence and government of *the* county and each and all of the cities and towns therein into one municipal corporation and government under the provisions of this part and part 13 shall be submitted to the *registered* electors of such county if a petition is filed in the office of the *election administrator* of *the* county, signed by at least 20% of the electors of *the* county whose names appear on the official register of voters of the county on the date of the filing of such petition, requesting that such question be submitted to the *registered* electors of the county.

(2) Such petition shall be substantially in the form and shall be signed, verified, and filed in the manner prescribed in *7-5-132 through 7-5-137* for initiative, referendum, and recall petitions and shall designate therein the name by which such consolidated government is to be known, which must be either that of the county or of some one of the cities or towns therein."

Section 382. Section 7-3-1205, MCA, is amended to read:

"7-3-1205. Certification of petition — board action. (1) If the county *election administrator* shall find that such petition or amended petition so filed is signed by the required number of *registered* electors, he shall so certify to the board of county commissioners of such county at their next regular meeting.

(2) Such board shall, within 10 days after receiving the *election administrator's* certificate, order a special election to be held, at which election such question shall be submitted to the *registered* electors of the county. Such order shall specify the time when such election shall be held, which shall be not less than 90 or more than 120 days from and after the day when such order is made, and the board of county commissioners shall immediately upon making such order issue a proclamation setting forth the purpose for which such special election is held and the date of holding the same, which proclamation must be published in the manner prescribed by *[section 6]*."

Section 383. Section 7-3-1208, MCA, is amended to read:

"7-3-1208. Election of commission upon favorable vote. (1) If the majority of the votes cast at such election shall be in favor of such consolidation and merging, the board of county commissioners of such county must, within 2 weeks after such election returns have been canvassed, order a special election to be held for the purpose of electing the number of members of the commission to which such consolidated municipality shall be entitled. This order shall specify the time when such election shall be held, which shall be not less than 90 or more than 120 days after the day when such order is made; provided, however, that if any general election is to be held in such county after 3 months but within 6 months from the date of the making of such order, then such order shall require such special election to be held at the same time as such general election. The board of county commissioners, immediately upon making such order, shall issue a proclamation setting forth the purpose for which such special election is held and the date of holding the same, which proclamation must be published in the manner prescribed by *[section 6]*.

(2) No primary election shall be held for the purpose of nominating candidates for members of the commission hereinafter provided for, to be

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voted for at such special election, but such candidates shall be nominated directly by petition which shall be in substantially the same form and be signed by the same number of signers as hereinafter required for primary nominating petitions. Such election shall be conducted, vote returned and canvassed, and result declared in the same manner as provided by law in respect to general elections."

Section 384. Section 7-3-1218, MCA, is amended to read:

"7-3-1218. Meetings of commission. (1) (a) Except as provided in subsection (1)(b), at 2 p.m. on *the first Monday of January* following a regular municipal election, the commission shall meet at the courthouse in the consolidated municipality and the newly elected members shall assume the duties of office.

(b) The first meeting of such commission after the special election at which the first members of the commission are elected shall be held at 2 p.m. on the first day of the third month following such special election, and at such meeting the members of such commission shall determine by lot the members whose terms will expire on *the first Monday of January* in the first year following such special election and the members whose terms will expire on *the first Monday of January* in the third year following such election.

(2) Thereafter the commission shall meet at such times as may be prescribed by ordinance or resolution, but not less frequently than once in each month. Special meetings shall be called by the clerk of the commission upon written request of the president, the manager, or a majority of the members of the commission. Any such notice shall state the subject to be considered at the meeting, and no other subject shall be considered at such meeting.

(3) All meetings of the commission and of committees thereof shall be open to the public, and the rules of the commission shall provide that citizens of the municipality shall have a reasonable opportunity to be heard at any such meeting in regard to any matter considered thereat."

Section 385. Section 7-3-1271, MCA, is amended to read:

"7-3-1271. General provisions related to elections. (1) For any election held on the question of the adoption of this part and part 13 and for the first election of members of the commission thereunder if adopted, the county *election administrator* and board of county commissioners shall exercise the powers and perform the duties respecting elections prescribed for county *election administrators* and boards of county commissioners by the general laws of the state.

(2) After the adoption of this part and part 13 by the electors of the county and the election and qualification of a commission thereunder, *elections shall be conducted as provided in Title 7 and Title 13.*"

Section 386. Section 7-3-4214, MCA, is amended to read:

"7-3-4214. First term of office. (1) The mayor and councilmen elected at such special election shall qualify and their terms of office shall begin on the first Monday after their election. The terms of office of the

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mayor and councilmen or aldermen in such city in office at the beginning of the term of office of the councilmen first elected under the provisions of this part shall then cease and determine, and the terms of office of all their appointed officers in force in such city, except as hereinafter provided, shall cease and determine as soon as the council shall by resolution declare.

(2) The terms of office of the mayor and all councilmen elected at such special election shall expire on the first Monday in *January* of the *first even-numbered* year following their election. At the first regular city election held in the *year prior to the* year in which the terms of office of the mayor and councilmen elected at such special election shall expire, a mayor and two councilmen shall be elected in cities having a population of less than 25,000. The mayor elected at such first general city election shall hold office for *4* years, one of the councilmen elected at such first city election shall hold office for *2 years*, and the other of such councilmen elected at such first general city election shall hold office for *4* years, beginning with the first Monday in *January* of *the* year *following their election*. A mayor and four councilmen shall be elected in cities having a population of 25,000 or more, and the mayor elected at such first general city election shall hold office for *4* years. Two of the councilmen elected at such first general city election shall hold office for *2 years*, and the other two of the councilmen elected at such first general city election shall hold office for *4* years, beginning with the first Monday in *January* of *the* year *following their election.*

(3) The councilmen elected at the first general city election shall decide by lot, in such manner as they may select, which thereof shall hold the office of councilman the term of which expires *2 years* thereafter and which thereof shall hold the office of councilman the term of which expires *4* years thereafter."

Section 387. Section 7-6-2344, MCA, is amended to read:

"7-6-2344. Limitation on amount of emergency expenditures and liabilities — election. (1) Unless the excess above the sums listed in subsections (1)(a), (1)(b), and (1)(c) shall first have been authorized by a majority of the taxpaying freeholders of such county who are registered electors therein, voting at a general or special election, the aggregate total of all expenditures made or liabilities incurred in any fiscal year to meet emergencies, other than such as are caused by fire, flood, explosion, earthquake, epidemic, riot, or insurrection, shall not exceed the sum of:

(a) $25,000 in counties of classes 1, 2, 3, and 4;

(b) $15,000 in counties of classes 5 and 6; and

(c) $7,500 in counties of class 7.

(2) The question of authorizing such excess expenditures shall be submitted in the following form, inserting in the ballot the amount of the excess proposed to be authorized and a description of the emergency to be met:

Shall the board of county commissioners of .... County, Montana, be authorized to make additional expenditures and incur additional liabilities

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in the amount of $.... over and above the sum of $.... to meet an emergency caused by ....

☐ YES

☐ NO

(3) The total of all emergency budgets and appropriations made therein in any one year to be paid from the county poor fund shall not exceed the amount which would be produced by a mill levy equal to the difference between the mills levied in that year and the maximum mill levy authorized by law to be made for such fund, computed against the taxable value of the property subject to such levy as shown by the last completed assessment roll of the county."

Section 388. Section 7-13-2237, MCA, is amended to read:

"7-13-2237. Petition of nomination required for printing of name on ballot. The name of a candidate shall be printed upon the ballot when a petition of nomination shall have been filed in his behalf in the manner and form and under the conditions set forth in 7-13-2238 through *7-13-2247*."

Section 389. Section 7-13-2245, MCA, is amended to read:

"7-13-2245. Withdrawal of signature from petition. (1) Any signer to a petition of nomination and certificate may withdraw his name from the same by filing with the county *election administrator* a verified revocation of his signature before the filing of his petition by the *election administrator* and not otherwise.

(2) He shall then be at liberty to sign a petition for another candidate for the same office."

Section 390. Section 7-33-2106, MCA, is amended to read:

"7-33-2106. Details relating to board of trustees of fire district. (1) The five trustees initially appointed by the county commissioners shall hold office until their successors are elected and qualified as hereinafter provided.

(2) Trustees shall be elected as provided in 13-1-104(3). The term of office shall be 3 years beginning on the first Monday in January following their election or until their successors are elected and qualified. Appointments to fill vacancies shall be made by the county governing body and appointees shall hold office until the next regular election. Nominations for office shall be made as provided in [section 141]. All electors, as defined in Title 13, who reside in the district are eligible to vote in the election.

(3) The trustees shall organize by choosing a chairman and appointing one member to act as secretary."

Section 391. Section 7-34-2118, MCA, is amended to read:

"7-34-2118. Term of office. (1) The trustees elected for the first board shall serve for terms:

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(a) commencing upon their being elected and qualified; and

(b) terminating 1, 2, and 3 years, respectively, from the first Monday in *January* following their election and until their respective successors shall be elected and qualified.

(2) Annually thereafter there may be elected a trustee to serve for a term of 3 years and until his successor shall be qualified. Such term of 3 years shall commence on the first Monday in *January* following the said trustee's election."

Section 392. Section 16-1-205, MCA, is amended to read:

"16-1-205. Local option. The electors of a county may, by approving an initiative as provided under Title 7, chapter 5, part 22, prohibit the sale and consumption of liquor or of all alcoholic beverages within the county. If such initiative is presented to the board of county commissioners, the board may not approve it but shall submit the proposal to the people under *Title 7, chapter 5, part 1.*"

Section 393. Section 76-15-103, MCA, is amended to read:

"76-15-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "District" or "conservation district" means a governmental subdivision of this state and a public body corporate and politic organized in accordance with this chapter, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(5) "Due notice" means notice published at least twice, with an interval of at least 14 days between the two publication dates, in a newspaper or other publication of general circulation within the proposed area or by posting at a reasonable number of conspicuous places within the appropriate area, the posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally.

(6) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(7) "Land occupier" or "occupier of land" includes a person, firm, corporation, municipality, or other entity who holds title to or is in possession of lands lying within a district organized under this chapter, whether as owner, lessee, renter, tenant, or otherwise.

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(8) "Petition" means a petition filed under 76-15-201 for the creation of a district.

(9) "Qualified elector" means *an* elector as defined in Title 13.

(10) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with this chapter.

(11) "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America."

Section 394. Section 76-15-506, MCA, is amended to read:

"76-15-506. Bonds authorized — election. (1) Whenever a board of supervisors deems it necessary, it may issue bonds payable from revenues, assessments, or both, or the district may use other financing as provided for by this part and part 6 for the cost of works.

(2) The board of supervisors may call a special election to vote upon the proposition of issuing the bonds or may submit the proposition as a special question at a regular or general election. If from the returns of the election it appears that the majority of votes cast at such election was in favor of and assented to the incurring of the indebtedness, then the board of supervisors may by resolution provide for the issuance of such bonds.

(3) The authorization of such undertaking, the form, and content shall be carried out in accordance with 7-7-4426, 7-7-4427, and 7-7-4432 through 7-7-4435. Validity of such bonds, use of revenue, and refunding shall be in accordance with the provisions of 7-7-4425, 7-7-4430, 7-7-4501 (2) and (3), and 7-7-4502 through 7-7-4505.

(4) Any bonds issued under this part and part 6 have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana."

Section 395. Section 76-15-605, MCA, is amended to read:

"76-15-605. Board decision. (1) The report of 76-15-603 shall be presented and read at the hearing on the petition.

(2) At the public hearing on the petition, the board of supervisors shall proceed to hear and pass upon all protests made and its decision shall be final and conclusive except when owners of more than 50% of the land in the proposed project area protest the project. If owners of more than 50% of the land protest the project, no further action may be taken for a period of 6 months from the date of the hearing, after which a new petition may be filed.

(3) If the board or boards of supervisors find that it is not feasible, desirable, or practical to establish the proposed project area, they shall make an order denying the petition and shall state therein their reasons for so doing.

(4) If, however, the board finds that the project is desirable, proper, and necessary, it shall grant the petition, establish the boundaries of the

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proposed project area, and *notify the county election administrator that an election is* to be held in the proposed area for the purpose of determining whether or not the project area shall be created."

Section 396. Section 76-15-701, MCA, is amended to read:

"76-15-701. Adoption of land use regulations. (1) The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and water resources and preventing and controlling erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work.

(2) The supervisors shall not have authority to enact such land use regulations into law until after they shall have caused due notice to be given of their intention to *order* a referendum for submission of such regulations to the qualified electors within the boundaries of the district for their indication of approval or disapproval of such proposed regulations and until after the supervisors have considered the result of such referendum."

Section 397. Section 76-15-702, MCA, is amended to read:

"76-15-702. Referendum on proposed land use regulations. (1) The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum.

(2) The notices of the referendum shall recite the contents of such proposed ordinance or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots upon which the words "For approval of proposed ordinance No ...., prescribing land use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance No ...., prescribing land use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance.

(3) The supervisors shall publish the result *of the referendum.* All *registered* electors within the district shall be eligible to vote in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted."

Section 398. Section 85-7-1501, MCA, is amended to read:

"85-7-1501. Qualifications of commissioners and term of office. (1) No person may be a commissioner unless he is an owner of land within the district and is a resident of the county in which the division of the district or some portion thereof, for which the commissioner is elected, is situated.

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(2) The commissioners appointed shall hold their respective offices until the second Saturday in *December* following their appointment and until their respective successors are elected and qualified. Each of the commissioners shall qualify in the same manner as justices of the peace. The bond for a commissioner shall be approved by the district court or judge thereof and filed in the office of the clerk of the court."

Section 399. Section 85-7-1602, MCA, is amended to read:

"85-7-1602. Election on joint operations. At any time after March 7, 1959, in the event that it is deemed advisable or desirable for any irrigation districts to operate under the direction of a board of control as herein provided, the boards of commissioners of the districts, after petition requesting the same be received and filed with them, must call an election to put the question before the landowners of the districts which are petitioned to be joined. In the event a majority of the landowners of each district, as provided by 85-7-1710, vote for organizing such board of control, then the commissioners of each district will be authorized and directed to enter into such contract to operate the districts in accordance with the terms of this part as provided by 85-7-1601. The election herein provided shall be conducted in the same manner and the same persons shall be entitled to vote thereat as provided for elections of commissioners of irrigation districts, in accordance with 85-7-1702, 85-7-1710, and 85-7-1712."

Section 400. Section 85-8-302, MCA, is amended to read:

"85-8-302. Election of commissioners — regular term of office. (1) The regular election of commissioners shall be held annually *in accordance with 13-1-104.* The term of office of commissioners shall commence on the first *Monday in January* following their election. At the first regular election following the organization of a district and in districts organized and in existence on March 1, 1921, and which, on petition, have been divided into divisions, at the first regular election following the date of the order making such division, there shall be elected three commissioners, one commissioner being elected from each division of which he must be an actual landowner. One of the commissioners, to be determined by lot, shall hold office until the first *Monday in January* in the year following his election; another of the commissioners, to be determined by lot, shall hold office until the first *Monday in January* in the second year following his election; and the third of the commissioners shall hold office until the first *Monday in January* in the third year following his election. Thereafter one commissioner shall be elected each year, who shall hold office for a term of 3 years and until his successor is elected and qualified. The person elected as a commissioner in each year to succeed the commissioner whose term is then expiring must be elected as a commissioner from the same division as the commissioner whom he is to succeed.

(2) Each commissioner must be a resident of a county where a portion of the district lands is situated."

Section 401. Section 85-8-303, MCA, is amended to read:

"85-8-303. Notice of election. *Forty* days before any regular election, the secretary of the board of commissioners shall give notice by mail

to all landowners within the district of the time and place of holding the election."

Section 402. Section 85-8-304, MCA, is amended to read:

"85-8-304. Results of election. The clerk of the board of directors shall enter the result of *the election* in the minutes of the board and file with the clerk of the district court creating the district a statement showing the names of the persons elected as commissioners, the names of the commissioners whose term will expire on the first *Monday in January* following, and the names of all of the persons who will compose the board of directors for the year next following the first *Monday in January*."

Section 403. Section 85-8-306, MCA, is amended to read:

"85-8-306. Nominations. Candidates for the office of commissioner to be filled by election under the provisions of this part may be nominated by petition filed with the *county election administrator* and signed by at least five electors of the district. If no nominations are made, the electors of the district shall write on the ballots the name or names of the persons for whom they desire to vote. Nothing herein contained shall prevent an elector from voting for any qualified person, although the name does not appear on the official ballot."

Section 404. **Transition schedule.** (1) Elected officials holding offices to be elected in odd-numbered years and holding office on the date this law becomes effective shall continue in office and in the performance of their duties until the next election as specified in 13-1-104 and subsection (2) or (3) of this section.

(2) Elections required by 13-1-104 for odd-numbered years shall be held beginning in 1979.

(3) Elections required by 13-1-104 for even-numbered years shall be held beginning in 1980.

(4) Notwithstanding any other provision of state law, all elected officers holding office on the date this law becomes effective shall hold their respective offices until new successors are elected and qualified.

Section 405. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 406. **Codification.** (1) Section 3, section 6, and sections 11 through 18 are intended to be codified as an integral part of Title 13, chapter 1.

(2) Sections 25, 30, 41, and 43 are intended to be codified as an integral part of Title 13, chapter 2.

(3) Sections 53 and 62 are intended to be codified as an integral part of Title 13, chapter 4.

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(4) Section 102 is intended to be codified as an integral part of Title 13, chapter 12.

(5) Sections 104 through 115, section 127, section 130, and section 133 are intended to be codified as an integral part of Title 13, chapter 13.

(6) Sections 139 through 149 are intended to be codified as an integral part of Title 13, chapter 14.

(7) Section 150 and sections 166 through 168 are intended to be codified as an integral part of Title 13, chapter 15.

(8) Sections 181 through 184 and section 193 are intended to be codified as an integral part of Title 13, chapter 16.

(9) Section 200 is intended to be codified as an integral part of Title 13, chapter 17.

(10) Section 210 is intended to be codified as an integral part of Title 13, chapter 25.

(11) Sections 244 through 246 are intended to be codified as an integral part of Title 13, chapter 37.

(12) Sections 261 and 262 are intended to be codified as an integral part of Title 13, chapter 38.

(13) If the sections in (1) through (12) are not codified as instructed in this section, the code commissioner shall add to the MCA, if necessary, statutory language to convey the intent of this section.

Section 407. **Repealer.** Sections 2-15-413, 7-2-4604, 7-2-4605, 7-3-1233, 7-3-1234, 7-3-1272 through 7-3-1280, 7-3-4224 through 7-3-4226, 7-3-4232 through 7-3-4241, 7-3-4263, 7-3-4328 through 7-3-4333, 7-3-4342 through 7-3-4352, 7-5-301 through 7-5-303, 7-5-311, 7-5-2211 through 7-5-2222, 7-5-4211 through 7-5-4225, 7-5-4402 through 7-5-4409, 7-6-4433, 7-6-4435, 7-7-2230 through 7-7-2236, 7-7-4228 through 7-7-4234, 7-13-2223, 7-13-2224, 7-13-2248, 7-13-2250 through 7-13-2253, 7-13-2257, 7-13-2326, 13-1-105, 13-2-101, 13-2-111, 13-2-113, 13-2-121, 13-2-204, 13-2-303, 13-4-204 through 13-4-206, 13-10-101, 13-10-206, 13-10-207, 13-10-210, 13-10-304, 13-10-312 through 13-10-321, 13-10-506, 13-10-603, 13-11-101 through 13-11-103, 13-12-103 through 13-12-105, 13-12-206, 13-12-211, 13-12-213, 13-13-102 through 13-13-110, 13-13-202, 13-13-237, 13-13-238, 13-13-240, 13-13-302, 13-13-303, 13-13-308, 13-14-101 through 13-14-104, 13-14-201 through 13-14-208, 13-15-302, 13-17-202, 13-17-205, 13-17-207, 13-17-302 through 13-17-304, 13-17-307, 13-17-401 through 13-17-404, 13-18-101 through 13-18-106, 13-18-201 through 13-18-210, 13-35-212, 13-35-216, 13-35-219, 13-35-222 through 13-35-224, 13-35-229, 13-35-230, 13-35-232, 20-20-412 through 20-20-414, 85-7-1701, 85-7-1704 through 85-7-1709, 85-7-1711, and 85-9-423, MCA, are repealed.

Approved April 12, 1979.

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CHAPTER NO. 572

AN ACT TO EXEMPT CERTAIN EMPLOYEES FROM PROVISIONS OF THE OVERTIME COMPENSATION LAW.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Overtime exclusions.** The provisions of 39-3-405 do not apply to:

(1) an employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(2) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(3) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(4) a salesman, partsman, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers;

(5) a salesman primarily engaged in selling trailers, boats, or aircraft if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(6) an employee employed as a driver or driver's helper making local deliveries who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the commissioner finds that such plan has the general purpose and effect of reducing hours worked by such employees to or below the maximum workweek applicable to them under 39-3-405;

(7) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and which are used exclusively for supply and storing of water for agricultural purposes;

(8) an employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee is:

(a) primarily employed during his workweek in agriculture by such farmer; and

(b) paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by 34-3-404;

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(9) an employee of an establishment commonly recognized as a country elevator, including an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(10) a driver employed by an employer engaged in the business of operating taxicabs;

(11) an employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in such institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as such employee and his spouse reside in such facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000; or

(12) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight.

Approved April 12, 1979.

CHAPTER NO. 573

AN ACT TO AMEND SECTION 72-16-308, MCA, TO CLARIFY THE EXTENT TO WHICH A DECEDENT'S JOINT DEBTS MAY BE DEDUCTED IN DETERMINING CLEAR MARKET VALUE OF PROPERTY PASSING AT DEATH; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-16-308, MCA, is amended to read:

"72-16-308. Tax to be on clear market value — deductions allowed in determining value. (1) The tax so imposed shall be upon the clear market value of such property passing by any such transfer to each person, institution, association, corporation, or body politic at the rates hereinafter prescribed and only upon the excess of the exemption hereinafter granted to such person, institution, association, corporation, or body politic.

(2) In determining the clear market value of the property so passing by any such transfer, the following deductions and no other shall be allowed:

(a) debts of the decedent owing at the date of death, *provided that any debt secured by decedent's joint interest in property and for which the decedent was jointly and severally liable, is deductible only to the extent of ½ or other proper fraction representing decedent's share of the property;*

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(b) expenses of funeral and last illness;

(c) all Montana state, county, municipal, and federal taxes, including all penalties and interest thereon, owing by decedent at the date of death;

(d) the ordinary expenses of administration, including:

(i) the commissions and fees of executors and administrators and their attorneys actually allowed and paid;

(ii) attorneys' fees, filing fees, necessary expenses, and closing costs incident to proceedings to terminate joint tenancies, termination of life estates and transfers in contemplation of death, and any and all other proceedings instituted for the determination of inheritance tax; and

(e) federal estate taxes due or paid."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 12, 1979.

CHAPTER NO. 574

AN ACT TO INCLUDE AN AUXILIARY MEMBER ON THE BOARD OF PARDONS AND PROVIDING AN IMMEDIATE EFFECTIVE DATE; AMENDING SECTION 2-15-2302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2302, MCA, is amended to read:

"2-15-2302. Board of pardons — composition — allocation — quasi-judicial. (1) There is a board of pardons.

(2) The board consists of three members *and an auxiliary member*, at least one of whom shall have particular knowledge of Indian culture and problems. Members of the board, *including the auxiliary member*, shall possess academic training which has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.

(3) The auxiliary member shall attend any meeting that a regular board member is unable to attend, and at that time the auxiliary member has all the rights and responsibilities of a regular board member.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

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(5) The board, *including the auxiliary member,* is designated as a quasi-judicial board for purposes of 2-15-124, except board members shall be compensated as provided by legislative appropriation."

Section 2. **Effective date.** This act is effective upon passage and approval.

Approved April 12, 1979.

CHAPTER NO. 575

AN ACT TO REQUIRE A CORPORATION UPON DISSOLUTION TO REPORT AS ABANDONED PROPERTY THE VALUE OF ALL SHARES OWNED BY SHAREHOLDERS THAT CANNOT BE LOCATED; TO SUBJECT UNCLAIMED INTANGIBLE PERSONAL PROPERTY IN THE CUSTODY OF THE UNITED STATES TO THE PROVISIONS OF TITLE 70, CHAPTER 9, MCA; TO INCREASE FROM $25 TO $50 THE REQUIREMENT THAT THE DEPARTMENT OF REVENUE PUBLISH NAMES OF OWNERS OF PROPERTY PRESUMED ABANDONED; TO PROVIDE RELIEF FROM LIABILITY FOR ANY PERSON WHO DELIVERS DUPLICATE STOCK TO THE DEPARTMENT; TO PERMIT THE DEPARTMENT TO SELL LISTED STOCK THROUGH A STOCK DEALER RATHER THAN BY AUCTION; AMENDING SECTIONS 70-9-204, 70-9-205, 70-9-302, 70-9-304, AND 70-9-308, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-9-204, MCA, is amended to read:

"70-9-204. Stock, dividends, and distributions of business association. *(1)* Any stock or other certificate of ownership or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder or a participating patron of a cooperative, who has not claimed it or corresponded in writing with the business association concerning it within 7 years after the date prescribed for payment or delivery is presumed abandoned if it is held or owing by a business association:

(a) organized under the laws of or created in this state; or

(b) doing business in this state but not organized under the laws of or created in this state and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

(2) Any intangible interest in a business association as evidenced by the stock or membership records of the association is presumed abandoned and the association deemed the holder thereof when:

(a) the interest in the association is owned by a person who for more than 7 years has not claimed a dividend or other sum referred to in subsection (1);

(b) the records of the association indicate that the last-known address of the person entitled to the dividend is in this state; and

(c) the association is:

(i) organized under the laws of or created in this state; or

(ii) doing business in this state but not organized under the laws of or created in this state.

(3) Any dividends or other distributions held for or owing to a person at the time an intangible interest in a business association is presumed abandoned pursuant to subsection (2) are presumed abandoned."

Section 2. Section 70-9-205, MCA, is amended to read:

"70-9-205. Property of business association or of banking or financial organization held in course of dissolution. All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state that is unclaimed by the owner *on* the date for final distribution is presumed abandoned."

Section 3. Section 70-9-207, MCA, is amended to read:

"70-9-207. Property held by court or public officer or agency. *(1)* All intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this state or a political subdivision thereof that has remained unclaimed by the owner for more than 7 years is presumed abandoned.

(2) All intangible personal property held for the owner by any court, department, agency, or officer of the United States, that has remained unclaimed by the owner for more than 7 years is presumed abandoned when the records of the holder indicate that the last-known address of the owner is in this state."

Section 4. Section 70-9-302, MCA, is amended to read:

"70-9-302. Notice of property presumed abandoned — publication — mail. (1) Within 120 days from the filing of the report required by 70-9-301, the department of revenue shall cause notice to be published at least once each week for 2 successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(2) The published notice shall be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property" and shall contain:

(a) the names in alphabetical order and last known addresses, if any, or person listed in the report and entitled to notice within the county as hereinbefore specified;

(b) a statement that information concerning the amount or description of the property and the name and address of the holder may be obtained

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by any persons possessing an interest in the property by addressing an inquiry to the department;

(c) a statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within 65 days from the date of the second published notice, the abandoned property will be placed not later than 85 days after such publication date in the custody of the department to whom all further claims must thereafter be directed.

(3) The department is not required to publish in such notice any item of less than *$50* unless the department deems such publication to be in the public interest.

(4) Within 120 days from the receipt of the report required by 70-9-301, the department shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of *$50* or more presumed abandoned under parts 1 through 3.

(5) The mailed notice shall contain:

(a) a statement that, according to a report filed with the department, property is being held to which the addressee appears entitled;

(b) the name and address of the person holding the property and any necessary information regarding changes of name and address of the holder;

(c) a statement that if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the department to whom all further claims must be directed.

(6) This section is not applicable to sums payable on travelers' checks or money orders presumed abandoned under 70-9-201."

Section 5. Section 70-9-304, MCA, is amended to read:

"70-9-304. Relief from liability by payment or delivery to department. (1) Upon the payment or delivery of abandoned property to the department of revenue, the state shall assume custody and shall be responsible for the safekeeping thereof.

(2) Any person who pays or delivers abandoned property to the department under parts 1 through 3 is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property.

(3) Any person who delivers duplicate stock or other duplicate certificates of ownership to the department under parts 1 through 3 is relieved of all liability for any claim which then exists or which thereafter may arise or be made in respect to the property, including but not limited to a claim by a person attempting to redeem the original certificate."

Section 6. Section 70-9-308, MCA, is amended to read:

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"70-9-308. Sale of abandoned property — notice — title of purchaser. (1) *Except as provided in subsection (2), all* abandoned property other than money delivered to the department of revenue under parts 1 through 3 shall within 1 year after the delivery be sold by the department to the highest bidder at public sale in whatever city in the state affords in the department's judgment the most favorable market for the property involved. The department may decline highest bid and reoffer the property for sale if the department considers the price bid insufficient. The department need not offer any property for sale if, in the department's opinion, the probable cost of sale exceeds the value of the property.

(2) Securities listed on an established stock exchange shall be sold at the prevailing prices on such exchange. Other securities may be sold over the counter at prevailing prices or by such other method as the department may determine to be advisable. United States government savings bonds and United States war bonds shall be presented to the United States for payment. Securities that have little or no value may be held by the department of revenue and sold at its discretion as provided by this section.

(3) Any sale held under this section shall be preceded by a single publication of notice thereof at least 3 weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

(4) The purchaser at any sale conducted by the department pursuant to parts 1 through 3 shall receive title to the property purchased free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The department shall execute all documents necessary to complete the transfer of title."

Approved April 12, 1979.

CHAPTER NO. 576

AN ACT TO EXEMPT MONTANA PRODUCED GASOHOL FROM TAXATION UNDER THE GASOLINE LICENSE TAX; PROVIDING A LONG-TERM SLIDING SCALE FOR TAXATION OF GASOHOL; AND CONTAINING SUNSET PROVISIONS; AMENDING SECTIONS 15-70-201 AND 15-70-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-201, MCA, is amended to read:

"15-70-201. Definitions. As used in this part, the following definitions shall apply:

(1) "Aviation dealer" means any person in this state engaged in the business of selling aviation gasoline, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as herein provided for.

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(2) "Aviation gasoline" means gasoline or any other liquid fuel by whatsoever name such liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(3) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks thereat or gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks thereat or gasoline imported into this state and placed in storage at refineries or pipeline terminals shall be deemed to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from such tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from such tanks, refinery, or terminal, such gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, shall be deemed to be "distributed" after it has arrived in and is brought to rest in this state.

(4) "Distributor" means:

(a) any person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) any person who imports gasoline for sale, use, or distribution;

(c) any dealer licensed as of January 1, 1969, except a dealer at an established airport.

(5) "Gasoline" includes all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation gasoline, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Gasoline does not include special fuels as defined in 15-70-301(6).

(6) "Import" shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of any gasoline shipped or transported into this state from point of origin without this state other than in the fuel supply tank of a motor vehicle.

(7) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(8) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(9) "Use" shall include and mean the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision thereof.

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(10) "Gasohol" means all products commonly or commercially known or sold as gasohol, produced and sold in Montana for the purpose of effectively and efficiently operating internal combustion engines, consisting of not less than 10% anhydrous ethanol produced in Montana from Montana agricultural products."

Section 2. Section 15-70-204, MCA, is amended to read:

"15-70-204. Gasoline license tax — rate. (1) Every distributor shall pay to the department of revenue a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to 1 cent for each gallon of aviation gasoline, which shall be allocated to the department of community affairs as provided by 67-1-301, as amended, and 8 cents for each gallon of all other gasoline distributed by him within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported or sold for export out of the state shall not be included in the measure of the distributor's license tax.

(3) Gasohol shall be subject to gasoline license taxes in accordance with the following schedule:

(a) beginning April 1, 1979, gasohol shall be taxed at the rate of 2 cents per gallon;

(b) beginning April 1, 1985, gasohol shall be taxed at the rate of 4 cents per gallon;

(c) beginning April 1, 1987, gasohol shall be taxed at the rate of 6 cents per gallon.

(4) If at any time the gasoline license tax is lower than the current applicable tax on gasohol, the lower tax rate shall be adopted for gasohol."

Section 3. **Suspension.** The governor may, upon recommendation of the director of the department of revenue and the director of the department of highways, suspend this act if the fiscal impact of this act significantly impairs the maintenance or construction of state or interstate highway systems.

Section 4. **Termination.** This act terminates April 1, 1989.

Section 5. **Effective date.** This act is effective upon passage and approval.

Approved April 12, 1979.

CHAPTER NO. 577

AN ACT RELATING TO REVIEW OF POSITIONS AND CHANGES IN CLASSIFICATION UNDER THE STATE CLASSIFICATION AND PAY PLAN FOR STATE EMPLOYEES; AMENDING SECTION 2-18-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-203, MCA, is amended to read:

"2-18-203. Review of positions — change in classification. (1) The department shall continuously review all positions on a regular basis

and adjust classifications to reflect significant changes in duties and responsibilities. *In the event adjustments are to be made to the classification specifications or criteria utilized for allocating positions in the classification specifications affecting employees within a bargaining unit, the department shall consult with the representative of the bargaining unit prior to implementation of the adjustments, except for blue collar, teachers, and liquor store clerks classification plans which shall remain mandatory negotiable items under the Collective Bargaining Act.*

(2) Employees and employee organizations will be given the opportunity to appeal any changes in classifications or positions.

(3) The period of time for which retroactive pay for a classification or position appeal may be awarded under parts 1 through 3 of this chapter or under 2-18-1011 through 2-18-1013 may not extend beyond 30 days prior to the date the appeal was filed. This provision shall not affect a classification or position appeal already in process on April 26, 1977."

Approved April 12, 1979.

CHAPTER NO. 578

AN ACT TO DEFINE CONFIDENTIAL HEALTH CARE INFORMATION; PROVIDING FOR DISCLOSURE OF THE INFORMATION IN CERTAIN CASES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purpose of [this act] is to establish safeguards for maintaining the integrity of confidential health care information.

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Health care provider" means a person, corporation, facility, or institution licensed by this state to provide health care services.

(2) "Health care services" means diagnosis, treatment, medical evaluation, advice, or other activities permitted under the health care licensing statutes of this state.

(3) "Confidential health care information" means information obtained by a health care provider relating to health care history, diagnosis, condition, treatment, or evaluation.

(4) "Peer review committee" means a committee of a state or local professional medical society or of a medical staff of a licensed hospital or other health care facility that is operated pursuant to written bylaws approved by the governing board of the hospital or other health care facility or approved by an organization of health care providers and formed pursuant to state or federal law and authorized by law to evaluate health care services.

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(5) "Third party" means a person or entity other than the person to whom the confidential health care information relates and other than a health care provider.

(6) "Qualified person" means a person whose training and experience is appropriate to the nature and level of work in which he is engaged and who, when working as part of an organization, is performing the work with published and adequate administrative safeguards against unauthorized disclosures.

(7) "Administration" includes but is not limited to accreditation, reimbursement, liability risk management, appraisal, and defense or prosecution of legal actions.

Section 3. **Confidential health care information.** (1) Except as provided in subsection (2) or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, confidential health care information relating to a person may not be released or transferred without the written consent of the person or his authorized representative.

(2) Consent is not required for release or transfer of confidential health care information:

(a) to a physician, dentist, or other medical person for diagnosis or treatment of an individual in a medical or dental emergency;

(b) to a peer review committee if the information concerns matters within the scope of the licensed professional practice of the committee members;

(c) to qualified persons for the purpose of conducting scientific research, management audits, financial audits, program evaluations, or similar studies. However, qualified persons may not directly or indirectly identify an individual patient in a research report, audit, or evaluation or disclose a patient's identity in any manner.

(d) to a health care provider:

(i) as may be reasonably necessary to provide health care services to the individual about whom the information relates; or

(ii) in the administration of the office, practice, or operation in connection with the providing of health care services to the individual about whom the information relates;

(e) to an employer as may be reasonably necessary in the administration of a group insurance plan or to a workers' compensation insurer, the division of workers' compensation, or the workers' compensation judge, as is necessary in the administration of Title 39, chapters 71 and 72;

(f) when a person's insurance coverage obligates more than one insurer with respect to a claim or benefit;

(g) to a state insurance department for the purpose of reviewing an insurance claim or complaint made to such department by an insured or his authorized representative or by a beneficiary or his authorized representative of a deceased insured.

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Section 4. **Conditions of transfer — right to request modification.** (1) A third party who has performed an adverse action defined in subsection (2) may transfer confidential health care information to a designated physician when the third party receives a written request signed by the affected person or his authorized representative.

(2) The adverse action referred to in subsection (1) may include but is not limited to:

(a) denial of an application for an insurance policy;

(b) issuance of an insurance policy with other than standard and uniform restrictions;

(c) rejection in whole or in part of any claim for insurance benefits;

(d) denial of an employment application or termination of employment when such denial or termination is for health reasons.

(3) Prior to making a transfer, a third party may require payment of actual expenses incurred in the retrieval, duplication, and forwarding of such information.

(4) A physician receiving confidential health care information pursuant to subsection (1) may review and interpret the information. Thereafter, the physician may, in his discretion, disclose to the affected person as much of the transferred information as he believes is in the best interest of the affected person to know.

(5) After reviewing confidential health care information received pursuant to subsection (4), an affected person or his authorized representative may request a third party to amend or expunge any part of the information that he believes is in error or request the addition of relevant information. Upon receiving such a request, the third party shall notify the health care provider who initially forwarded the information to the third party. If the health care provider concurs with the modification requested by the affected person, the third party shall modify the information in accordance with the request.

(6) Modification of confidential health care information may be required by court order upon action brought by the requestor.

(7) After reviewing confidential health care information received pursuant to subsection (4), a person has the right to place into the confidential file a personal statement of reasonable length regarding the correctness or relevance of existing information or regarding the addition of new information. The statement or a copy thereof shall at all times accompany that part of the information to which it relates.

Section 5. **Privileged information — exemption from compulsory legal process.** (1) Except as provided in subsection (2), confidential health care information is not subject to compulsory legal process in any type of proceeding, including any pretrial or other preliminary proceedings, and a person or his authorized representative may refuse to disclose and may prevent a witness from disclosing confidential health care information in any proceeding.

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(2) The exemption or privilege provided in subsection (1) does not apply:

(a) when the individual's physical or mental condition is relevant regarding the execution or witnessing of a will or other document;

(b) when the physical or mental condition of an individual is introduced by a party claiming or defending as a successor or beneficiary of the individual;

(c) when an individual makes communications to a psychiatrist in the course of a court-ordered psychiatric examination after having been informed that the communications are admissible only as to issues involving the individual's mental condition;

(d) when required by Rule 35, M.R.Civ.P., or otherwise ordered by a court.

Section 6. **No limitation on licensing board.** [This act] does not limit the authority, otherwise provided by law, of a licensing or disciplinary board of this state to require a peer review committee to report to it concerning any disciplinary actions or recommendations of the committee or to transfer to it records of the committee's proceedings or actions, including confidential information. [This act] does not limit the authority of such board to restrict or revoke a license to practice. However, personally identifiable portions of a person's confidential health care information may not be used in any legal action without the written consent of the person or his authorized representative, except upon court order.

Section 7. **No disciplinary or punitive action.** No disciplinary or punitive action may be taken against an employee or agent who brings evidence of violation of [this act] to the attention of a person or entity.

Section 8. **Reporting obligations not limited.** [This act] may not be construed to limit the reporting obligations provided by Title 37, chapter 3, part 4, or any other statute which requires information to be reported to a government agency.

Approved April 12, 1979.

CHAPTER NO. 579

AN ACT TO AUTHORIZE PUBLIC FINANCING OF POLITICAL CAMPAIGNS BY PROVIDING THAT FUNDS MAY BE DISTRIBUTED TO THE NOMINEES FOR GOVERNOR-LIEUTENANT GOVERNOR, CHIEF JUSTICE, AND JUSTICE OF THE SUPREME COURT; CHANGING THE METHOD OF COLLECTING FUNDS; AND PROVIDING AUTHORIZED AMOUNTS AND CAMPAIGN SPENDING LIMITATIONS; AMENDING SECTIONS 13-37-302, 13-37-303, AND 13-37-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-302, MCA, is amended to read:

"13-37-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

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(1) "Fund" means the election campaign fund established in 13-37-304.

(2) "Political party" is a party whose candidate for governor in the last general election received 5% or more of the total votes cast for that office as verified by the secretary of state.

(3) "Department" means the department of revenue provided for in Title 2, chapter 15, part 13.

(4) "Candidate" means an individual who has been nominated by a political party for election to *the* office *of governor-lieutenant governor or has been nominated in the nonpartisan primary election for the office of chief justice or justice of the supreme court* in this state.

(5) "Individual" means a natural person."

Section 2. Section 13-37-303, MCA, is amended to read:

"13-37-303. Donation by taxpayer. (1) An individual whose *withheld* income tax *or payment of estimated tax exceeds by more than $1 his income tax liability for the taxable year may donate $1 to be paid to the fund.* In the case of a joint return, as provided in 15-30-142, of a husband and wife having an income tax *overpayment as defined in 15-30-149* of $2 or more, each spouse may *donate* $1 be paid to the fund.

(2) An individual with an unpaid tax liability may at the time of payment donate an extra $1 to be paid to the fund.

(3) The department shall provide a place on the face of the blank form of return, provided for in 15-30-144, where an individual may make the *donations* provided for in *subsections* (1) *and (2).* The form shall adequately explain the individual's option to *donate* $1 to the fund."

Section 3. Section 13-37-304, MCA, is amended to read:

"13-37-304. Public campaign fund. (1) There is a public campaign fund within the earmarked revenue fund provided for in 17-2-102.

(2) All money designated under 13-37-303 shall be deposited in the fund.

(3) *(a)* Five months before the general election in *the* election year, money in the fund shall be paid over in equal amounts to *all eligible candidates for the designated political office according to the percentages in (3)(b). The money shall be spent only for the legitimate campaign expenses of the candidates.*

(b) The money shall be distributed in the following percentages:

(i) campaign for office of governor-lieutenant governor, 50%

(ii) campaigns for offices of chief justice and justice of the supreme court, 50% equally allocated to each eligible campaign fund.

(4) Three months before the general election in a general election year the remainder of any money in the fund shall be remitted to the treasurer of each candidate in the same proportion as provided in subsection (3)(b)."

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Section 4. **Unopposed candidates ineligible.** In a campaign where the candidate is unopposed, including campaigns for chief justice or justice of the supreme court, the candidate may not receive any campaign funds.

Section 5. **Application.** All candidates who wish to receive money from the fund must notify the department on a form prescribed and supplied by the department. Acceptance of money from the fund is voluntary.

Approved April 12, 1979.

CHAPTER NO. 580

AN ACT TO PROVIDE THAT THE EXISTENCE OF A MENTAL STATE NECESSARY FOR COMMISSION OF A CRIMINAL OFFENSE MAY BE INFERRED FROM THE ACTS OF THE ACCUSED AND THE FACTS AND CIRCUMSTANCES CONNECTED WITH THE OFFENSE; AMENDING SECTION 45-2-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-2-103, MCA, is amended to read:

"45-2-103. General requirements of criminal act and mental state. (1) A person is not guilty of an offense, other than an offense which involves absolute liability, unless, with respect to each element described by the statute defining the offense, he acts while having one of the mental states described in subsections (27), (31), and (52) of 45-2-101. *The existence of a mental state may be inferred from the acts of the accused and the facts and circumstances connected with the offense.*

(2) If the statute defining an offense prescribes a particular mental state with respect to the offense as a whole without distinguishing among the elements thereof, the prescribed mental state applies to each such element.

(3) Knowledge that certain conduct constitutes an offense or knowledge of the existence, meaning, or application of the statute defining an offense is not an element of the offense unless the statute clearly defines it as such.

(4) A person's reasonable belief that his conduct does not constitute an offense is a defense if:

(a) the offense is defined by an administrative regulation or order which is not known to him and has not been published or otherwise made reasonably available to him and he could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to him;

(b) he acts in reliance upon a statute which later is determined to be invalid;

(c) he acts in reliance upon an order or opinion of the Montana supreme court or a United States appellate court later overruled or reversed; or

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(d) he acts in reliance upon an official interpretation of the statute, regulation, or order defining the offense made by a public officer or agency legally authorized to interpret such statute.

(5) If a person's reasonable belief is a defense under subsection (4), nevertheless he may be convicted of an included offense of which he would be guilty if the law were as he believed it to be.

(6) Any defense based upon this section is an affirmative defense."

Approved April 12, 1979.

CHAPTER NO. 581

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO TAXATION; REPEALING SECTIONS 84-510, 84-6210, R.C.M. 1947, AND SECTIONS 15-23-509, 15-24-401, AND 15-51-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-105, MCA, is amended to read:

"15-1-105. Fines and forfeitures to county. Except for the forfeiture described in 15-8-706(2), all fines, forfeitures, and penalties incurred by a violation of any of the provisions of *the state tax laws* must be paid into the treasury for the use of the county where the person against whom the recovery is had resides."

Section 2. Section 15-1-401, MCA, is amended to read:

"15-1-401. Payment of license fees under protest — action to recover. (1) Whenever any license fee *or tax* is demanded of any person for the use and benefit of the state of Montana and the same is *considered* unlawful by the person from whom the same is demanded, such person may pay the same, or so much thereof as may be *considered* unlawful, under written protest, specifying the grounds of protest, to the state agency or officer responsible for collecting the *license fee or* tax.

(2) The person paying or his legal *representative* may bring an action in a court of competent jurisdiction against the state agency or officer responsible for collecting the *license fee or* tax to recover the same, without interest. Any action instituted to recover any license *fee or tax* paid under protest *must* be commenced and summons and copy of complaint served within 60 days after the date of payment thereof to the state agency or officer responsible for collecting the *license fee or* tax. If such action *is* decided adversely to the state, the state treasurer shall, upon receiving a copy of the final judgment in *such* action, refund such license fee *or tax* to the person in whose favor such judgment is rendered."

Section 3. Section 15-6-113, MCA, is amended to read:

"15-6-113. Class twelve property — description — taxable percentage. (1) Class twelve property includes:

(a) boats and all watercraft;

(b) aircraft;

(c) motorcycles; and

(d) large farm machinery valued in the *Official Guide Tractors* and *Farm Equipment* and *in* department valuation schedules.

(2) Class twelve property is taxed at 11% of its market value."

Section 4. Section 15-6-117, MCA, is amended to read:

"15-6-117. Class sixteen property — description — taxable percentage. (1) Class sixteen property includes:

(a) business inventories as defined in this section; and

(b) mobile machines, valued as other heavy construction equipment is valued, used in new industries as defined in class eighteen.

(2) Mobile machines used in new industry are subject to the conditions imposed in class eighteen for other property used in new industries.

(3) "Business inventories" includes goods intended for sale or lease in the ordinary course of business and raw materials and work in progress with respect to such goods. Business inventories *do* not include goods leased or rented or mobile homes held by a dealer or distributor as part of his stock-in-trade.

(4) The market value of business inventories, for property tax purposes, is the cost *or present value, whichever is lower,* to the person subject to the inventory tax.

(5) Class sixteen property is taxed at 4.2% of market value."

Section 5. Section 15-7-215, MCA, is amended to read:

"15-7-215. Violation a misdemeanor. Any person who violates any provision of this *part is* guilty of a misdemeanor."

Section 6. Section 15-10-203, MCA, is amended to read:

"15-10-203. Increase of tax revenue — notice of intention required. No taxing authority *may* budget an increased amount of ad valorem tax revenue exclusive of revenue from ad valorem taxation on properties appearing for the first time on the assessment roll unless it *gives notice of* its intention to do so at the same time *and in the same manner* that it *gives notice of* its *hearing on* its *preliminary* budget for the forthcoming fiscal year."

Section 7. Section 15-10-204, MCA, is amended to read:

"15-10-204. Resolution or ordinance for increase over certified millage. No millage in excess of the department of revenue's certified millage *may* be levied until a resolution or ordinance *is* approved by the governing board of the taxing authority, which resolution or ordinance must be approved by *the* taxing authority according to the following procedure:

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(1) The taxing authority shall *publish notice of* its intent to exceed the department's certified millage in *the same manner that it gives notice of hearings on its preliminary budget for the forthcoming fiscal year.* The *notice must* state that the taxing authority will meet on a day, at a time and place fixed in the *notice*, which *must* be approximately 7 days after the day that the *notice* is published, for the purpose of hearing comments regarding the proposed increase and to explain the reasons for the proposed increase. The meeting may coincide with the meeting on the tentative budget as required by law.

(2) After the public hearing has been held in accordance with the above procedures, the taxing authority may adopt a resolution or ordinance levying a millage rate in excess of the certified millage. If the resolution or ordinance adopting *such* millage rate is not approved on the day of the public hearing, the day, time, and place at which the resolution or ordinance will be scheduled for consideration and approval by the taxing authority must be announced at the public hearing. If the resolution or ordinance is to be considered at a day and time that is more than 2 weeks from the public hearing, the taxing authority must again *publish notice* in the same manner as provided in subsection (1)."

Section 8. Section 15-10-207, MCA, is amended to read:

"15-10-207. Additional millage increase — new notice required. If after the initial *notice* provided for in 15-10-203 the taxing authority determines that it requires a greater millage or fails to act in the specified period, it *must give notice anew under 15-10-203* and *proceed* as required in 15-10-204."

Section 9. Section 15-10-208, MCA, is amended to read:

"15-10-208. Increase over legal maximum not authorized — reductions permitted. Nothing contained in this *part may* serve to extend or authorize any millage in excess of the maximum millage permitted by law or prevent the reduction of millage."

Section 10. Section 15-17-303, MCA, is amended to read:

"15-17-303. Assignment of rights of county. (1) At any time after any parcel of land has been bid *upon* by the county as the purchaser thereof for taxes as provided in 15-17-207, the same not having been redeemed, the county treasurer shall assign all the right of the county therein acquired at such sale to any person who *pays* the amount for which the same was bid, with interest upon the original tax at the rate of ⅔ of 1% per month and the amount of all subsequent delinquent taxes, penalties, costs, and interest as provided by law upon the same from time to time when such tax became delinquent. *The county treasurer* shall execute to such person a certificate for such parcel, which may be substantially in the following form:

"I, ..., the treasurer of the county of ...., state of Montana, do hereby certify that at the sale of lands pursuant to the tax assessment for the year 19.. in the county of .... and which sale was held on the .... day of ...., 19.., for the purpose of liquidating assessment, the following described parcel of

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land, situate in *the* county of ...., state of Montana, to wit: (insert description) was duly offered for sale; that there was no purchaser in good faith for the same as provided by law and no person or purchaser offered to take the same and pay the taxes, cost, and charges due as aforesaid. Accordingly, the whole amount of the property assessed and described as above was struck off to the county of .... as purchaser thereof for the sum of ...., and the same still remaining unredeemed, and on this day .... having paid into the treasury of *such* county the amount for which the same was bid, together with all subsequent delinquent taxes, penalties, costs, and interest amounting in all to .... dollars;

Now, therefore, in consideration thereof and pursuant to the statute in such case made and provided, I do hereby assign and set over all the right, title, and interest of the county of ...., state of Montana, acquired in *such* lands under and by virtue of *the* sale to ...., his heirs and assigns forever, together with all the rights, powers, and privileges of the county of .... to take steps to receive a deed thereof or receive payment in case of a redemption; subject, however, to redemption as provided by law.

Witness my hand and official seal of office this .... day of ...., 19...

..... (County Treasurer)"

(2) *If* the certificate described *in subsection (1) becomes* lost *by accident* or destroyed by the assignee, the county treasurer shall issue a duplicate certificate to the assignee after the county treasurer is convinced that the certificate has been lost or destroyed and after the assignee has made an affidavit to that effect.

(3) The provisions of this section apply to any *sale* of land for which a treasurer's deed *was* not *issued* by March 5, 1917, and the holder of any certificate *described in subsection (1) has* the same rights, powers, and privileges with regard to securing a deed as any purchaser of *land* at tax sale may now have.

(4) As to any *land* received by the county in exchange, the same may be sold or leased the same as might have been done with the lands exchanged."

Section 11. Section 15-18-305, MCA, is amended to read:

"15-18-305. Defense to action — redemption of parcels. Any defendant may appear in the action within the time provided by law for appearances in civil actions, may set up any defense to the action he may have, and may therein question the legality, validity, or the sufficiency of any act had in connection with the assessment or sale of the land. Any defendant to the action may make redemption of the lands from the tax sale by paying the total amount of delinquent taxes and penalties which plaintiff has paid, with interest thereon at 8% a year from date of payment, together with costs of the action. Upon such payment, a certificate of redemption *must* be issued by the county treasurer to the defendant so paying, and thereupon the action *must* be dismissed. Whenever a defendant desires to redeem from a tax sale and pay all subsequent taxes upon any lot, piece, or parcel of real estate which *such defendant* owns or holds

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a mortgage or other lien against or has any interest in, the county treasurer of the county in which such real estate is situated shall permit such redemption and payment. In case the real estate has been assessed against any other property and is a lien thereon, then the county treasurer shall compute and apportion the tax that should have properly been assessed against the real estate sought to be redeemed and upon which the taxes are sought to be paid, the same as if the property had been separately assessed. Any personal property tax which is a lien upon such real estate *must* be likewise computed and apportioned on the same percentage basis as the tax assessed against the real estate is apportioned."

Section 12. Section 15-23-806, MCA, is amended to read:

"15-23-806. Lien of tax. The tax or penalty on gross proceeds is a lien upon the mine from which the metal is extracted and is *a* prior lien upon all owned or leased personal property and improvements used in extracting the ore or metal. The tax shall be collected in the manner provided *in chapters 16, 17, and* 18 of this title."

Section 13. Section 15-23-807, MCA, is amended to read:

"15-23-807. Assessment procedures. The gross proceeds of metal mines shall be assessed under the provisions of 15-23-101 through 15-23-107."

Section 14. Section 15-24-104, MCA, is amended to read:

"15-24-104. Situs in state of proportionally registered fleets. (1) For the purposes of this *part, any vehicle* previously registered or which has *had application for registration made* under the provisions of 61-3-711 through 61-3-733 *is* hereby declared to have a situs in the state for the purposes of taxation.

(2) The department or its designated agent shall collect the personal property taxes prescribed herein."

Section 15. Section 15-24-202, MCA, is amended to read:

"15-24-202. Tax-paid sticker — display required. The owner of a mobile home or housetrailer which is not taxed as an improvement, as improvements are defined in 15-1-101, shall pay the personal property tax in two payments, except as provided in 15-24-206(2). The first payment is due within 30 days from the date of the notice of taxes due. The second payment is due no later than September 30 of the year in which the property is assessed. The department of revenue shall issue tax-paid stickers to the county treasurers. The treasurers shall issue the stickers to the owners of mobile homes and housetrailers if the taxes are paid in full. An owner shall then display the sticker, which *must* be visible from the exterior of the mobile home or housetrailer. No mobile home movement permit provided for in 15-24-206 may be issued unless the taxes have been paid in full to the county treasurer."

Section 16. Section 15-24-203, MCA, is amended to read:

"15-24-203. Tax receipt — when production required. If stopped on a highway or at a state vehicle weight station by a state highway patrolman or state vehicle weight station attendant, a person transporting a *mobile home or* housetrailer must produce, if requested, the

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property-tax-paid receipt or a duplicate issued by the county treasurer where the vehicle was taxed."

Section 17. Section 15-24-206, MCA, is amended to read:

"15-24-206. Declaration of destination on imported mobile homes — display — tax receipt — exemptions. (1) Whoever brings a mobile home into the state shall immediately upon arrival in the state execute a written declaration, verified under oath, stating the destination of the mobile home and such other information as the department of revenue *may* require and shall deliver the original of the declaration to *whomever* is on duty at the nearest port of entry station, state vehicle weight station, or such other place and person as the department may prescribe. He shall also immediately upon arrival in the state affix a copy of the declaration to the mobile home at a conspicuous place.

(2) The treasurer shall issue the mobile home movement declaration provided for in this section to a person required by this section to execute it, in such quantities as he requests to a maximum of 100. The treasurer shall issue such additional quantities of the declaration to a maximum of 100 as the person requests at the discretion of the county treasurer upon receipt from the person of the previously issued declarations properly executed. In any event executed declarations must be delivered to the treasurer within 30 days from their issue.

(3) Whoever moves a mobile home from a point within the state to another point within or without the state shall first:

(a) execute the declaration provided for in subsection (1) of this section, deliver the original of it to the treasurer of the county in which the move originates or to such other person as the department *may* prescribe, and affix a copy of it *in a conspicuous place on* the mobile home to be moved;

(b) obtain from the county treasurer of the county in which the move originates a receipt showing payment in full of property taxes with respect to that mobile home.

(4) The provisions of subsection (3)(b) *do* not apply whenever a person moves a mobile home:

(a) from a point without to a point within the state;

(b) between places of business of dealers within or without the state;

(c) from the place of business of a dealer to a point within or without the state."

Section 18. Section 15-24-302, MCA, is amended to read:

"15-24-302. Collection procedure. All property mentioned in *15-24-301 is* assessed at the same value as property of like kind and character, and the assessment, levy, and collection of the tax *is* governed by the provisions of 15-8-408; 15-16-111 through 15-16-115; 15-16-404; chapter 17, part 9; and 15-24-202(1); as amended, except livestock taxation which is governed by part 9 of this chapter, 81-7-104, and Title 81, chapter 7, part 2."

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Section 19. Section 15-24-1001, MCA, is amended to read:

"15-24-1001. Custom combiner's tax — collection — distribution — not transferable. (1) In lieu of the taxes required by 15-24-301, motor vehicle license fees and gross vehicle weight fees, overwidth and overheight permits, Title 61, a nonresident engaged in the business of custom combining who brings equipment into the state shall pay a fee of $40 per unit for a period beginning July 1 and ending October 31. A unit shall include:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks and all other equipment, except combines, used by a nonresident and brought into the state as part of his business of custom combining.

(2) The fee required by this section *must* be collected by the department of highways. Upon payment of the fee, the department of highways *must* provide an identifying device to be displayed on each truck, header trailer, or combine trailer and other equipment used by the nonresident in his business of custom combining in the state, which device *is* valid for a period beginning July 1 and ending October 31.

(3) All fees collected under this section *must* be distributed not later than December 1 immediately following the period of license as follows: 62 ½% to the county general fund in the county in which the permittee declares the greatest amount of time will be spent to operate, 37 ½% to the earmarked revenue fund for the department of highways.

(4) The identifying devices and fee paid for each unit *is* not transferable from one vehicle to another or transferable on the sale or change of ownership.

(5) Any owner or operator of any equipment included in the unit definition in subsection *(1)* of this section who violates any provision of this section is guilty of a misdemeanor and *punishable* by a fine of not more than $300 or by a sentence of not more than 60 days in the county jail, or both."

Section 20. Section 15-30-201, MCA, is amended to read:

"15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" includes all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision thereof or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

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(3) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person; except that if the person for whom the individual performs or performed the service does not have control of the payment of the wages for such service, the term "employer" means the person having control of the payment of such wages.

(4) "Wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include remuneration paid:

(a) for active service as a member of the armed forces of the United States;

(b) for agricultural labor as defined in subsection (1);

(c) for domestic service in a private home, a local college club, or local chapter of a college fraternity or sorority;

(d) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this subsection *(4)*(d), an individual *is considered* to be regularly employed by an employer during a calendar quarter only if:

(i) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business;

(ii) such individual was regularly employed (as determined under subsection *(4)*(d)(i)) by such employer in the performance of such service during the preceding calendar quarter;

(e) for services by a citizen or resident of the United States for a foreign government or an international organization;

(f) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(g) (i) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(ii) for services performed by an individual in and at the time of the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of

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compensation for such service or is entitled to be credited with the unsold newspapers or magazines turned back;

(h) for services not in the course of the employer's trade or business to the extent paid in any medium other than cash when such payments are in the form of lodgings or meals and such services are received by the employee at the request of and for the convenience of the employer;

(i) to or for an employee as a payment for or a contribution toward the cost of any group plan or program which benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or dependents, and employees' club activities."

Section 21. Section 15-30-221, MCA, is amended to read:

"15-30-221. Withholding on payments to nonresidents — exception. (1) Every person, firm, corporation, association, partnership, or fiduciary doing business in or having income in the state of Montana, including the state of Montana, its agencies and instrumentalities, counties, cities, towns, school districts, and municipal corporations of every kind, which knowingly makes payments of any kind to any nonresident of the state of Montana for services performed within the state of Montana other than those *payments excepted* in 15-30-201*(4)* or for casual sales of property, either real or personal, located within the state of Montana, or any prizes or winnings payable from or within the state of Montana or hiring or having a contract with any nonresident of a temporary nature to be carried out within the state of Montana shall deduct from such payment or payments an amount, to be set by the department, not to exceed 3% of such payment which shall be transmitted by him to the department as partial payment of such nonresident's income tax.

(2) Upon finding that reports and information in addition to that now required by law or regulation should be filed in order to insure the collection of Montana state income tax on payment to nonresidents for leases, rentals, or royalties derived from property located within the state of Montana, the department may adopt rules requiring the filing of such reports and information.

(3) If, upon notice to a nonresident taxpayer and hearing, the department finds that withholding should be made on payments to the taxpayer for leases, rentals, or royalties derived from property located within the state of Montana in order to insure the collection of Montana state income tax, it may order withholding on such payments in an amount equal to the tax liability of the nonresident taxpayer. Such order *is* binding upon all withholding agents, as hereinafter described, who receive a copy thereof by mail or otherwise until such agent *receives* a copy of an order of the department terminating such withholding as to the nonresident taxpayer.

(4) Payments made for livestock or agricultural products raised or grown outside Montana and sold at a market within this state *are not* subject to withholding under this section."

Section 22. Section 15-31-202, MCA, is amended to read:

"15-31-202. Election by small business corporation. (1) Except as provided in subsection (6), any small business corporation may elect, in

accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter. Such election shall be valid only if consented to by all persons who are shareholders in such corporation. The election is effective:

(a) on the first day of the first taxable year for which such election is effective, if such election is made on or before such first day; or

(b) on the day on which the election is made, if the election is made after such first day.

(2) If a small business corporation makes an election under subsection (1), then:

(a) with respect to the taxable years of the corporation for which such election is in effect, such corporation *is* not subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this part apply to such corporation; and

(b) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of this part apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of this part apply to such shareholder.

(3) An election under subsection (1) may be made by a small business corporation for any taxable year at any time during the first month of such taxable year or at any time during the month preceding such first month. Such election *must* be made in *accordance with rules prescribed by* the department of revenue.

(4) An election under subsection (1) *is* effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation unless it is terminated, with respect to any such taxable year, under subsection (5).

(5) (a) (i) An election under subsection (1) made by a small business corporation *terminates* if any person who was not a shareholder in such corporation at the time of the initial election under subsection (1) subsequently becomes a shareholder in such corporation and affirmatively refuses in *accordance with rules prescribed by* the department to consent to such election on or before the 60th day on which he acquires the stock.

(ii) If the person acquiring the stock is the estate of a decedent, the period under subsection (5)(a)(i) for affirmatively refusing to consent to the election *expires* on the 60th day after whichever of the following is the earlier:

(A) the day on which the executor or administrator of the estate qualifies; or

(B) the last day of the taxable year of the corporation, in which the decedent died.

(iii) Any termination of an election under subsection (5)(a)(i) by reason of the affirmative refusal of any person to consent to such election *is* effective for the taxable year of the corporation in which such person becomes

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a shareholder in the corporation and for all succeeding taxable years of the corporation.

(b) An election under subsection (1) made by a small business corporation may be revoked by it for any taxable year after the first taxable year for which the election is effective. An election may be revoked only if all persons who are shareholders in the corporation on the day on which the revocation is made consent to the revocation. A revocation under this paragraph *is* effective:

(i) for the taxable year in which made, if made before the close of the first month of such taxable year;

(ii) for the taxable year following the taxable year in which made, if made after the close of such first month, and for all succeeding taxable years of the corporation. Such revocation *must* be made in *accordance with rules prescribed by* the department.

(c) An election under subsection (1) made by a small business corporation *terminates* if the corporation ceases to meet the definition of a small business corporation at any time after election is effective under subsection (1).

(d) Such termination *is* effective for the taxable year of the corporation in which the corporation ceases to be a small business corporation and for all succeeding taxable years of the corporation.

(6) If a small business corporation has made an election under subsection (1) and if such election has been terminated or revoked under subsection (5), such corporation and any successor corporation *is* not eligible to make an election under subsection (1) for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such termination or revocation is effective unless the department consents to such election.

(7) This election *is* not effective unless the corporate net income or loss of such electing corporation *is* included in the stockholders' adjusted gross income as defined in 15-30-111.

(8) Every electing corporation *is* required to pay the minimum fee of $10 required by *15-31-204*."

Section 23. Section 15-31-521, MCA, is amended to read:

"15-31-521. Closing agreements. (1) The director of revenue or any person authorized in writing by him is authorized to enter into an agreement with any *taxpayer* relating to the liability of such *taxpayer* in respect to the tax imposed by this chapter for any taxable period.

(2) Any such agreement *is* final and conclusive, and except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under such agreement or any determination, assessment, collection, payment, abatement, refund, or

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credit made in accordance therewith, the agreement may not be annulled, modified, set aside, or disregarded."

Section 24. Section 15-31-601, MCA, is amended to read:

"15-31-601. Central reporting system for identification of corporations. It *is* the duty of the department of revenue to establish a central reporting system to assist in the identification of corporations, foreign and domestic, which transact business within the state of Montana and are subject to taxation by the state of Montana."

Section 25. Section 15-31-605, MCA, is amended to read:

"15-31-605. List of corporations compiled by department of revenue. The department of revenue shall compile a list of all corporations, foreign and domestic, subject to taxation by the state of Montana to be filed in the central reporting system. *The* list *must* contain the following information:

(1) the name of the corporation;

(2) the principal office of the corporation;

(3) the name and address of the registered agent of the corporation in Montana;

(4) whether the corporation filed such reports, returns, and other information pursuant to the terms of this chapter."

Section 26. Section 15-32-108, MCA, is amended to read:

"15-32-108. Extension of existing classifications. Any classification of property under the provisions of *section 3, Chapter 548, Laws of 1975,* that existed prior to *January 1, 1977,* approved by the department of revenue before April 19, 1977, shall continue in effect until December 31, 1982. On January 1, 1983, the taxable percentage of such property shall be determined under chapter 6, part 1, or that part as it may be recodified or amended."

Section 27. Section 15-36-109, MCA, is amended to read:

"15-36-109. Penalty for violations. *Violation* of any of the provisions of this part *is* a misdemeanor and *punishable* by a fine of not exceeding $1,000 or by imprisonment in the county jail for not exceeding 6 months or by both such fine and imprisonment."

Section 28. Section 15-51-111, MCA, is amended to read:

"15-51-111. Procedure to compute tax in absence of statement. If any person fails, neglects, or refuses to file any statement required by 15-51-101 within the time therein required, the department of revenue shall, after such time has expired, proceed to inform itself as best it may regarding the number of KWH produced by such person in this state during such quarter and compute the amount of taxes due to the state from such person for such quarter and add the penalty and interest as required by 15-51-103. The department shall mail to the person required to file a quarterly report and pay such tax a letter setting forth

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the amount of tax, penalty, and interest due, and the letter *must* further contain a statement that if payment is not made within such time, a lien may be filed. Upon receipt of the letter, the person shall remit to the department the full amount of tax, penalty, and interest within 15 days. The 10% penalty may be waived by the department if reasonable cause for failure and neglect to file the statement required by *15-51-101* is provided to the department."

Section 29. Section 15-55-107, MCA, is amended to read:

"15-55-107. Actions to recover delinquent taxes and penalties — additional taxes. (1) If the taxes and penalties provided for in this chapter to be paid by the railroad company on the property of such freight line company remain unpaid more than 90 days from the due date, the department shall cause an action to be brought to recover the amount of such delinquent taxes and penalties in the district court of any county within the state of Montana in which service can be had on the railroad company which is liable for the payment of such taxes or penalties or in which the property of such delinquent railroad company can be seized under attachment or garnishment proceedings in the manner prescribed by law.

(2) In the event the state tax appeal board, under its authority to raise or lower the rate of the taxes which would be payable on the cars of such freight line company if taxed upon an ad valorem basis, *finds*, after a hearing as herein provided, taxes due from any such freight line company in excess of the 5 ½% of all gross revenue in this state which is required to be paid by the railroad companies, such additional tax as so determined *is* due and payable by the freight line company upon which the assessment is made, and if such tax *remains* unpaid for more than 90 days after notification of such assessment by the state tax appeal board, the board shall cause an action to be brought to recover the amount of such additional tax in the district court of any county within the state of Montana in which service can be had on the freight line company liable for the tax or in which the property of such delinquent freight line company can be seized under attachment or garnishment proceedings in the manner prescribed by law."

Section 30. Section 15-70-208, MCA, is amended to read:

"15-70-208. Examination of records. (1) The department of revenue or its authorized representative is hereby empowered to examine the books, papers, records, and equipment of any gasoline distributor or any person dealing in, transporting, or storing gasoline as defined in this part and to investigate the character of the disposition which any person makes of such gasoline in order to ascertain and determine whether all *license* taxes due hereunder are being properly reported and paid. If such books, papers, records, and equipment are not maintained in this state at the time of demand, they *must* be furnished to the department for review or such dealer *must* bear the reasonable cost of examination by an agent authorized or designated by the department at the place where such books or records are kept. *However*, the taxpayer *is* not liable for such costs for a period exceeding 1 week or for such longer period as he may consent to

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in writing unless the result of such examination is the payment of a tax deficiency.

(2) The records, receipts, and invoices and any other pertinent papers supporting sales of every distributor or any person dealing in, transporting, or storing gasoline *must* be open and subject to inspection by the department or any of its employees or assistants during business hours in order to ascertain the amount of license tax due."

Section 31. Section 20-9-115, MCA, is amended to read:

"20-9-115. Notice of preliminary budget filing and final budget meeting. Between July 10 and July 20 of each year, the clerk of each district shall publish notice one time in the official newspaper of the county stating that the preliminary budget for the district for the school fiscal year just beginning, as prepared and adopted by the trustees, is on file in his office and open to inspection by all taxpayers. The notice shall also state that the trustees will meet at 10 a.m. on the fourth Monday in July for the purpose of considering and adopting the final budget of the district, that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and that any taxpayer in the district may appear at such meeting and be heard for or against any part of the budget."

Section 32. **Rulemaking authority.** The department of revenue may adopt rules necessary for the taxation of property under chapter 35 of Title 15.

Section 33. **Codification.** Section 32 is intended to be codified as an integral part of Title 15, chapter 35, and the provisions of Title 15, chapter 35, apply to section 32.

Section 34. **Repealer.** Sections 84-510 and 84-6210, R.C.M. 1947, are repealed.

Section 35. **Repealer.** Sections 15-23-509, 15-24-401, and 15-51-105, MCA, are repealed.

Approved April 16, 1979.

CHAPTER NO. 582

AN ACT TO PROVIDE FINANCIAL SUPPORT FOR THE MONTANA UNIVERSITY SYSTEM.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Tax levy for the university system.** There is levied upon the taxable value of all real and personal property in the state of Montana, subject to taxation, 6 mills or so much thereof as is necessary to raise the amount appropriated by the legislature from the earmarked revenue fund for the support, maintenance, and improvement of the Montana university system and other public educational institutions subject to

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board of regents' supervision, as provided in referendum measure No. 75 passed by vote of the people at the general election held November 7, 1978; and the funds raised therefrom shall be deposited in the earmarked revenue fund.

Section 2. **Termination date.** This act terminates on January 1, 1989.

Approved April 16, 1979.

CHAPTER NO. 583

AN ACT TO CHANGE THE HEARING REQUIREMENTS FOR THE ISSUE OR TRANSFER OF ALCOHOLIC BEVERAGE LICENSES; AMENDING SECTIONS 16-4-202 AND 16-4-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-207, MCA, is amended to read:

"**16-4-207. Notice of application — publication — protest.** (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer such license, the department shall promptly publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that such applicant has made application for such license and that protests against the issuance of a license to the applicant *may be mailed to a named administrator in the department of revenue within 10 days after the final notice is published.* Notice of application for a new license shall be published once a week for 4 consecutive weeks. Notice of application for transfer of a license shall be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL
ALL-BEVERAGES LICENSE

Notice is hereby given that on the .... day of ...., 19.., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue, to be used at (describe location of premises where beverages are to be sold), and protests, if any there be, against the issuance of such license *may be mailed to ...., department of revenue, Helena, Montana,* on *or before* the .... day of ...., 19...

Dated .... Signed .....
ADMINISTRATOR

(2) Each applicant shall, at the time of filing his application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) If the administrator receives no protests, the department may issue or transfer the license without holding a public hearing. If, however,

any protests against the issue or transfer of the license are received, the department shall hold a hearing at its office in Helena."

Section 2. Section 16-4-202, MCA, is amended to read:

"**16-4-202. Resort licenses.** (1) It is the intent and purpose of this section to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail liquor licenses may be issued by the department under the terms and as more particularly prescribed below. In addition to the licenses as otherwise set forth in [this act], the department may issue resort retail liquor licenses in a resort area.

(2) For the purposes of this section, a resort area is defined as a recreational facility meeting the qualifications determined by the department as hereinafter provided.

(3) The department shall determine that the area for which licenses are to be issued is a resort area, such determination to be made under and pursuant to rules to be first promulgated on or before December 31, 1975.

(4) In addition to the other requirements of this code, a resort area, for the purposes of qualification for the issuance of resort retail liquor license, must have a current actual valuation of resort or recreational facilities, including land and improvements thereon, of not less than $500,000, at least half of which valuation must be for a structure or structures within the resort area, and must be under the sole ownership or control of one person or entity at the time of the filing of the resort area plat referred to in subsection (5) of this section. The word control shall mean lands held under lease, option, or permit.

(5) The resort area must be determined by the resort developer or landowner by a plat setting forth the resort boundaries, designating the ownership of the lands within the resort area, which plat must be verified by the resort developer or landowner and filed with the department prior to the filing of any applications by individuals for licenses within the resort area. Such plat must show the location and general design of the buildings and other improvements to be built in said area in which resort retail liquor licenses are to or may be located. A master plan for the development of the area may be filed by the resort developer in satisfaction of this section.

(6) Upon such filing the department shall forthwith schedule a public hearing to be held in Helena, Montana, to determine whether the facility proposed by the resort developer or landowner is a resort area within the meaning of the rules of the department. At least 30 days prior to the date of the hearing, the department shall publish notice thereof, with a description of the location of the proposed resort area, in a newspaper published in the county or counties in which the resort is located, once a week for 4 consecutive weeks. Each resort developer or landowner shall, at the time of filing his application, pay to the department an amount sufficient to cover the costs of said publication.

(7) Persons may present statements to the department at the hearing in person or in writing in opposition or support of the plat.

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(8) Within 30 days of the hearing, the department shall accept or reject the plat. If rejected the department must state its reasons and set forth the conditions, if any, under which the plat will be accepted, and the decision of the department may be reviewed pursuant to the review procedure set forth in 16-4-406.

(9) Once filed with the department, the boundaries of a resort may not be changed without full hearing as above provided and the prior approval of the department, which approval shall be according to public convenience and necessity.

(10) (a) When the department has accepted a plat and a given resort area has been determined, applications may then be filed with the department by persons for the issuance of resort retail liquor licenses within the resort area.

(b) Each applicant must submit plans showing the location, appearance, and floor plan of the premises for which application for a license is made.

(c) If an applicant otherwise qualifies for a resort license but the premises to be licensed are still in construction or are otherwise incomplete at the time of such application, the department shall issue a letter stating that the license will be issued at such time as the qualifications for a licensed premises have been met, setting forth such time limitations and requirements as the department may establish.

(11) In addition to the restrictions on sale or transfer of a license as provided in 16-4-204, no resort retail liquor license may be sold or transferred for operation at a location outside of the boundaries of the resort area.

(12) A resort retail liquor license shall not be subject to the quota limitations set forth in 16-4-201, and *if the requirements of this section have been met,* a resort retail liquor license shall be issued by the department on the basis that the department has determined that such license is justified by public convenience and necessity, *in accordance with the procedure required* in 16-4-207."

Approved April 16, 1979.

CHAPTER NO. 584

AN ACT REQUIRING THE DEPARTMENT OF REVENUE TO INCLUDE IN ITS REPORT OF PROPERTY TAX DATA FOR THE STATE A BREAKDOWN OF SUCH DATA BY COUNTY AND CITY; AMENDING SECTION 15-1-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-205, MCA, is amended to read:

"15-1-205. Biennial report. The department shall transmit to the governor and *upon request* to each member of the legislature 20 days

before the meeting of the legislature a report of the department showing all the taxable property of the state, *counties, and cities* and its value, in tabulated form, with recommendations for improvements in the system of taxation, together with measures as may be formulated for the consideration of the legislature. The department may include a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures."

Approved April 16, 1979.

CHAPTER NO. 585

AN ACT TO PROVIDE AUTHORITY FOR ADDITIONAL TAX ASSESSMENTS AND REFUNDS OF THE RESOURCE INDEMNITY TRUST TAX; AMENDING SECTION 15-38-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-38-106, MCA, is amended to read:

"15-38-106. Payment of tax — records — collection of taxes — refunds. (1) The tax imposed by this chapter shall be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax shall be paid to the department at the time that the statement of yield is filed with the department.

(2) *The department shall deposit the proceeds of the tax in the resource indemnity trust account of the trust and legacy fund. Every person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.*

(3) The department shall examine each of the statements and compute the taxes thereon, and the amount computed by the department shall be the taxes imposed, assessed against, and payable by the taxpayer making the statement for the year for which the statement is filed. If the tax found to be due is greater than the amount paid, the excess shall be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years, or refunded if requested by the taxpayer."

Approved April 16, 1979.

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CHAPTER NO. 586

AN ACT SETTING A MINIMUM AND MAXIMUM AMOUNT, FROM $5 TO $25, AN IRRIGATION DISTRICT MAY CHARGE AGAINST A SEPARATELY OWNED TRACT OF LAND FOR AN ANNUAL FEE; AMENDING SECTIONS 85-7-2103 AND 85-7-2104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-7-2103, MCA, is amended to read:

"85-7-2103. All irrigable lands chargeable alike. (1) All irrigable lands in each irrigation district, except such lands that are included within the district because of the exchange or substitution of water under the provisions of 85-7-1912, shall pay at the same rate for all purposes for which the lands are charged, except as otherwise provided by law. There may be a charge of $5 *to $25* against each separately owned tract of land regardless of its size, as provided in 85-7-2104. *However, a separately owned tract of land of 1 acre or less and unable to receive water may be charged not more than the $5 minimum.* Whenever water used for the irrigation of any lands within an irrigation district is obtained by pumping to different elevations, the cost of maintenance, operation, and pumping to each separate elevation shall be apportioned and levied upon the lands lying under the ditch or ditches running from that particular elevation, in such manner as may be determined fair and equitable by the board of commissioners after considering the facts in each case. This apportionment shall be made by the board of commissioners and included each year in the assessment provided for by 85-7-2104.

(2) The amount of the assessment for maintenance, operation, and pumping of water to each separate elevation, whenever there are different elevations, shall be determined by the board of commissioners in such manner and upon such notice to the persons interested in the district as the board in its rules may provide. Whenever a contract has been made with the United States, the lands within the district, whether originally included or later annexed to the district, shall pay in accordance with the federal reclamation laws and the public notices, orders, and regulations issued thereunder and in compliance with any contracts made by the United States with the owners of the lands and in compliance with the contract between the districts and the United States. Whenever the works necessary for the completed project are constructed progressively over a period of years and whenever a portion of the lands within the district are or can be irrigated 1 year or more before the completion of the entire project, those lands so irrigated or that can be so irrigated through the built portion of the project shall pay for the cost of operating that portion of the project serving them with irrigation water and also shall pay such portion of the interest charges as its irrigable area bears to the irrigable area of the entire project. Whenever lands have appurtenant thereto a partial water right or partial rights in a system of irrigation other than that of the district, the amounts payable shall be equitably apportioned."

Section 2. Section 85-7-2104, MCA, is amended to read:

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"85-7-2104. Annual tax levy — apportionment when tracts divided. (1) On or before the second Monday in July each year, the board of commissioners of each irrigation district organized under parts 1 and 15 shall ascertain the total amount required to be raised in that year for the general administrative expenses of the district, including the cost of maintenance and repairs, and the total amount to be raised that year for interest on and principal of the outstanding bonded or other indebtedness of the district, including any indebtedness incurred under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 85-7-1906. The board shall levy, against each 40-acre tract or fractional lot, as designated by the United States public survey, or platted lot, if land is subdivided in lots and blocks (or where land shall be owned in less than 40-acre tracts or in less than the platted lot, then against each such tract) of land in the district, that portion of the respective total amounts so to be raised which the total irrigable area of any such tract bears to the total irrigable area of the lands in the district, so that each acre of irrigable land in the district shall be assessed and required to pay the same amount as every other acre of irrigable land therein, unless otherwise specifically provided. The board of commissioners may make a charge of $5 *to $25* against each separately owned tract of land, regardless of its size. *However, a separately owned tract of land of 1 acre or less and unable to receive water may be charged not more than the $5 minimum.*

(2) In the event that the ownership of any such 40-acre tract or other subdivision of land in the district shall be divided after a special tax or assessment against the same has been levied, each or either of the owners of such tract or subdivisions shall be entitled to have such special tax or assessment equitably apportioned to and against said divisions of such tract or subdivisions, so that each owner shall be enabled to pay such special tax or assessment against his portion of such tract or subdivision and have the same discharged from the lien thereof. In no event shall the charge against any separately owned tract of land be less than $5. *However, a separately owned tract of land of 1 acre or less and unable to receive water may be charged not more than the $5 minimum.*"

Approved April 16, 1979.

CHAPTER NO. 587

AN ACT TO PROVIDE INCREASED PENALTIES FOR CRIMINAL SALE OF DANGEROUS DRUGS IN CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 45-9-101 AND 46-18-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-9-101, MCA, is amended to read:

"45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away or

manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of an opiate, as defined in 50-32-101(18), shall be imprisoned in the state prison for a term of not less than 2 years or more than life, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinols, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 5 years or more than life, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, he shall be imprisoned in the state prison for a term of not less than 10 years or more than life, except as provided in 46-18-222. Whenever a conviction under this subsection is for criminal sale of such a drug to a minor, the sentence shall include the restriction that the defendant be ineligible for parole and participation in the prisoner furlough program while serving his term.

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2) *or (3)* shall be imprisoned in the state prison for a term of not less than 1 year or more than life.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 2. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 90 days;

(iii) conditions for probation;

(iv) restitution;

(v) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(vi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions during the period of suspended sentence. Such reasonable restrictions may include:

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(i) jail base release;

(ii) jail time not exceeding 90 days;

(iii) conditions for probation;

(iv) restitution;

(v) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(vi) any combination of the above.

(c) impose a fine as provided by law for the offense;

(d) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(e) impose any combination of subsections (1)(b), (1)(c), and (1)(d).

(2) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, shall not be a credit against the sentence unless the court orders otherwise.

(3) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-102(2), 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) *and (3)*, 45-9-102(3), and 45-9-103(2)."

Approved April 16, 1979.

CHAPTER NO. 588

AN ACT TO GENERALLY REVISE THE METAL MINE RECLAMATION LAWS; AMENDING SECTIONS 82-4-303, 82-4-305, 82-4-331, 82-4-332, 82-4-334, 82-4-335, AND 82-4-337, MCA; AND REPEALING SECTION 82-4-333, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-303, MCA, is amended to read:

"82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Board" means the board of land commissioners or such state employee or state agency as may succeed to its powers and duties under this part.

(3) "Department" means the department of state lands.

(4) "Disturbed land" means that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and it comprises that area from which the overburden or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.

(5) "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 82-4-305 and 82-4-310.

(6) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(7) "Mining" commences at such time as the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(8) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or development or mining of minerals on or below the surface of the earth.

(9) "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed, which proposal shall include, to the extent practical at the time of application for *an* operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas where necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) such maps and other supporting documents as may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(10) (a) "Small miner" means a person, firm, or corporation *that engages* in the business of mining, *that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that holds no operating permit under 82-4-335, and that conducts:*

(i) operations resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations which disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation;

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining or exploration ceases.

(11) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

(12) "Underground mining" means all methods of mining other than surface mining.

(13) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit, and it comprises and includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground

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mining operations which by virtue of such use are thereafter susceptible to erosion in excess of the surrounding undisturbed portions of land.

(14) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 2. Section 82-4-305, MCA, is amended to read:

"82-4-305. Exemption — small miners — written agreement. (1) No provisions of this part shall apply to any small miner when the small miner annually agrees in writing:

(a) that he shall not pollute or contaminate any stream;

(b) that he shall provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals; and

(c) he shall *provide* a map locating his mining operations. Such map shall be to a size and scale as determined by the department.

(2) Failure to comply with the regulations stipulated in this section will constitute a misdemeanor, and this offense will subject the owners or operators of said project to a fine of not less than $10 or more than $100, payable to the department of revenue of the state of Montana or any board, commission, or person authorized to collect said fine."

Section 3. Section 82-4-331, MCA, is amended to read:

"82-4-331. Exploration license required — employees included. (1) No person shall engage in exploration in the state without first obtaining an exploration license from the board to do so, such license to be issued for a period of 1 year from date of issue and to be renewable from year to year on application therefor filed at any time within the 30 days next preceding the expiration of the current license and payment of like fee as required for a new license, provided that the applicant for renewal is not then held by the board to be in violation of any provision of this law. Such license shall be subject to suspension and revocation as provided by this part.

(2) Employees of persons holding a valid license under this part shall be deemed included in and covered by such license."

Section 4. Section 82-4-332, MCA, is amended to read:

"82-4-332. Exploration license. (1) An exploration license shall be issued to any applicant therefor who shall:

(a) pay a fee of $5 to the board;

(b) agree to reclaim any surface area damaged by the applicant during exploration operations, all as may be reasonably required by the board;

(c) not be in default of any other reclamation obligation under this law.

(2) An application for an exploration license shall be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include an exploration

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map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The department shall by rules determine the precise nature of such exploration map or sketch. The applicant must state what types of prospecting and excavation techniques will be employed in disturbing the land.

(3) Upon filing of any certificate of claim location as permitted by federal and state mining laws and regulations, the locator shall provide copies of said certificates to the board.

(4) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with 82-4-338.

(5) In the event that the holder of an exploration permit desires to mine the area covered by the exploration license and has fulfilled all of the requirements for *an* operating permit, the department *shall* allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for *an* operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the operating reclamation plan shall be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner acceptable to the department."

Section 5. Section 82-4-334, MCA, is amended to read:

"82-4-334. Exception — geological phenomena. Upon proper application by the holder of an exploration license, the board may excuse such holder from reclamation obligations with reference to any specified openings or excavations exposing geological indications or phenomena of especial interest, even though the licensee does not apply or have any intention to apply for *an* operating permit for the land in which such openings or excavations have been made."

Section 6. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit. *No* person shall engage in mining *or disturb land in anticipation of mining* in the state without first obtaining an operating permit from the board to do so. A separate operating permit shall be required for each mine complex. Prior to receiving an operating permit from the board, any person must pay the basic permit fee of $25 and must submit an application on a form provided by the board, which shall contain the following information and any other pertinent data required by the rules:

(1) name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners, and the like and its resident agent for service of process, if required by law;

(2) minerals expected to be mined;

(3) a proposed reclamation plan;

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(4) expected starting date of mining;

(5) a map showing the specific area to be mined and the boundaries of the land which will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, location of proposed access roads to be built and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to applicant;

(6) types of access roads to be built and manner of reclamation of road sites on abandonment; *and*

(7) a plan of mining which will provide, within limits of normal operating procedures of the industry, for completion of mining and associated land disturbances."

Section 7. Section 82-4-337, MCA, is amended to read:

"82-4-337. Inspection — issuance of operating permit — modification. (1) (a) *The board shall cause all applications for operating permits to be reviewed for completeness within 30 days of receipt. The board shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within 30 days of receipt.*

(b) Unless the review period is extended as provided in this section, the board shall review the adequacy of the proposed reclamation plan and plan of mining within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the board does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of mining within such time period, the operating permit shall be issued upon receipt of the bond as required in 82-4-338. The department shall promptly notify the applicant of the form and amount of bond which will be required. No permit may be issued until sufficient bond has been submitted pursuant to 82-4-338.

(c) (i) Prior to issuance of a permit, the department shall inspect the site *unless the department has failed to act on the application within the time prescribed in subsection (1)(b).* If the site is not accessible due to extended adverse weather conditions, the department may extend the time period *prescribed in subsection (1)(b)* by not more than 180 days to allow inspection of the site and reasonable review. The department must serve written notice of extension upon the applicant in person or by certified mail, and any such extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period *prescribed in subsection (1)(b)* by not more than 365 days in order to permit reasonable review.

(iii) Failure of the board to act upon a complete application within the *extension* period constitutes approval of the application, and the permit shall be issued promptly *upon receipt of the bond as required in 82-4-338.*

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(2) The operating permit shall be granted for the period required to mine the land covered by the plan and shall be valid until the surface or underground mining authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the board as provided in this part.

(3) The operating permit shall provide that the reclamation plan may be modified by the board, upon proper application of the permittee or department, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection."

Section 8. **Repealer.** Section 82-4-333, MCA, is repealed.

Approved April 16, 1979.

CHAPTER NO. 589

AN ACT TO DESIGNATE THE DEPARTMENT OF REVENUE AS THE PARTY DEFENDANT IN ALL ACTIONS RELATING TO THE DEPARTMENT'S ASSESSMENT OF PROPERTY AND TO PROVIDE THAT LOCAL TAXING UNITS ARE NOT RESPONSIBLE FOR ANY COSTS ASSESSED AGAINST THE DEPARTMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Department to defend property tax appeals — costs and judgments.** (1) The department of revenue or its agent is the party defendant in any proceeding before a county tax appeal board, the state tax appeal board, or a court of law that seeks to dispute or adjust an action of the department under 15-8-101 arising from the exercise of the department's duties as prescribed by law or administrative rule. For the purposes of proceedings before county tax appeal boards, service on the department may be obtained by serving the local county assessor.

(2) Costs, if any, shall be assessed against the department and not against a local taxing unit.

(3) In any suit brought in the courts of this state for the refund of taxes paid under protest and those funds are held by the treasurer of a unit of local government in a protest fund, the court shall enter judgment, exclusive of costs, against the treasurer if the court finds the taxes should be refunded.

Approved April 16, 1979.

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CHAPTER NO. 590

AN ACT TO INCREASE THE REIMBURSEMENT RATE FOR SCHOOL BUS AND INDIVIDUAL AND ISOLATED TRANSPORTATION COSTS; AMENDING SECTIONS 20-10-141 AND 20-10-142, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-10-141, MCA, is amended to read:

"20-10-141. Schedule of maximum reimbursement by bus mileage rates. (1) The following bus mileage rates for school bus transportation constitute the maximum reimbursement to districts for school bus transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates shall not limit the amount which a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school bus transportation during the ensuing school fiscal year. Any vehicle, the operation of which is reimbursed under the rate provisions of this schedule, shall be a school bus, as defined by this title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) The rate per bus mile traveled shall be determined in accordance with the following schedule when the *bus is used for transportation of eligible transportees:*

(a) *50* cents in fiscal *1980* and *55* cents in fiscal *1981* and each year thereafter per bus mile for a school bus with a rated capacity of not less than 12 but not more than 50 children; and

(b) when the rated capacity is more than 50 children, an additional 2 cents per bus mile for each additional child in the rated capacity in excess of 50 shall be added to a base rate of *50* cents in fiscal *1980* and *55* cents in fiscal *1981* and each year thereafter per bus mile.

(3) The rated capacity shall be the number of riding positions of a school bus as determined under the policy adopted by the board of public education."

Section 2. Section 20-10-142, MCA, is amended to read:

"20-10-142. Schedule of maximum reimbursement for individual transportation. The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates also shall constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. The schedules provided in this section shall not be altered by any authority other than the legislature of the state of Montana. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of

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school attendance, they shall reimburse the parent or guardian on the basis of the following schedule:

(1) When a parent or guardian transports an eligible transportee or transportees from the residence of the parent or guardian to a school or to schools located within 3 miles of one another, the total reimbursement per day of attendance shall be determined by multiplying the distance in miles between the residence and the school, or the most distant school if more than one, by 2, subtracting 6 miles from the product so obtained, and multiplying the difference by *18* cents provided that:

(a) if two or more eligible transportees are transported by a parent or guardian to two or more schools located within 3 miles of one another and if such schools are operated by different school districts, the total amount of the reimbursement shall be divided equally between the districts;

(b) if two or more eligible transportees are transported by a parent or guardian to two or more schools located more than 3 miles from one another, the parent or guardian shall be separately reimbursed for transporting the eligible transportee or transportees to each school;

(c) if a parent transports two or more eligible transportees to a school and a bus stop which school and bus stop are located within 3 miles of one another, the total reimbursement shall be determined under the provisions of this subsection and shall be divided equally between the district operating the school and the district operating the bus;

(d) if a parent transporting two or more eligible transportees to a school or bus stop must, because of varying arrival and departure times, make more than one round-trip journey to the bus stop or school, the total reimbursement allowed by this section shall be limited to one round trip per day for each scheduled arrival or departure time;

(e) notwithstanding subsections (1)(a), (1)(b), (1)(c), or (1)(d), no reimbursement may be less than 25 cents a day.

(2) When the parent or guardian transports an eligible transportee or transportees from the residence to a bus stop of a bus route approved by the trustees for the transportation of the transportee or transportees, the total reimbursement per day of attendance shall be determined by multiplying the distance in miles between the residence and the bus stop by 2, subtracting 3 miles from the product so obtained, and multiplying the difference by *18* cents provided that:

(a) if the eligible transportees transported attend schools in different districts but ride on one bus, the districts shall divide the total reimbursement equally; and

(b) if the parent or guardian is required to transport the eligible transportees to more than one bus, the parent or guardian shall be separately reimbursed for transportation to each bus.

(3) Where, due to excessive distances, impassable roads, or other special circumstances of isolation the rates prescribed in subsection (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a physical hardship for the eligible transportee, his parent

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or guardian may request an increase in the reimbursement rate. Such a request for increased rates due to isolation shall be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances which exist to justify the increase. Before any increase rate due to isolation can be paid to the requesting parent or guardian, such rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the county transportation committee and the superintendent of public instruction, the trustees shall pay such increased rate due to isolation. The increased rate shall be 1 ½ times the rate prescribed in subsection (1) above.

(4) When the isolated conditions of the household where an eligible transportee resides require such eligible transportee to live away from the household in order to attend school, he shall be eligible for the room and board reimbursement. Approval to receive the room and board reimbursement shall be obtained in the same manner prescribed in subsection (3) above. The per diem rate for room and board shall be *$4* for one eligible transportee and *$2* for each additional eligible transportee of the same household.

(5) When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate shall be the cost of such study, provided that the course of instruction is approved by the trustees and supervised by the district."

Approved April 16, 1979.

CHAPTER NO. 591

AN ACT TO AMEND SECTION 15-70-330, MCA, TO CHANGE THE PENALTY FOR FAILURE OF A SPECIAL FUEL DEALER OR A SPECIAL FUEL USER TO FILE A MONTHLY TAX RETURN FROM 25% OF THE AMOUNT OF TAX DUE TO 10% OF THE AMOUNT OF TAX DUE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-330, MCA, is amended to read:

"15-70-330. Penalties for refusal or failure to file return or pay tax when due. (1) In case of any special fuel dealer or special fuel user who refuses or fails to file a return required by this part within the time prescribed by 15-70-103 and 15-70-325, there is hereby imposed a penalty of $25 or a sum equal to *10%* of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for each calendar month or fraction thereof during which such refusal or failure continues; provided, however, that if any such special fuel dealer or special fuel user shall establish to the satisfaction of the department that his failure to file

a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this section.

(2) Where a special fuel dealer or a special fuel user files a return but fails to pay in whole or in part the tax due hereunder, there shall be added to the amount due and unpaid interest at the rate of 1% per month or fraction thereof from the date such tax was due to the date of payment in full thereof."

Approved April 16, 1979.

CHAPTER NO. 592

AN ACT REQUIRING MOTOR VEHICLE LIABILITY PROTECTION ON MOTOR VEHICLES AS A CONDITION OF OPERATION OF THOSE VEHICLES UPON THE HIGHWAYS OR OTHER PREMISES OPEN TO USE BY THE PUBLIC; AMENDING SECTIONS 61-6-123 AND 61-6-142, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Required motor vehicle insurance.** (1) Every owner of a motor vehicle which is registered and operated in Montana by the owner or with his permission shall continuously provide insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by maintenance or use of a motor vehicle, as defined in 61-1-102, in an amount not less than that required by 61-6-103, or a certificate of self-insurance issued in accordance with 61-6-143.

(2) A motor vehicle owner who prefers to post an indemnity bond with the division of motor vehicles in lieu of obtaining a policy of liability insurance may do so. The bond shall guarantee that any loss resulting from liability imposed by law for bodily injury, death, or damage to property suffered by any person caused by accident and arising out of the operation, maintenance, and use of the motor vehicle sought to be registered shall be paid within 30 days after final judgment is entered establishing such liability. The indemnity bond shall guarantee payment in the amount provided for insurance under subsection (1).

(3) Any bond given in connection with this section is a continuing instrument and shall cover the period for which the motor vehicle is to be registered and operated. Such bond shall be on a form approved by the commissioner of insurance with a surety company authorized to do business in the state.

Section 2. **Proof of compliance.** (1) Before any applicant required to register his motor vehicle may do so the applicant must certify and display to the county treasurer an automobile liability insurance policy, a certificate of self-insurance, a posted indemnity bond, or eligibility for an exemption under [section 3] covering the motor vehicle, the certification

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shall be on a form prescribed by the division of motor vehicles. The division may immediately cancel the registration and license plates of the vehicle upon notification that the insurance certification was not correctly represented.

(2) An owner of a motor vehicle who ceases to maintain the insurance or bond required or whose certificate of self-insurance is canceled or whose vehicle ceases to be exempt shall immediately surrender the registration and license plates for the vehicle to the county treasurer for delivery to the division and may not operate or permit operation of the vehicle in Montana until insurance has again been furnished as required and the vehicle is again registered and licensed.

Section 3. **Exempt vehicles.** The following vehicles and their drivers are exempt from the provisions of [section 1]:

(1) a vehicle owned by the United States government or any state or political subdivision;

(2) a vehicle for which cash, securities, or a bond has been deposited or filed with the division upon such terms and conditions providing the same benefits available under a required motor vehicle liability insurance policy;

(3) a vehicle owned by a self-insurer certified as provided in 61-6-143;

(4) an implement of husbandry or special mobile equipment that is only incidentally operated on a highway or property open to use by the public;

(5) a vehicle operated upon a highway only for the purpose of crossing such highway from one property to another;

(6) a commercial vehicle registered or proportionally registered in this and any other jurisdiction provided that vehicle is covered by a motor vehicle liability insurance policy complying with the laws of another jurisdiction in which it is registered;

(7) a motorcycle;

(8) a vehicle moved solely by human or animal power.

Section 4. **Penalties.** It is unlawful for any person to operate a motor vehicle upon highways, streets, or roadways of this state without a valid policy of liability insurance in effect in an amount not less than that provided in [section 1] or unless such person has been issued a certificate of self-insurance pursuant to [section 2] or has previously posted an indemnity bond with the commissioner of insurance as provided by [section 1] or is operating a vehicle exempt under [section 3]. A violation of [sections 1 through 4] is a misdemeanor punishable as provided in 61-3-601.

Section 5. Section 61-6-123, MCA, is amended to read:

"61-6-123. Suspension to continue until judgments paid and proof given — maximum period of suspension. Such license and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of

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such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided, and until the person gives proof of financial responsibility subject to the exemptions stated in 61-6-122 and 61-6-125 or 6 years have passed from date judgment was first entered as provided in 25-9-301, *and the person has complied with [sections 1 and 2].*"

Section 6. Section 61-6-142, MCA, is amended to read:

"**61-6-142. Duration of proof — when money or securities may be canceled or returned.** (1) *The* division shall direct and the state treasurer shall return to the person entitled thereto any money or securities deposited pursuant to this part as proof of financial responsibility, or the division shall waive the requirement of filing proof *under this part*, in any of the following events:

(a) at any time after 3 years from the date such proof was required when during the 3-year period preceding the request the division has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license, registration, or nonresident's operating privilege of the person by or for whom such proof was furnished;

(b) in the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

(c) in the event the person who has given proof surrenders his license and registration to the division.

(2) However, the division shall not consent to the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has deposited such money or securities has, within 1 year immediately preceding such request been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the division.

(3) Whenever any person whose proof has been canceled or returned under subsection (1)(c) of this section applies for a license or registration within a period of 3 years from the date proof was originally required, any such application shall be refused unless the applicant *complies with the insurance or bond requirements under [sections 1 and 2].*"

Section 7. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 17, 1979.

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CHAPTER NO. 593

AN ACT TO PROVIDE THAT THE TRANSPORTATION OF BUILDINGS UNDER A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY CAN BE DONE ON A STATEWIDE BASIS AND MAY NOT BE RESTRICTED TO A PARTICULAR REGION OF THE STATE; PROVIDING RULEMAKING AUTHORITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Special provisions relating to transportation of buildings.** (1) A certificate that permits the transportation of a building other than a mobile home as defined in 15-1-101 from its existing foundation to a new location shall permit such transportation throughout the state and may not restrict such transportation to a particular region of the state.

(2) The provisions of this section shall apply only to those licensed motor carriers who have specifically identified the moving of buildings or certain types of buildings as an area of authorization on their present public service commission certification or to those motor carriers operating under an authority broad enough to include the moving of buildings who have been actively engaged in the business of moving buildings for a period of 2 years prior to July 1, 1979. For purposes of this subsection, a motor carrier has been actively engaged in the business of moving buildings if the moving of buildings has constituted a substantial part of his business during the 2-year period prior to July 1, 1979.

(3) The commission shall adopt rules to implement subsection (1).

Section 2. **Codification.** It is intended that section 1 be codified as an integral part of Title 69, chapter 12, part 3, and the provisions of Title 69, chapter 12, apply to section 1.

Approved April 18, 1979.

CHAPTER NO. 594

AN ACT TO REVISE THE COST LIMITS ON UNDERGROUND PLACEMENT OF UTILITIES; AMENDING SECTION 7-12-4132, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-4132, MCA, is amended to read:

"7-12-4132. Power to require underground placement of utilities within district. (1) It is provided that the city council shall have the same jurisdiction and powers as provided in 7-12-4102 and 7-12-4103 (before doing any of the work mentioned in this part) to require any public service corporation or company, firm, or person occupying such

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streets, avenues, or alleys, at their own expense and within a reasonable time to be fixed by the council, to place in an underground conduit, in such manner as may be directed by the council, all wires; electric conduits; or telephone, telegraph, power, or power transmission lines or appurtenances thereto or appliances owned, held, or enjoyed in connection therewith.

(2) The whole cost so assessed shall at no time exceed the sum of $1.50 per lineal foot plus the cost of the pipe."

Approved April 18, 1979.

CHAPTER NO. 595

AN ACT TO PERMIT A DEALER IN IMPLEMENTS OF HUSBANDRY TO TRANSPORT SUCH IMPLEMENTS ON SATURDAY AND SUNDAY; TO PROVIDE FOR THE PURCHASE OF AN OVERSIZE PERMIT BY SUCH DEALER FOR $75 TO COVER A PERIOD OF 1 YEAR; AMENDING SECTIONS 61-10-121, 61-10-122, AND 61-10-124, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-121, MCA, is amended to read:

"61-10-121. Permits for excess size and weight. (1) The department of highways and local authorities in their respective jurisdictions may in their discretion, upon application in writing and with good cause shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle, combination of vehicles, load, object, or other thing of a size or weight exceeding the maximum specified in 61-10-101 through 61-10-110 upon a highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible. However, only the department has the discretion to issue permits for movement of a vehicle or combination of vehicles carrying built-up or reducible loads in excess of 9 feet in width or exceeding the length, height, or weight specified in 61-10-101 through 61-10-110. This permit shall be issued in the public interest. A carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. A permit may not be issued for a period of time greater than the license period provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit. The department may issue oversize permits to dealers in implements of husbandry and self-propelled machinery which may be transferred from unit to unit by the dealer for the fees set forth in 61-10-124. *These oversize permits may not restrict dealers in implements of husbandry and self-propelled machinery from traveling on a Saturday or Sunday.* These oversize permits expire on December 31 of each year

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with no grace period. For the purposes of this section, a dealer in implements of husbandry or self-propelled machinery must be a resident of the state. A post-office box number is not a permanent address under this section.

(2) The applicant for a special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle, combination of vehicles, load, object, or other thing to be operated or moved and the particular state highways over which the vehicle, combination of vehicles, load, object, or other thing is to be moved and whether the permit is required for a single trip or for continuous operation."

Section 2. Section 61-10-122, MCA, is amended to read:

"61-10-122. Discretion of issuer — conditions. The department or local authority may issue or withhold a special permit at its discretion or, if the permit is issued, limit the number of trips or establish seasonal or other time limitations within which the vehicle, combination of vehicles, load, object, or other thing described may be operated on the public highways indicated, or otherwise limit or prescribe conditions of operation of the vehicle, combination of vehicles, load, object, or other thing when necessary to assure against damage to the road foundation, surfaces, or structures or safety of traffic, and may require an undertaking or other security considered necessary to compensate for injury to a roadway or road structure. During harvest no permit may be denied to oversize harvest or harvest-related agricultural machinery solely on the grounds that the travel takes place on a Saturday or Sunday. *No permit may be denied to dealers in implements of husbandry and self-propelled machinery solely on the grounds that the travel may take place on a Saturday or Sunday.*"

Section 3. Section 61-10-124, MCA, is amended to read:

"61-10-124. Special permits — fee. (1) *Except as provided in subsection (2)(b), in* addition to the regular license and gross vehicle weight fees, a fee of $6 for each permit issued in excess of the size and weight specified in 61-10-101 through 61-10-110 shall be paid for all movements under special permits on the public highways under the jurisdiction of the department.

(2) *(a) Except as provided in subsection (2)(b), term* or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet, an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 85 feet, and an overheight vehicle, combination of vehicles, load, or other thing in excess of 13 ½ feet or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). The fee for this permit is $75. This permit covers a period of 1 year and expires on December 31 of each year with no grace period.

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(3) *Except as provided in subsection (2)(b), a* fee of $6 shall be paid for each overweight permit issued, but a permit may not be issued for a period of time greater than the license period provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit."

Approved April 18, 1979.

CHAPTER NO. 596

AN ACT REVISING THE METHOD BY WHICH INTERIM LEGISLATIVE STUDIES AND STUDY COMMITTEES ARE SELECTED; AMENDING SECTIONS 5-5-211, 5-5-216, AND 5-11-105, MCA; AND REPEALING SECTIONS 5-5-221 AND 5-5-222, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-5-211, MCA, is amended to read:

"5-5-211. Appointment and composition of joint subcommittees. *Joint subcommittee members shall be appointed by the legislative council. The chairmen of the appropriate standing committees in each body shall recommend suggested members to serve on each subcommittee. The legislative council shall consider the recommendations, but is not bound thereby. No legislator shall serve on more than two interim joint subcommittees.* The composition of each subcommittee shall be as follows:

(1) four members of the house, no more than two of whom may be of one political party; and

(2) four members of the senate, no more than two of whom may be of one political party."

Section 2. Section 5-5-216, MCA, is amended to read:

"5-5-216. Recommendations of subcommittees. A subcommittee appointed for the purpose of making a study *designated by the legislative council* may make recommendations for legislation. These recommendations and the study report shall be submitted to the legislature at the next regular session."

Section 3. Section 5-11-105, MCA, is amended to read:

"5-11-105. Powers and duties of council. (1) If a question of statewide importance arises when the legislature is not in session and a subcommittee has not been appointed to consider the question, the legislative council shall assign the question to an appropriate subcommittee.

(2) The legislative council shall supervise the activities of the council staff.

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(3) The legislative council shall assist in the preparation and submission of all standing and select committee and subcommittee reports and recommendations to the legislature.

(4) This section shall not be construed to permit the council to approve or disapprove of any substantive portions or recommendations of a standing or select committee or subcommittee report."

Section 4. **Selection and assignment of interim studies.** (1) Immediately following adjournment sine die, the legislative council shall prepare a list of study requests adopted. A copy of the list shall be distributed to each legislator with a request that the legislator rank the study requests in the order of importance he ascribes to them. The lists, with the priorities assigned, shall be returned to the legislative council.

(2) The legislative council shall review the priority lists returned by legislators, review estimated costs and staff assistance associated with the requested studies, and designate those studies to be assigned. In designating studies, the legislative council may combine requests as one study when the subject matter of those requests is closely related. The legislative council shall group related studies together and shall designate the number of committees to be appointed.

(3) The legislative council shall inform the chairmen of the appropriate standing committees in each body of those studies that have been selected. Following receipt of the recommendations from the standing committee chairmen, the legislative council shall then proceed under 5-5-211 to appoint the subcommittees.

Section 5. **Repealer.** Sections 5-5-221 and 5-5-222, MCA, are repealed.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1979.

CHAPTER NO. 597

AN ACT TO REQUIRE COMPETITIVE BIDS FOR LEASES AND RENTAL AGREEMENTS ENTERED INTO BY THE STATE, EXCEPT FOR CERTAIN GOODS OR SERVICES OFFERED BY PUBLIC UTILITIES; AMENDING SECTIONS 18-4-101, 18-4-102, 18-4-201 THROUGH 18-4-203, 18-4-213, AND 18-4-214, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-4-101, MCA, is amended to read:

"18-4-101. General procurement duties of department of administration. (1) The department shall make or supervise the making of all purchases, *leases, or rentals* of goods and services for the legislature, the supreme court, and each state agency, institution, and official.

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(2) Unless otherwise provided by law, the legislature, the supreme court, or any state agency, institution, or official may not purchase, *lease, or rent* goods or services unless the purchase, *lease, or rental agreement* is supervised by the department.

(3) All purchases, *leases, or rentals made or entered into* by the department shall be based on competitive bids, *except that goods or services offered for sale, lease, or rental by public utilities are exempt from [this act] if the prices of the goods or services are regulated by the public service commission or other governmental authority.*"

Section 2. Section 18-4-102, MCA, is amended to read:

"**18-4-102. Contract terms and time limit.** (1) No contract, except as otherwise provided by law, shall be made for a longer period than 3 years.

(2) A contract shall provide for the delivery of the articles at the times and in the quantities as the department determines.

(3) All purchases, *leases, rentals,* advertisements, and contracts for supplies for any purpose authorized by law shall be made by the department in the name of the state."

Section 3. Section 18-4-201, MCA, is amended to read:

"**18-4-201. Requisitions for supplies.** (1) State officers, agencies, and institutions shall tabulate in detail the amount of supplies on hand for any class of merchandise for a period as determined by the department and the additional supplies needed for a period of time not to exceed 1 year's supply. The department shall examine the amount of supplies on hand and shall determine from that examination and from the furnished statements the additional amount of supplies necessary and shall make an itemized statement thereof, all of which acts of the department are subject to approval of the governor. As soon as the department determines what kind of supplies and the amount necessary for the state to purchase, *lease, or rent* for its state offices, agencies, or institutions, the department shall make the purchases, *leases, or rentals.*

(2) An estimate or requisition presented by an agency or state official in control of the appropriation or fund against which such contract, purchase, *lease, or rental* is to be charged must be approved by the department, and this shall be full authority for any contract and any purchase, *lease, or rental* made by the department."

Section 4. Section 18-4-202, MCA, is amended to read:

"**18-4-202. Contracts over two thousand dollars.** On any purchase, *lease, or rental agreement* when the estimated *aggregate* expenditure *per fiscal year* is $2,000 or over, sealed bids shall be solicited by mail from each person, firm, or corporation who has filed with the department a request in writing that it be listed for solicitation on bids for such particular items set forth in such listing. However, if a person, firm, or corporation whose name is listed fails to respond to any solicitation for bids after the receipt of two such solicitations, such listing shall, within the discretion of the department, be canceled. It is within the discretion of the

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department to advertise for such purchases, *leases, or rentals.* If bids are solicited through advertising, the advertisement shall be made in at least three newspapers (one of which must be a daily) of general circulation printed within the state, once each week for 2 consecutive weeks, and the advertisement shall state that sealed proposals will be received by the department, up to a time to be mentioned therein, for furnishing supplies for the state offices, agencies, or institutions. The notice shall also state that detailed statements of supplies to be furnished are on file at the office of the department and subject to inspection and that at a certain time to be therein mentioned the proposals will be opened and contracts awarded to the lowest responsible bidder."

Section 5. Section 18-4-203, MCA, is amended to read:

"18-4-203. Contracts under two thousand dollars. On purchases, *leases, or rental agreements* where the estimated expenditure is less than $2,000, bids shall be secured without advertising, but the department shall solicit bids for the supplies by notice sent by mail to prospective suppliers whose names are listed as provided above, which notice shall contain the same information as is herein required to be set forth in advertisements."

Section 6. Section 18-4-213, MCA, is amended to read:

"18-4-213. Public bid opening — award or rejection — bid records. (1) At the time set for the opening of bids, the proposals shall be opened in public and contracts awarded to the lowest responsible bidder. The department may reject any bid. If all proposals be rejected, proposals shall again be invited and proceeded with in the same manner; however, in that event, the department may, with the approval of the governor, purchase, *lease, or rent* the supplies on the open market if they can be *obtained* at a better price.

(2) The department shall record in a book kept for that purpose a true abstract of all bids made for furnishing supplies and equipment for the state, giving the name of the party bidding, the terms of the offer, and the sum to be paid and shall keep on file and preserve all bids until the end of the contract term to which they relate.

(3) Each bidder has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids.

(4) The records shall be open at all times for the inspection of those who are interested in the contracts made or to be made with the state."

Section 7. Section 18-4-214, MCA, is amended to read:

"18-4-214. Payment by department. All valid claims on account of such contract, purchases, *leases, or rental agreements* negotiated by the department shall be audited and paid from the sums severally set aside for the use of the department by the contract, purchase, *lease, or rental agreement* estimate or requisition."

Approved April 18, 1979.

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CHAPTER NO. 598

AN ACT TO CLARIFY POSTSECONDARY VOCATIONAL-TECHNICAL CENTER GOVERNANCE; DEFINING DUTIES OF STATE AND LOCAL OFFICIALS; INCREASING THE COUNTY MILL LEVY FOR THE SUPPORT OF THE CENTERS; AUTHORIZING ADDITIONAL SCHOOL DISTRICT LEVIES IN CERTAIN CASES; CLARIFYING FINANCIAL RESPONSIBILITY FOR MAINTENANCE, REMODELING, AND RENOVATION OF CENTERS; AMENDING SECTIONS 20-1-101, 20-2-121, 20-3-103, 20-3-104, 20-3-106, 20-7-301, 20-7-303, 20-7-311, 20-7-312, 20-7-314, 20-7-322 THROUGH 20-7-325, 20-7-332, AND 20-7-333, MCA; REPEALING SECTION 20-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-301, MCA, is amended to read:

"20-7-301. Duties of the superintendent of public instruction. The *superintendent of public instruction* shall be the governing *agent and executive officer* of the state of Montana for vocational education. The *superintendent of public instruction* shall adopt *and administer* policies to effect the orderly development of a system of vocational education that is adaptable to changing needs, controlled to prevent unnecessary duplication, coordinated with federal guidelines and requirements for vocational education, and funded to ensure growth and quality programming. In order to accomplish the orderly development of a system of vocational education, the *superintendent of public instruction* policies shall include:

(1) a state plan for such development;

(2) standards for vocational education courses and programs;

(3) the minimum requirements for granting postsecondary vocational-technical certificates to students;

(4) a review process for the establishment and deletion of programs;

(5) the necessary qualifications that a postsecondary vocational-technical center director must possess;

(6) instructor qualifications for vocational education courses and programs;

(7) criteria for approval of vocational education courses and programs which are to receive financial assistance;

(8) criteria for receiving, reviewing, and transmitting recommendations on postsecondary vocational-technical center operations and budget requests to the legislature;

(9) a basis for apportionment of all moneys appropriated by the legislature for vocational education in accordance with the intent of the legislature as reflected in the terms of the appropriation;

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(10) a basis for apportionment of all moneys received by the state of Montana for vocational education from the federal government in accordance with the acts of congress;

(11) a system of evaluation of vocational education which allows for consideration of the current and projected manpower needs and job opportunities;

(12) the tuition and fees to be charged at the postsecondary vocational-technical centers, based upon legislative appropriations available to the superintendent of public instruction for postsecondary vocational-technical centers;

(13) the allowable costs for rental of buildings for postsecondary vocational-technical center purposes;

(14) guidelines for the authority delegated by the superintendent of public instruction to the local school district board of trustees operating a postsecondary vocational-technical center; and

(15) any other policy not inconsistent with public law and which is necessary for the proper operation of a system of vocational education."

Section 2. **State director of vocational education — duties.** There is a state director of vocational education appointed by the superintendent of public instruction. He must:

(1) administer the vocational education policies adopted by the superintendent of public instruction;

(2) prepare curriculum guides for superintendent of public instruction adoption;

(3) employ, with the confirmation of the superintendent of public instruction, the professional staff necessary for the state supervision and administration of vocational education;

(4) report the status of vocational education in the state of Montana when requested by the superintendent of public instruction;

(5) keep all vocational education records in his office;

(6) provide vocational education supervisory and consultative assistance to districts;

(7) provide a postsecondary vocational-technical center system policy and procedural handbook for institutional operations that will standardize operations among the centers;

(8) identify and direct the county treasurer in those counties where postsecondary vocational-technical centers are located to establish the necessary multifund structures for postsecondary vocational-technical center financial operations;

(9) meet with the chairman of the board of trustees, district superintendent, and center director of each postsecondary vocational-technical center at least twice each year to discuss recommended changes in the superintendent of public instruction's policies and procedures;

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(10) formulate and put into effect uniform fiscal, student, staff, and program accounting systems for the postsecondary vocational-technical centers;

(11) prepare any necessary reports for the superintendent of public instruction or the legislature;

(12) represent the postsecondary vocational-technical center system to state agencies, associations, and others when appropriate;

(13) recommend a staffing pattern for the postsecondary vocational-technical centers;

(14) provide for the evaluation of programs and services within each postsecondary vocational-technical center;

(15) provide for evaluation of each postsecondary vocational-technical center's ability to meet employment and student vocational-technical education needs; and

(16) perform any other duty assigned by the superintendent of public instruction.

Section 3. Section 20-7-312, MCA, is amended to read:

"20-7-312. Local administration. *(1) Subject* to the requirements of the laws of the state of Montana and the policies of the superintendent of public instruction *as administered by the state director of vocational education, the board of trustees operating a postsecondary vocational-technical center shall:*

(a) employ, from among qualified applicants, a postsecondary vocational-technical center director;

(b) employ administrative personnel, faculty members, and employees for the postsecondary vocational-technical center according to the policies and procedures of the board of trustees;

(c) recommend, develop, and submit budgets for the postsecondary vocational-technical centers;

(d) establish and collect student tuition and fees;

(e) recommend to the superintendent of public instruction through the state director of vocational education:

(i) proposals regarding postsecondary vocational-technical center programs, budgets, student services, and public service activities; and

(ii) campus development and program plans for individual postsecondary vocational-technical center buildings;

(f) manage buildings erected and equipped on leased grounds;

(g) receive and administer gifts and bequests to the postsecondary vocational-technical center according to a written plan submitted to the superintendent of public instruction; and

(h) perform any other administrative responsibilities not inconsistent with law and required by the superintendent of public instruction.

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(2) The board of trustees operating a postsecondary vocational-technical center may not enter into any contract that in any way creates a debt or obligation upon the state for the improvement or construction of postsecondary vocational-technical center buildings on leased property.

Section 4. Section 20-7-324, MCA, is amended to read:

"20-7-324. Sources of financing for postsecondary vocational-technical center budgets — superintendent of public instruction administration. (1) The total of the budgets approved by the *superintendent of public instruction*, together with the budget for the cost of state administration of the postsecondary vocational-technical centers, shall constitute the total maximum approved statewide budget which shall be financed as follows:

(a) The primary source of financing is to be those funds specifically designated by legislative enactment or referendum by the people for financing postsecondary vocational-technical education in Montana.

(b) The board of county commissioners of each county in which a designated postsecondary vocational-technical center is located is hereby authorized to levy a tax of not to exceed *1 ¼ mills for calendar year 1979 and 1 ½ mills thereafter* on the dollar of all taxable property, real and personal, within the county for the support and maintenance of the postsecondary vocational-technical center located within the county.

(c) Designated postsecondary vocational-technical centers shall be eligible to receive such funds from the federal government as the *superintendent of public instruction* may provide pursuant to applicable acts of congress.

(d) The board of trustees of any designated high school district or county high school district where a postsecondary vocational-technical center is located may be required, as a condition for the construction in that district of a postsecondary vocational-technical center, or any part thereof, to furnish up to 50% of the amount of funds required for any such construction. The percentage of construction funds to be furnished by the designated district shall be derived, in whole or in part, from any of the following sources:

(i) the sale of bonds issued by that district (such bonds shall be issued in conformity with the requirements of chapter 9, part 4, of this title in the case of high school and county high school district);

(ii) any other funds available to that district which may be legally and properly applied toward such construction;

(iii) the reasonable value of land, buildings, fixtures, or equipment furnished by that district, subject to the approval of the *superintendent of public instruction.*

(2) The *superintendent of public instruction* shall direct the distribution of the funds specified in subsections (1)(a) *and* (1)(c) on the basis of the budgets approved by the *superintendent of public instruction.* The

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funds earned by the mill levy specified in subsection (1)(b) shall be credited by the county treasurer to the postsecondary vocational-technical center fund.

(3) The *superintendent of public instruction* shall determine the amount of financing available from these *four* sources of revenue and may approve budgets for maintenance and operation, construction, and ancillary services. The aggregate amount of the budgets so approved by the *superintendent of public instruction* for postsecondary vocational-technical centers shall not exceed the moneys determined to be available."

Section 5. **Additional levy by school district.** Notwithstanding the provisions of 20-7-324, the trustees operating a postsecondary vocational-technical center may propose to adopt a budget in excess of the amount appropriated by the legislature for salaries and benefits. The legislature shall base the appropriation for salaries and benefits on amounts appropriated in the previous legislative session. When the trustees determine that an additional amount is required, they must submit the proposition for an additional levy to the qualified electors of the district pursuant to 20-20-301 and in the manner prescribed by 20-9-353. When another additional levy proposition is presented to the electorate, the proposition for an additional levy for a postsecondary vocational-technical center may be presented as a separate issue on the ballot or it may be consolidated with the additional levy proposition of the high school district.

Section 6. **Source of financing for postsecondary vocational-technical center facility maintenance.** The source of funds for maintenance, remodeling, and renovation of postsecondary vocational-technical center facilities may be either local funds or state funds specifically appropriated by the legislature and approved by the superintendent of public instruction.

Section 7. **Precedence of state laws for vocational education.** If, in construing the laws of Montana, there is a conflict between the laws providing for postsecondary vocational-technical centers and any other laws governing the operation of schools, the former have controlling authority.

Section 8. Section 20-1-101, MCA, is amended to read:

"20-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Agricultural experiment station" means the agricultural experiment station established at Montana state university.

(2) "Average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district.

(3) "The board of public education" is the board created by Article X, section 9, subsection (3) of the 1972 Montana constitution and 2-15-1507.

(4) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2) of the 1972 Montana constitution and 2-15-1505.

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(5) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2) of the 1972 Montana constitution and 2-15-1506.

(6) "County superintendent" means the county government official who is the school officer of the county.

(7) "District superintendent" means any person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(8) "Postsecondary vocational-technical center" means a school used principally for the provision of postsecondary vocational-technical education to persons who qualify as postsecondary vocational-technical pupils. These centers are designated by the *superintendent of public instruction* upon direction by the legislature. All other public or private schools are hereby prohibited from using this title.

(9) "Postsecondary vocational-technical education" means vocational-technical education of postsecondary vocational-technical pupils which is conducted by a postsecondary vocational-technical center or other programs as designated by the *superintendent of public instruction.* Postsecondary vocational-technical education shall include the 13th and 14th year and beyond but will not include work toward a baccalaureate degree.

(10) "Postsecondary vocational-technical pupil" means a person who has completed or left school, is at least 16 years of age, and is available for study in preparation for entering the labor market, for reentering the labor market, or for employment stability or advancement in employment.

(11) "Principal" means any person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher shall be construed as including a principal, as herein defined.

(12) "Pupil" means any child who is 6 years of age or older but has not yet reached his 21st birthday and who is enrolled in a school established and maintained under the laws of the state of Montana at public expense.

(13) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

(14) "Regents" means the board of regents of higher education.

(15) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and shall include any food service financially assisted through funds or commodities provided by the United States government.

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(16) "The state board of education" is the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1) of the 1972 Montana constitution.

(17) "State university" means the Montana state university, located at Bozeman.

(18) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the constitution of Montana.

(19) "System" means the Montana university system.

(20) "Teacher" means any person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher shall also include any person for whom an emergency authorization of employment of such person has been issued under the provisions of 20-4-111.

(21) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

(22) "Textbook dealer" means any party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state of Montana.

(23) "Trustees" means the governing board of a district.

(24) "University" means the university of Montana, located at Missoula.

(25) "Vocational education" means the instruction to prepare or improve the pupil for gainful employment that does not require a baccalaureate or higher degree. This definition of vocational education shall include guidance and prevocational, related, or technical instruction necessary to prepare the pupil for further vocational education or for entry into employment."

Section 9. Section 20-2-121, MCA, is amended to read:

"20-2-121. Board of public education — powers and duties. The board of public education shall:

(1) effect an orderly and uniform system for teacher certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 20-4-102 and 20-4-111;

(2) consider the suspension or revocation of teacher certificates and appeals from the denial of teacher certification in accordance with the provisions of 20-4-110;

(3) administer and order the distribution of state equalization aid in accordance with the provisions of 20-9-344;

(4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 20-10-111;

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(5) approve or disapprove a reduction of the number of hours in a district's school day in accordance with the provisions of 20-1-302;

(6) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for such days in accordance with the provisions of 20-1-303 and 20-1-304;

(7) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of 20-7-101 and 20-7-102;

(8) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 20-7-201;

(9) adopt policies for the conduct of special education in accordance with the provisions of 20-7-402;

(10) perform any other duty prescribed from time to time by this title or any other act of the legislature."

Section 10. Section 20-3-103, MCA, is amended to read:

"20-3-103. Deputy superintendent — staff. (1) The state superintendent of public instruction shall appoint a deputy who, in the absence of the principal or in the case of vacancy in his office, shall perform all the duties of office until such disability be removed or vacancy be filled. Such deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of his duties.

(2) The superintendent of public instruction shall have the power to employ, organize, and administer a staff of personnel to assist him in the administration of the duties and services of the office. In organizing his staff, the superintendent of public instruction shall employ:

(a) a supervisor of physical education who is a graduate of an accredited institution of higher education with a master's degree in physical education;

(b) a professional staff for the state supervision and administration of vocational education; and

(c) a special education supervisor who is a graduate of an accredited institution of higher education with a master's degree in a field of special education for the mentally retarded or physically handicapped and who has not less than 2 years' experience in special education."

Section 11. Section 20-3-104, MCA, is amended to read:

"20-3-104. Discretionary staff. In addition to the positions of employment listed in 20-3-103, the superintendent of public instruction may employ:

(1) one or more assistant superintendents, one of whom may be designated as assistant superintendent for vocational education;

(2) a high school supervisor who is the holder of a class 3 teacher certificate with a district superintendent endorsement;

(3) an elementary supervisor who is the holder of a valid teacher certificate;

(4) a competent person to develop economy and efficiency in school transportation and to otherwise supervise the transportation program;

(5) a music supervisor who is a graduate of an accredited institution of higher education in music education and who has not less than 5 years of teaching experience;

(6) an educational media supervisor who is a graduate of an accredited institution of higher education and who has experience in the field of educational media; and

(7) any other supervisors or assistants as may be required to carry out the duties of his office."

Section 12. Section 20-3-106, MCA, is amended to read:

"20-3-106. Supervision of schools — powers and duties. The superintendent of public instruction has the general supervision of the public schools and districts of the state, and he shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of joint costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment and give notice of teacher certification suspension or revocation proceedings to be conducted by the board of public education in accordance with the provisions of the teacher certification part of this title;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) serve on the teachers' retirement board in accordance with the provisions of 2-15-1010;

(5) prescribe absentee voting forms and rules in accordance with the provisions of 20-20-104;

(6) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311;

(7) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(8) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(9) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-505;

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(10) establish a system of communication for calculating joint district revenues in accordance with the provisions of 20-9-151;

(11) approve or disapprove the adoption of a district's emergency budget resolution under the conditions prescribed in 20-9-163 and publish rules for an application for additional state aid for an emergency budget in accordance with the approval and disbursement provisions of 20-9-166;

(12) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(13) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(5) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(14) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(15) distribute state equalization aid in support of the foundation program in accordance with the provisions of 20-9-342, 20-9-346, and 20-9-347;

(16) estimate the statewide equalization level for the foundation program in accordance with the provisions of 20-9-348;

(17) distribute state impact aid in accordance with the provisions of 20-9-304;

(18) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(19) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705;

(20) request, accept, deposit, and expend federal moneys in accordance with the provisions of 20-9-603;

(21) authorize the use of federal moneys for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(22) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(23) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of 20-1-303 and 20-1-304;

(24) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with such standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(25) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

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(26) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(27) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(28) *as the governing agent and executive officer of the state of Montana for vocational education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301*;

(29) consider applications for the designation of a postsecondary vocational-technical center in accordance with the provisions of 20-7-311;

(30) establish a fund for the handling of postsecondary vocational-technical center fees in accordance with the provisions of 20-7-333;

(31) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(32) administer the traffic education program in accordance with the provisions of 20-7-502;

(33) administer the school food services program in accordance with the provisions of 20-10-201, 20-10-202, and 20-10-203;

(34) review school building plans and specifications in accordance with the provisions of 20-6-622;

(35) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408; and

(36) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

Section 13. Section 20-7-303, MCA, is amended to read:

"20-7-303. District authorization to establish and maintain vocational education courses and programs. The trustees of any district, community college district, or unit of the Montana university system may establish and maintain a vocational education course or program that complies with the vocational education standards adopted by the *superintendent of public instruction*. In order for a course or program to be eligible for state or federal financing, it shall be approved by the *superintendent of public instruction*."

Section 14. Section 20-7-311, MCA, is amended to read:

"20-7-311. Postsecondary vocational-technical center designation. (1) Postsecondary vocational-technical centers shall be designated by the *superintendent of public instruction* only upon direction of the legislature. Applications for designation must be made in accordance with the following procedure:

(a) The trustees of any high school district, of a county high school, of a community college district, or the governing board of any unit of the Montana university system may submit an application for designation of

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a postsecondary vocational-technical center to be operated by such trustees or governing board. The application for designation shall be submitted in accordance with the time, data, and form requirements prescribed by the *superintendent of public instruction*. Applicant high school districts, county high schools, or community college districts shall be located in a county with a taxable valuation of at least $45 million.

(b) Applications are to be presented to the superintendent of public instruction. The superintendent of public instruction shall examine the application and draft recommendations. The application, together with all recommendations, shall be presented by the *superintendent of public instruction* to the next following legislature.

(2) The *superintendent of public instruction* shall recognize the presently designated postsecondary vocational-technical centers operated by the respective board of trustees of school district number 1 of Silver Bow County, high school district number 1 of Lewis and Clark County, high school district "A" of Cascade County, Missoula County high school, and high school district number 2 of Yellowstone County."

Section 15. Section 20-7-314, MCA, is amended to read:

"20-7-314. Lease or purchase of state property for postsecondary vocational-technical center purposes. (1) The state of Montana, acting by and through the *superintendent of public instruction*, is hereby empowered and authorized to enter into a lease agreement for a term not to exceed 40 years in order to lease to a district operating a postsecondary vocational-technical center any building or lands owned by the state and financed in whole or in part by an appropriation made by the legislature of the state of Montana for the purpose of supporting the district's postsecondary vocational-technical center. The consideration necessary to support such a lease may be nominal.

(2) The *superintendent of public instruction* is hereby authorized to transfer or direct transfer of title held by the state of Montana in buildings or lands financed in whole or in part by an appropriation by the state legislature to a district operating a postsecondary vocational-technical center, at any time the *superintendent of public instruction* deems such transfer to be in the best interests of both the state and the district involved, provided that this authorization extends only to buildings or lands which are to be used by the district for postsecondary vocational-technical education purposes."

Section 16. Section 20-7-322, MCA, is amended to read:

"20-7-322. State treasurer custodian of vocational education moneys. The treasurer of the state of Montana is hereby designated as the custodian of all federal and state moneys designated, appropriated, or apportioned for vocational education. All moneys received from any federal or state source for the establishment, operation, or furtherance of vocational education in the state shall be deposited with the state treasurer. At the direction of the *superintendent of public instruction*, he shall disburse all moneys appropriated or received for vocational education."

Section 17. Section 20-7-323, MCA, is amended to read:

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"20-7-323. Program and budget categories for postsecondary vocational-technical education centers. (1) The *superintendent of public instruction* shall have the sole authority for the approval of the postsecondary vocational-technical education programs and their budgets. Such programs and budgets shall be placed into three categories defined as:

(a) maintenance and operation, which shall include programs and costs for instruction; vocational guidance and counseling; job placement; travel of pupils and personnel while engaged in a program; acquisition, maintenance, and repair of equipment; and the rental of necessary emergency facilities for not more than 1 year;

(b) construction, which shall include the program and cost for construction of new buildings; acquisition, expansion, remodeling, and alteration of existing buildings; site acquisition and improvements; architectural fees; and the purchase of initial equipment;

(c) ancillary services, which shall include the program and cost for the services and activities necessary to assure quality in the postsecondary vocational-technical center's instruction, such as supervision and administration of the center, program evaluation, special demonstration and experimental programs, and development of instructional materials and curriculum.

(2) The trustees of the designated district or other governing board where the postsecondary vocational-technical center is located shall submit program proposals and the related budgets on the basis of these categories and in accordance with the program and budget approval procedure prescribed by the *superintendent of public instruction.*"

Section 18. Section 20-7-325, MCA, is amended to read:

"20-7-325. Postsecondary vocational-technical center fund. (1) Whenever an approved postsecondary vocational-technical center under the provisions of 20-7-311 is operated within a district, the trustees of such district shall establish a postsecondary vocational-technical center fund. All moneys prescribed and received under the provisions of 20-7-324 shall be credited to the postsecondary vocational-technical center fund. The expenditure of the moneys deposited in the postsecondary vocational-education center fund shall be made under the budget and for the programs approved by the *superintendent of public instruction* under the provisions of 20-7-323 and the financial administration provisions of this title.

(2) The approval of the postsecondary vocational-technical center budget and subsequent revision or amendment of such budget by the *superintendent of public instruction* shall constitute the final budget approval, and the inclusion of such fund in the district's preliminary budget and the final budget approved by the budget board shall not be required.

(3) Whenever the county tax prescribed in 20-7-324(1)(b) is to be used in support of the postsecondary vocational-technical center fund budget, the county commissioners are authorized to levy such tax on the county in accordance with the provisions of 20-9-142."

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Section 19. Section 20-7-332, MCA, is amended to read:

"20-7-332. Waiver of tuition for Montana residents and setting nonresident tuition rates. (1) Tuition shall not be charged to any resident of the state of Montana by the governing board of any postsecondary vocational-technical center. However, nonresidents may be charged tuition at rates to be determined by the *superintendent of public instruction.*

(2) For the purposes of this section the eligibility of a student for resident status shall be determined in the same manner as that prescribed for use by the Montana university system, except that those provisions referring to "high school graduates" or "graduation from high school" shall be considered to refer to a person who has attended school or who was in attendance at a school."

Section 20. Section 20-7-333, MCA, is amended to read:

"20-7-333. Pupil fees and disposition of collected fees. (1) Fees for the use of equipment and material used in instruction may be charged by the trustees or other governing board of the postsecondary vocational-technical center. The *superintendent of public instruction* shall prescribe the basis and limitations for the charging of such fees.

(2) Fees collected by the postsecondary vocational-technical center shall be deposited with the county treasurer in the fund designated by the superintendent of public instruction for the receipt of such fees. The expenditure of the fees shall not be subject to budget limitations and shall be in addition to the program budgets approved by the *superintendent of public instruction.*"

Section 21. **Repealer.** Section 20-7-302, MCA, is repealed.

Section 22. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1979.

CHAPTER NO. 599

AN ACT TO REVISE THE SPECIAL FUEL USER'S PERMIT PROVISIONS; PROVIDING FOR QUARTERLY FILING OF SPECIAL FUEL TAX RETURNS; AMENDING SECTIONS 15-70-302 THROUGH 15-70-307, 15-70-325, AND 15-70-327, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-302, MCA, is amended to read:

"15-70-302. Special fuel dealer's licenses and special fuel user's permits required — exceptions. (1) It shall be unlawful for any person to act as a special fuel dealer in this state unless such person

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is the holder of an uncanceled fuel dealer's license issued to him by the department.

(2) Every special fuel user shall obtain *annually* from the department, prior to the use of such special fuel for the propulsion of a motor vehicle or vehicles in this state, a special fuel user's permit *and shall at all times display the original or a reproduced copy of the permit in* each such vehicle or vehicles operated by him upon the highways as herein defined which shall be exhibited for inspection on request of any checking station officer, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. *The special fuel user shall be responsible for reproducing clear and legible copies of the permit.*

(3) A special fuel user's permit is not required of any person whose sole use of special fuel is for the propulsion of a privately operated passenger automobile provided the person purchases special fuel, tax paid, from a licensed special fuel dealer in this state. For purposes of this exemption, a privately operated passenger vehicle does not include a motor vehicle used for the transportation of persons for hire or for compensation or designed, used, or maintained primarily for transportation of property.

(4) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit shall not be transferable and shall be valid for 90 days. Permits will be issued at no cost to the user by the department, scale house personnel, and gross vehicle weight patrol crews. The department may require the user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid."

Section 2. Section 15-70-303, MCA, is amended to read:

"15-70-303. Application for license or permit. (1) Application for a special fuel dealer's license *or* a special fuel user's permit shall be made to the department unless otherwise provided herein.

(2) The application shall be filed upon a form prepared and furnished by the department. The application shall contain such information as the department deems necessary."

Section 3. Section 15-70-304, MCA, is amended to read:

"15-70-304. Bonding, release of surety, and additional bond. (1) Except as herein provided, no special fuel dealer's license or special fuel user's *permit* shall be issued to any person or continued in force unless such person has furnished bond, as defined in 15-70-301 and in such form as the department may require, to secure its compliance with this part and the payment of any and all taxes, interest, and penalties due and to become due hereunder. Upon application, the department may waive the bond requirement of any resident special fuel user who establishes to the reasonable satisfaction of the department that the tax as herein provided is not delinquent or that interest or penalties are not accrued under the provisions of this part.

(2) The total amount of the bond or bonds required of any special fuel dealer *shall be equivalent to twice his estimated monthly tax payments*

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and the total amount of the bond or bonds required of any special fuel user shall be equivalent to twice his estimated *quarterly* tax payments as hereinafter provided, determined in such manner as the department may deem proper; provided, however, that the total amount of the bond or bonds shall never be less than $5,000 for any special fuel user awarded a contract in accordance with 15-70-321 or less than $500 for any other special fuel user and not less than $1,000 for a special fuel dealer.

(3) Any surety on a bond furnished by a special fuel dealer or special fuel user as provided herein shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of 30 days from the date upon which such surety shall have lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the 30-day period. The department shall, promptly upon receiving any such request, notify the special fuel dealer or special fuel user who furnished the bond, and unless the special fuel dealer or special fuel user shall, on or before the expiration of the 30-day period, file a new bond in accordance with the requirements of this section or make a deposit in lieu thereof as provided in 15-70-301(1), the department forthwith shall cancel the special fuel dealer's *license* or special fuel user's *permit*.

(4) The department may require a special fuel dealer or special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301(1) if, in its opinion, the security of the surety bond theretofore filed by such special fuel dealer or special fuel user or the market value of the properties deposited as security by such special fuel dealer or special fuel user shall become impaired or inadequate, and upon failure of the special fuel dealer or special fuel user to give such new additional surety bond or to deposit additional securities within 30 days after being requested so to do by the department, said department forthwith shall cancel his license."

Section 4. Section 15-70-305, MCA, is amended to read:

"15-70-305. Issuance of license or permit — grounds for refusal — hearing. (1) Upon receipt of the application and bond in proper form, the department shall issue to the applicant a license *or permit* to act as a special fuel dealer or special fuel user; provided, however, the department may refuse to issue a special fuel dealer's license *or* a special fuel user's permit to any person:

(a) who formerly held *a* license or permit which, prior to the time of filing application, has been revoked for cause;

(b) who is not the real party in interest and where the license or permit of the real party in interest has been revoked for cause prior to the time of filing such application; or

(c) upon other sufficient cause being shown.

(2) Before such refusal, the department shall grant the applicant a hearing and shall grant him at least 10 days' written notice of the time and place thereof.

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(3) Each special fuel dealer's license *or* special fuel user's permit shall be valid until suspended or revoked for cause or otherwise canceled.

(4) No special fuel dealer's license *or* special fuel user's permit shall be transferable."

Section 5. Section 15-70-306, MCA, is amended to read:

"15-70-306. Revocation, suspension, and cancellation. (1) The department may revoke the license *or permit* of any special fuel dealer or special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking such license or permit, the department shall notify the licensee or permittee of its intention so to do, by either certified or registered mail addressed to his last-known address shown in the files of the department, requiring him to appear before the department on a day and hour specified in such notice not more than 30 days or less than 10 days from date of such notice and show cause, if any he has, why the license or the permit or each of them should not be revoked; provided, however, that at any time prior to and pending such hearing, the department may in the exercise of reasonable discretion suspend such license or permit.

(2) Upon revocation by the department of any such license or permit, the holder thereof shall immediately surrender the same to the department for cancellation."

Section 6. Section 15-70-307, MCA, is amended to read:

"15-70-307. Surrender of permit upon use discontinuance. The department shall cancel any license to act as a special fuel dealer or *any* special fuel user permit immediately upon surrender thereof by the holder."

Section 7. Section 15-70-325, MCA, is amended to read:

"15-70-325. Returns. (1) For the purpose of determining the amount of his liability for the tax herein imposed, each special fuel dealer *shall file with the department a monthly tax return* and each special fuel user shall file with the department, on forms prescribed by said department, a *quarterly* tax return.

(2) Upon annual application, the department shall waive the filing of a *quarterly* tax return of any special fuel user who establishes that such user's annual tax liability is or will be $100 or less.

(3) Such user shall make an annual report and return to the department on forms prescribed by said department, on or before January 25 of each year. Should the department determine that a user filing annual returns as herein provided is delinquent in making reports and payments, it shall require such person to file *quarterly* returns as herein provided. Such return, annual or *quarterly*, shall contain a declaration by the person making the same to the effect that the statements contained are true and are made under penalties of perjury, which declarations shall have the same force and effect as a verification. The return shall show such information as the department may reasonably require for the proper administration and enforcement of this part.

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(4) If a special fuel dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the return to the department need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made.

(5) The special fuel dealer or special fuel user shall file the return on or before the 25th day of the next succeeding calendar month following the period to which it relates; provided, however, that for good cause the department may grant a taxpayer a reasonable extension of time for filing but not to exceed 30 days."

Section 8. Section 15-70-327, MCA, is amended to read:

"15-70-327. Payment — deductions. The tax return shall be accompanied by remittance covering the tax due hereunder on account of the use as defined in 15-70-301 of special fuels during the preceding *period*. A licensed special fuel dealer is allowed a deduction equal to 1% of the first 6 cents per gallon of the taxes paid by the dealer under 15-70-321 as an allowance for shrinkage, spillage, and evaporation of special fuels and other losses beyond the dealer's control."

Section 9. **Effective date.** This act is effective on January 1, 1980.

Approved April 18, 1979.

CHAPTER NO. 600

AN ACT REQUIRING AGENCIES TO RECODIFY ADMINISTRATIVE RULES OF MONTANA, TO CHANGE REFERENCES TO THE REVISED CODES OF MONTANA, 1947, TO THE MONTANA CODE ANNOTATED, TO PROVIDE PROCEDURES FOR THE ACCOMPLISHMENT OF RECODIFICATION, AND TO BIENNIALLY REVIEW ITS RULES; AMENDING SECTION 2-4-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "MCA" means Montana Code Annotated.

(2) "R.C.M." means Revised Codes of Montana, 1947.

(3) "ARM" means Administrative Rules of Montana.

(4) "Recodify" means to compile, rearrange, and prepare for publication. It includes without changing the meaning, effect, or intent of any rule:

(a) correcting or changing punctuation, capitalization, spelling, or grammatical construction and numbering as required by uniform literary and rule-drafting practice;

(b) substituting the appropriate MCA reference for reference to a section of, to a chapter of, or to an entire division of the R.C.M.;

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(c) substituting the calendar date for "effective date", "hereafter", and similar terms;

(d) creating new titles, chapters, subchapters, sections, or other divisions of ARM;

(e) changing or creating catchlines to clearly reflect the content of the section;

(f) changing or inserting language as made necessary because of rearrangement;

(g) eliminating redundant words;

(h) when given direction or authority by a statute or another ARM section, correcting inaccurate or obsolete references to:

(i) titles of officers or agencies, such as those changed by executive reorganization statutes or subsequent interagency reorganizations;

(ii) other ARM or R.C.M. sections, such as those which have been repealed or repealed and replaced;

(i) changing inaccurate terminology to comply with statutory or rule definitions or short-form amendments;

(j) renumbering all ARM rules in the new three-part numbering system;

(k) eliminating unnecessary information in the history of ARM rules;

(l) reserving blocks of page numbers in ARM where growth has been consistent in the past or future growth is anticipated;

(m) providing the secretary of state with an "old to new" numbering table to be filed in front of each title;

(n) removing all repealed rules from ARM and listing them on the "old to new" numbering table;

(o) providing the secretary of state with a schedule of prospective chapter numbers and prospective page numbers, indicating the blocks of page numbers to be reserved in the agency's title, for the purpose of assisting the secretary of state in providing to ARM subscribers instructions for page removal and insertion of replacement pages.

Section 2. **Agency duties.** (1) Prior to July 1, 1980, agencies shall recodify all the rules of a general and permanent nature appearing in ARM, prepare them for publication, and refile them, in correct format and style, with the secretary of state.

(2) The secretary of state may set a schedule requiring an agency to recodify and refile its rules in chapter increments and prescribing the number of recodified pages to be submitted by each agency to the secretary of state at each scheduled date for replacement pages during the period beginning on [the effective date of the act] and ending on July 1, 1980.

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(3) Each agency shall submit a schedule to the secretary of state listing the chapter names, chapter numbers, and pages in its title that will be recodified and refiled to meet the requirements of subsection (2). The validity of the rules that are not refiled by the scheduled date is suspended on that date.

(4) Such suspended rules may be recodified and refiled with the secretary of state by the next scheduled replacement page date, and if so recodified and refiled, they become valid and effective on that date. If such suspended rules are not so recodified and refiled by that date, they are permanently invalid and may be revived only by fulfilling all requirements of the Montana Administrative Procedure Act relating to rulemaking in the same manner as new rules proposed for adoption.

(5) Prior to September 1, 1980, each agency shall prepare and submit to the secretary of state a report, which must be certified by the agency as the Official Report of the Recodification of Title .... The report must explain and indicate, in tabular or other form, all changes made during recodification, other than the changes listed in subsections (4)(a) through (4)(e) and (4)(j) through (4)(o) of [section 1], to clearly indicate the character of and rationale for each change. The report must be made available by the secretary of state on request and at a fee set by 2-6-103.

(6) The effective date of the recodification is the date of the replacement page issue.

Section 3. **Effect of recodification and refiling.** The rules in ARM that are recodified and refiled pursuant to [section 2] shall be given effect as a continuation of the rules in ARM as they exist on [the effective date of this act] and not as a new adoption. A rule that is invalid, in whole or in part, on [the effective date of this act] is not rendered valid by the process of recodification and refiling.

Section 4. Section 2-4-314, MCA, is amended to read:

"**2-4-314. Biennial review by agencies.** *(1)* Each agency shall at least *biennially* review its rules to determine if any new rule should be adopted or any existing rule should be modified or repealed.

(2) Prior to October 1, 1980, and prior to October 1 of each even-numbered year thereafter, each agency shall prepare and submit a report to the administrative code committee, in tabular or other form, indicating the agency's recommendations for legislation which will clarify existing grants of rulemaking authority and grant or eliminate rulemaking authority as necessary."

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 20, 1979.

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CHAPTER NO. 601

AN ACT TO SIMPLIFY THE DISPOSITION OF THE FUEL PERMIT FEE; AMENDING SECTION 15-70-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-312, MCA, is amended to read:

"15-70-312. Fees for temporary permits — duration of temporary permits. (1) The temporary special fuel permits shall cost the special fuel vehicle user a fee of $20. *The* permit shall be valid for a period of time not to exceed 72 hours and will be automatically void should *the* vehicle leave the state of Montana during the 72-hour period.

(2) A temporary special fuel permit for a nonresident operating agricultural harvesting equipment shall cost $30 per unit for a period beginning July 1 and ending October 31. The permit shall not be transferable. A unit shall be defined as:

(a) one truck suitable for hauling produce;

(b) one harvesting machine; and

(c) pickup trucks and any other accessory vehicles.

(3) All fees collected shall be remitted to the department *or deposited directly in the earmarked revenue fund for the department of highways.*"

Approved May 7, 1979.

CHAPTER NO. 602

AN ACT TO ESTABLISH COURSES OF INSTRUCTION AND EXAMINATION FOR DEPARTMENT OF REVENUE APPRAISERS AND TO REQUIRE ALL APPRAISERS TO BECOME CERTIFIED WITHIN A YEAR.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** In order to produce more uniform appraisal of property throughout the state by encouraging technical training in the principles, methods, and techniques of appraising property and promoting a higher level of professionalism among appraisers, the legislature hereby establishes a system of instruction, examination, and certification for all appraisers.

Section 2. **Courses of instruction, examination, and certification.** (1) The department of revenue shall offer courses in the principles, methods, and techniques of appraising for property tax purposes property in three fields:

(a) residential property;

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(b) agricultural land; and

(c) commercial and industrial property.

(2) Twice each year the department shall conduct an examination for those who have completed a course of instruction in any of the three fields listed in subsection (1).

(3) The department shall issue a certificate to each appraiser successfully completing a course of instruction and passing an examination in any of these fields.

(4) No person may take the examination for appraising commercial and industrial property unless he holds a certificate in appraising residential property.

Section 3. **Certification required.** (1) Within 1 year after his employment by the department or by July 1, 1980, whichever occurs later, any appraiser employed by the department to appraise:

(a) residential property must obtain a certificate in appraising residential property;

(b) agricultural land must obtain a certificate in appraising agricultural land; and

(c) commercial and industrial property must obtain a certificate in appraising commercial and industrial property.

(2) The department may promulgate rules requiring appraisers to complete continuing education courses in laws, rules, and methods relating to appraisal.

Approved May 7, 1979.

CHAPTER NO. 603

AN ACT TO EXEMPT PROPERTY TAX PAYMENT ON VEHICLES OWNED BY NONRESIDENTS TEMPORARILY EMPLOYED IN MONTANA; AMENDING SECTION 15-24-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-301, MCA, is amended to read:

"15-24-301. Personal property brought into the state — assessment — exceptions — custom combine equipment. (1) Property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) any personal property (including livestock) brought, driven, or coming into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) property which comes to rest and becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner and to the same extent, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) Nothing in this section shall be construed to levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer in addition to the tax levied against the inventory of said merchant or dealer on the regular assessment date.

(4) This section *does* not apply to *any* motor *vehicle* brought, driven, or coming into this state by any nonresident *person* temporarily employed in Montana *for a period not exceeding 90 days* if the motor *vehicle is* used exclusively for transportation of *such person.*

(5) Agricultural harvesting machinery classified under classes eight and twelve, licensed in other states, and operated on the lands of persons other than the owner of the machinery under contracts for hire shall be subject to a fee in lieu of taxation of $35 per machine for a 60-day period. The machines shall be subject to taxation under classes eight and twelve only if they are sold in Montana."

Approved May 7, 1979.

CHAPTER NO. 604

AN ACT TO AMEND SECTION 2-9-313, MCA, TO REQUIRE SERVICE OF PROCESS IN TORT ACTIONS AGAINST THE STATE TO BE SERVED ON THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION IN ADDITION TO SERVICE REQUIRED BY RULE 4D(2)(H), M.R.CIV.P.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-313, MCA, is amended to read:

"2-9-313. Service of process on state. In all actions against the state, the state shall be named the defendant, and the summons *and complaint* shall be served on the *director of the department of administration in addition to service required by Rule 4D(2)(h), M.R.Civ.P.*"

Approved May 7, 1979.

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CHAPTER NO. 605

AN ACT PROVIDING SALARY INCREASES FOR PROBATION OFFICERS AND A MINIMUM SALARY FOR DEPUTY PROBATION OFFICERS; AMENDING SECTIONS 41-5-704 AND 41-5-705, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-704, MCA, is amended to read:

"41-5-704. Salary and expenses. (1) A chief probation officer shall receive for his services a sum specified by the court; however, the judge may employ him on a yearly salary, not to be less than *$15,000* or more than *$20,000* depending on the formal training and experience of each respective officer. The salary of such officer shall be apportioned among and paid by each of the counties in which such officer is appointed to act, in proportion to the assessed valuation of such counties for the same year, except where such officer is appointed for one county whereby such county shall pay the entire salary.

(2) For all *authorized* travel incident to his official duties in connection with the investigation, supervision, and transportation of youth, the probation officer shall, in addition to his office salary, be reimbursed *as provided in 2-18-501 through 2-18-503.*"

Section 2. Section 41-5-705, MCA, is amended to read:

"41-5-705. Deputy probation officers — salary. The judge having jurisdiction of juvenile matters may also appoint such additional persons, giving preference to persons having the qualifications suggested for appointment as the chief probation officer, to serve as deputy probation officers as the judge deems necessary, their salaries to be fixed by the judge. Such salaries shall not exceed 90% *or be less than 60%* of the salary of the chief probation officer."

Approved May 7, 1979.

CHAPTER NO. 606

AN ACT TO ELIMINATE THE USE OF LISTS OF PERSONS COMPILED BY STATE AND LOCAL AGENCIES AS MAILING LISTS BY PRIVATE PARTIES; PROVIDING A PENALTY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Prohibition on distribution or sale of mailing lists — penalty.** (1) Except as provided in subsections (3), (4), (5), and (6), in order to protect the privacy of those who deal with state and local government:

(a) no agency may distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

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(b) no list of persons prepared by the agency may be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) This section does not prevent an individual from compiling a mailing list by examination of original documents or applications which are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115 and 13-38-103, or to lists of the names of employees governed by Title 39, chapter 31, MCA.

(5) This section shall not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to Title 20, chapter 30, MCA, or specifically exempted therefrom as provided in 20-30-102.

(6) This section does not apply to the right of access either by Montana law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(7) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor.

Approved May 7, 1979.

CHAPTER NO. 607

AN ACT TO AMEND SECTION 60-3-201, MCA, TO INCREASE THE PERCENTAGE OF THE RECEIPTS OF THE GASOLINE DEALERS' LICENSE TAX TO BE DEPOSITED IN THE SNOWMOBILE ACCOUNT OF THE EARMARKED REVENUE FUND.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-3-201, MCA, is amended to read:

"60-3-201. Distribution and use of proceeds of gasoline dealers' license tax. (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of revenue's suspense account for gasoline tax refund, shall be used and expended as provided in this section. So much of that money on hand at any time as may be needed to pay highway bonds and interest thereon when due and to accumulate and maintain a reserve therefor, as provided in laws and in resolutions of the state board of examiners authorizing such bonds, shall be deposited in the highway bond account in the sinking fund established by 17-2-102. Subject to that provision, 9/10 of 1% of all money shall be deposited in the state park account and ½ of 1% of all money shall be deposited in a snowmobile

account in the earmarked revenue fund. All of the remainder of the money shall be used and expended by the department of highways on the federal-aid highways in this state selected and designated under the Federal-Aid Act, approved July 11, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto, and on highways leading from each county seat in the state to the federal highway system of federal-aid roads where the county seat is not on the system and on the other roads which have been or may be authorized by the laws of Montana and for collection of the license taxes and the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the federal highway system in the various parts of the state in accordance with 60-3-204 through 60-3-206. Nothing in this [act] conflicts with those federal-aid highway acts and the rules by which they are administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motor boating is allowed, except for the payment of refunds under 15-70-221 through 15-70-226. The legislature hereby finds as a fact that of all the fuel sold in the state for consumption in internal combustion engines, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost, and to promote snowmobile safety. For the 2 years following July 1, 1977, 15% of the amount deposited in the snowmobile fund each year shall be used to promote snowmobile safety. Thereafter, 10% of the amount deposited in the snowmobile fund shall be used to promote snowmobile safety. The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, not less than ½ of 1% is used for propelling snowmobiles on public lands of this state."

Approved May 7, 1979.

CHAPTER NO. 608

AN ACT TO INCLUDE LAND USED TO RAISE CERTAIN ANIMALS IN A CONFINED AREA AS ELIGIBLE FOR VALUATION AS AGRICULTURAL LAND; AMENDING SECTION 15-7-202, MCA; AND PROVIDING EFFECTIVE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-202, MCA, is amended to read:

"15-7-202. Eligibility of land for valuation as agricultural. (1) Land which is actively devoted to agricultural use shall be eligible for

valuation, assessment, and taxation as herein provided each year it meets *any* of the following qualifications:

(a) the area of such land is not less than 5 contiguous acres when measured in accordance with provisions of 15-7-206, and it has been actively devoted to agriculture during the last growing season, and it continues to be actively devoted to agricultural use, which means:

(i) it is used to produce field crops including but not limited to grains, feed crops, fruits, vegetables; or

(ii) it is used for grazing; or

(iii) it is in a cropland retirement program; or

(b) it agriculturally produces for sale or home consumption the equivalent of 15% or more of the owners' annual gross income regardless of the number of contiguous acres in the ownership; *or*

(c) it is used to raise animals in confined areas for the production of food or fiber, including but not limited to livestock, feedlots, dairies, fish hatcheries, and poultry farms.

(2) Land shall not be classified or valued as agricultural if it is subdivided with stated restrictions prohibiting its use for agricultural purposes.

(3) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise shall not be considered a bona fide agricultural operation."

Section 2. **Effective and applicability date.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1978.

Approved May 7, 1979.

CHAPTER NO. 609

AN ACT TO CHANGE THE TYPE OF SECURITY THAT GASOLINE DISTRIBUTORS, SPECIAL FUEL DEALERS, AND SPECIAL FUEL USERS MAY FILE WITH THE DEPARTMENT OF REVENUE, AMENDING SECTIONS 15-70-202 AND 15-70-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-202, MCA, is amended to read:

"15-70-202. License and security of gasoline distributors. *(1)* All gasoline distributors, prior to the commencement of doing business, shall file an application for a license with the department of revenue on forms prescribed and furnished by the department setting forth the information as may be requested by the department. Each distributor shall at the same time file *security with the department in an amount to be*

determined by the department. However, the required amount of security may not exceed twice the estimated amount of gasoline taxes the distributor will pay to this state each month. Upon approval of the application, the department shall issue to the distributor a nonassignable license which shall continue in force until surrendered or canceled.

(2) "Security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) a deposit made by the distributor with the department, under such conditions as the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation."

Section 2. Section 15-70-301, MCA, is amended to read:

"15-70-301. Definitions. As used in this part, the following definitions shall apply:

(1) "Bond" means:

(a) a bond duly executed by a special fuel dealer or special fuel user as principal with a corporate surety qualified under the laws of Montana, which bond shall be payable to the state of Montana, conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of such special fuel dealer or special fuel user arising out of this part; or

(b) a deposit with the *department* by the special fuel dealer or special fuel user, under such terms and conditions as the department of revenue may prescribe, of *certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.*

(2) "Department" means the department of revenue.

(3) "Motor vehicle" means any vehicle which is self-propelled upon the highways.

(4) "Person" means and includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation; whenever used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, means and includes the partners or members thereof and, as applied to joint-stock companies and corporations, the officers thereof.

(5) "Public roads and highways of this state" shall mean all streets, roads, highways, and related structures as have been or shall be built and maintained with appropriated funds of the United States and which have been or shall be built and maintained with funds of the state of Montana or any political subdivision thereof or which have been or shall be dedicated to public use or have been acquired by eminent domain or have been

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acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(6) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles propelled upon the public highways or streets within the state of Montana.

(7) "Special fuel dealer" means any person in the business of handling special fuel who delivers any part thereof into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him. For this purpose the term "fuel supply tank or tanks" does not include cargo tanks even though fuel is withdrawn directly therefrom for propulsion of the vehicle.

(8) "Special fuel user" means any person other than a county, incorporated city or town, or school district of this state who consumes in this state special fuel for the propulsion of motor vehicles owned or controlled by him upon the highways of this state.

(9) "Use" means either the receipt, delivery, or placing of special fuels by a special fuel dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while such vehicle is within this state or the consumption by a special fuel user of special fuels in propulsion of a motor vehicle on the highways of this state."

Approved May 7, 1979.

CHAPTER NO. 610

AN ACT TO AMEND SECTION 15-70-322, MCA, TO PROVIDE THAT THE UNITED STATES, THE STATE, AND OTHER STATES ARE EXEMPT FROM THE PAYMENTS OF TAX ON SPECIAL FUEL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-322, MCA, is amended to read:

"15-70-322. Tax on use of special fuels. There is hereby levied and imposed a tax on the use of each and every gallon of special fuel in any motor vehicle while operated upon the highways equivalent to the lawful tax levied on motor fuel under 15-70-321. Said tax, with respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles in this state, shall attach at the time of such delivery and shall be collected by such special fuel dealer from the special fuel user and shall be paid over to the department as hereinafter provided. Said tax, with respect to special fuel acquired by any special fuel user in any manner other than by delivery by a special fuel dealer into a fuel supply tank of a motor vehicle, shall attach at the time of the consumption of such fuel in the propulsion of a motor vehicle upon the highways of the state and shall be paid over to the department by the special fuel user as hereinafter

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provided. The *United States, Montana and all other states, and the* counties, incorporated cities and towns, and school districts of this state *are* exempt from the levy and imposition of this tax."

Approved May 7, 1979.

CHAPTER NO. 611

AN ACT TO AMEND SECTION 15-2-301, MCA, PROVIDING THAT THE STATE TAX APPEAL BOARD MAY UTILIZE A HEARINGS OFFICER AND REQUIRING A RECORD OF A HEARING INSTEAD OF A TRANSCRIPT UNDER CERTAIN CONDITIONS; PROVIDING A PERIOD OF EFFECTIVENESS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-2-301, MCA, is amended to read:

"15-2-301. Appeal of county tax appeal board decisions. (1) Any person or the department of revenue in behalf of the state or any municipal corporation aggrieved by the action of any county tax appeal board may appeal to the state board by filing with the county tax appeal board a notice of appeal and a duplicate thereof with the state board within 20 calendar days after the receipt of the decision of the county board, which notice shall specify the action complained of and the reasons assigned for such complaint. The county tax appeal boards shall mail their decisions to the property assessment division of the department. Receipt, for purposes of appeal, by the department is when the county tax appeal board decision is received by the property assessment division of the department. The state board shall set such appeal for hearing either in its office in the capital or such county seat as the board considers advisable to facilitate the performance of its duties or to accommodate parties in interest and shall give to the appellant and to the county board at least 15 calendar days' notice of the time and place of such hearing.

(2) *(a)* At the time of giving such notice, the state board may require the county board to certify to it the minutes of the proceedings resulting in such action and all testimony taken in connection therewith. The state board may, in its discretion, determine the appeal on such record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony. For the purpose of expediting its work, the state board may refer any such appeal to one of its members *or to a hearings officer under the conditions imposed in subsection (2)(b),* and the person so designated shall have and exercise all the powers of the board in conducting such hearings and shall, as soon as possible thereafter, report the proceedings, together with *the record of the hearing,* to the board and the state board shall determine such appeal on the record so made.

(b) The board may not employ a hearings officer unless:

(i) it has over 500 appeals awaiting hearing; and

(ii) the hearing officer has legal training or experience in tax appraisal, classification, and administration.

(3) On all hearings at county seats throughout the state, the state board or the *person* designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received and the cost thereof may be paid out of the general appropriation for the board.

(4) In connection with any appeal under this section, the state board shall not be bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. The decision of the state tax appeal board shall be final and binding upon all interested parties unless reversed or modified by judicial review. To the extent this section is in conflict with the Montana Administrative Procedure Act, this section shall supersede that act. The state tax appeal board may not amend or repeal any administrative rule of the department. The state tax appeal board must give an administrative rule full effect unless the board finds any such rule arbitrary, capricious, or otherwise unlawful."

Section 2. **Period of effectiveness.** This act is effective on passage and approval and remains in effect through June 30, 1981.

Approved May 7, 1979.

CHAPTER NO. 612

AN ACT TO ESTABLISH ADMINISTRATIVE PROCEDURES FOR ENFORCING SUPPORT FOR DEPENDENT CHILDREN.

WHEREAS, it is the responsibility of the state through the department of revenue to limit the expenditure of public assistance funds, whenever possible, in order that such funds not be spent if there are private funds available, or which can be made available by judicial process or otherwise, to partially or completely meet the financial needs of the children of this state. The failure of parents to provide adequate financial support and care for their children is a major cause of financial dependency and a contributing cause of social delinquency.

WHEREAS, the purpose of this act is to provide the state, through the department of revenue, a more effective and efficient way to effect the support of dependent children by the person or persons who, under the law, are primarily responsible for such support and to lighten the heavy burden of the taxpayer, who in many instances is paying toward the support of dependent children while those persons primarily responsible are avoiding their obligations.

WHEREAS, common law and statutory procedures governing the remedies for enforcement of support for financially dependent minor children by responsible parents have not proven wholly effective or efficient in coping with the increasing incidence of financial dependency. The increasing workload of courts and prosecuting attorneys has made such remedies

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uncertain, slow, and inadequate, thereby resulting in a growing burden on the financial resources of the state, which is constrained to provide public assistance grants for basic maintenance requirements when parents fail to meet their primary obligations.

THEREFORE, it is the intent of this act that the common law and statutory remedies pertaining to family desertion and nonsupport of minor dependent children be augmented by additional remedies as set forth in sections 12 through 30 and directed to the real and personal property resources of the responsible parents. In order to render resources more immediately available to meet the needs of minor children, it is the legislative intent that the remedies herein provided are in addition to and not in lieu of existing law. It is declared to be the public policy of the state that this act be construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through public assistance programs.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act] the following definitions apply:

(1) "Child" or "dependent child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States.

(2) "Department" means the department of revenue.

(3) "Director" means the director of the department of revenue or his authorized representative.

(4) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.

(5) "District court order" means any judgment or order of the district court of the state of Montana or an order of a court of appropriate jurisdiction of another state ordering payment of a set or determinable amount of support money.

(6) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and specifically includes periodic payments under pension or retirement programs or insurance policies of any type. "Earnings" specifically includes all gain derived from capital, labor, or both combined, including profit gained through sale or conversion of capital assets.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a dependent child or children.

(8) "Public assistance" means any type of monetary or other assistance, including medical and foster care benefits, furnished to a person by a state or county agency, regardless of the original source of the assistance.

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(9) "Responsible parent" means the natural or adoptive parent of a dependent child.

(10) "Support debt" means the sum created by the failure to provide support to a dependent child under the laws of this state or the decree of any court of appropriate jurisdiction ordering a sum to be paid as child support.

Section 2. **Department of revenue — powers and duties regarding collection of support debt.** (1) Whenever the department of social and rehabilitation services receives an application for public assistance on behalf of a child and it appears to the satisfaction of that department that the child has been abandoned by his parents; the child and one parent have been abandoned by the other parent; or the parent or other person who has a responsibility for the care, support, or maintenance of such child has failed or neglected to give proper care or support to the child, the department of social and rehabilitation services shall promptly refer the matter to the department of revenue for action under the provisions of [this act], the abandonment or nonsupport statutes, or other appropriate statutes of this state to insure that the parent or other person responsible pays for the care, support, or maintenance of the dependent child.

(2) In the event that public assistance is furnished by a state or county agency or in instances where the department has contracted to collect support, the department shall become trustee of any cause of action of the dependent child or the person having legal custody of the dependent child to recover support due to that obligee from any person and may bring and maintain the action either in the department's own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any recipient of public assistance in endorsing and cashing any and all drafts, checks, money orders, or other negotiable instruments received by the department and representing support payments for children in whose behalf public assistance has been previously paid.

(4) For purposes of prosecuting any civil action pursuant to [this act], the department is a real party in interest upon the payment of public assistance. No obligee shall act to prejudice the rights of the department after the receipt of public assistance.

(5) No agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may act to reduce or terminate any rights of the department to recover from that obligor for support debt provided unless the department has consented to the agreement in writing.

(6) The department may petition a court for modification of any court order on the same basis as a party to that action would have been entitled to do.

(7) The department shall be subrogated to the right of the child or children or person having the care, custody, and control of the child or

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children to maintain any civil action or execute any administrative remedy existing under the laws of the state to obtain reimbursement of money thus spent.

(8) If a district court an amount of support to be paid by a responsible parent, the department shall be subrogated to the debt created by the order and the money judgment shall be determined to be in favor of the department. This subrogation shall apply to temporary spouse support orders and family maintenance orders up to the amount paid by the department in public assistance money to or for the benefit of a dependent child or children but allocated to the benefit of the children on the basis of providing necessities for the caretaker of the children.

(9) The department may adopt and enforce such rules as may be necessary to carry out the provisions of [this act].

(10) The department, for the purposes mentioned in [this act], through its director or his authorized representatives, may administer oaths to certify official acts, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence.

Section 3. **Support enforcement services.** (1) The department may accept applications for support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against persons owing a duty to pay support.

(2) The department may establish by rule reasonable standards necessary to limit applications for support enforcement services. These standards shall take into account the earnings, income, and other resources already available to support the person for whom a support obligation exists.

(3) The department may charge a fee as compensation for services rendered in establishment of or enforcement of support obligations. This fee shall be agreed on in writing with the parent, custodian, or guardian of the person for whom a support obligation is owed or that person if no parent, custodian, or guardian exists. An initiation fee as a portion of the collection fee may be charged the applicant by the department. The department shall by rule establish reasonable fees for support enforcement services, and the schedule of fees shall be made available to all applicants for support enforcement services. The department may, upon a showing of necessity, waive or defer any such fee.

Section 4. **Cooperation by person having custody of child.** Any person having the care, custody, or control of any dependent child or children shall cooperate with the department in establishing the paternity of such child and obtaining support payments.

Section 5. **Payment of support money collected to support enforcement and collections unit — notice.** If written notice by the department is given to the responsible person or to the clerk of the court, if appropriate, that the children for whom a support obligation exists are receiving public assistance, then any support money paid by the person or persons responsible for support as a result of any action shall be paid

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through the support enforcement and collections unit of the department of revenue.

Section 6. **Petition for support order by married parent with minor children receiving public assistance.** (1) Any married parent with minor children, natural or legally adopted, who is receiving public assistance in the absence of a support order may apply to the district court of the county in which the parent resides or in which the spouse may be found for an order upon such spouse, if such spouse is the natural or adoptive mother or father of such children, to provide for the parent's support and the support of the parent's minor children by filing in the county a petition setting forth the facts and circumstances upon which the parent relies for the order.

(2) If it appears to the satisfaction of the court that the parent is without funds to employ counsel, the department may file a petition on behalf of the parent. If satisfied that a just cause exists, the court shall direct that a citation be issued to the spouse requiring that spouse to appear at a time set by the court to show cause why an order of support should not be entered in the matter.

Section 7. **Petition for support order by married parent with minor children receiving public assistance — powers of court.** (1) After hearing the petition for an order of support, the court shall make an order granting or denying it and fixing the terms and amount of the support.

(2) The court has the same power to compel the attendance of witnesses and the production of testimony as in actions and suits, make such decree or orders as are equitable in view of the circumstances of both parties, and punish violations as other contempts are punished.

Section 8. **Financial statements by parent whose absence is basis of application for public assistance — penalty.** (1) Any parent in the state whose absence is the basis upon which an application is filed for public assistance on behalf of a child shall complete a statement, under oath, of his current monthly income, his total income over the past 36 months, the number of dependents for whom he is providing support, the amount he is contributing regularly toward the support of all children for whom application for such assistance is made, his current monthly living expenses, and all other information pertinent to determining his ability to support his children. The statement shall be provided upon a demand made by the department. If assistance based upon the application is granted on behalf of the child, additional statements shall be filed as required by the department until the child is no longer receiving public assistance.

(2) Failure to comply with this section is a misdemeanor.

Section 9. **Scale of suggested minimum contributions.** (1) The department shall establish a scale of suggested minimum contributions to assist counties and courts in determining the amount that a parent should be expected to contribute toward the support of his child under [this act]. The scale shall:

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(a) include consideration of gross income;

(b) authorize an expense deduction for determining net income;

(c) designate other available resources to be considered;

(d) specify the circumstances which should be considered in reducing support contributions on the basis of hardship.

(2) The department shall accept and compile pertinent and reliable information from any available source in order to establish a minimum scale of suggested contributions. Copies of the scale shall be made available to courts, county offices, county attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of [this act]. Attorneys admitted to practice in Montana may have access to the minimum scale of suggested contribution.

(3) No county, court, officer, or agency may be required to use this scale.

Section 10. **Central unit for information and administration — cooperation enjoined — availability of records.** (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, to coordinate and supervise departmental activities in relation to deserting parents, and to assure effective cooperation with law enforcement agencies.

(2) To effectuate the purposes of this section, the director may request from state, county, and local agencies all information and assistance as authorized by [this act]. All state, county, and city agencies, officers, and employees shall cooperate in the location of parents who have abandoned or deserted or are failing to support children receiving public assistance and shall on request supply the department with all information available relative to the location, income, and property of the parents.

(3) Any records established pursuant to the provisions of this section are available only to the department, county attorneys, and courts having jurisdiction in support and abandonment proceedings or actions or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department and by the provisions of the federal Social Security Act.

Section 11. **Debt to state by natural or adoptive parents — limitations.** (1) Except as provided in subsection (2), any payment of public assistance money made to or for the benefit of any dependent child or children creates a debt due and owing the state of Montana by the responsible parent or parents in an amount equal to the amount of public assistance money so paid. In the case of an adoptive parent or parents, no debt for public assistance paid may accrue prior to the date of adoption.

(2) Where there has been a district court order established, the debt shall be limited to the amount provided for by the order.

(3) Where a child has been placed in foster care, and a written agreement for payment of support has been entered into by the responsible parent or parents and any state agency, the debt shall be limited to the

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amount provided for in the agreement. However, if a court order for support is or has been entered, the provisions of the order shall prevail over the agreement.

(4) The department shall adopt rules based on ability to pay, with respect to the level of support to be provided for in such agreements or modifications of such agreements based on changed circumstances.

Section 12. **Support debt based upon subrogation to or assignment of judgment — notice — contents — action to collect.** (1) The department may issue a notice of a support debt accrued or accruing based upon subrogation to or assignment of the judgment created by a district court order. The notice may be served upon the debtor in the manner prescribed for the service of a summons in a civil action in accordance with the provisions of the Montana Rules of Civil Procedure, demanding payment within 20 days of the date of receipt.

(2) The notice of debt shall include:

(a) a statement of the support debt accrued or accruing, computable on the amount required to be paid under any district court order to which the department is subrogated or has an assigned interest;

(b) a statement that the property of the debtor is subject to collection action;

(c) a statement that the property is subject to distraint and seizure and sale;

(d) a statement that the net proceeds will be applied to the satisfaction of the support debt.

(3) Action to collect the subrogated or assigned support debt by distraint and seizure and sale shall be lawful after 20 days from the date of service upon the debtor or 20 days from the receipt or refusal by the debtor of the notice of debt.

Section 13. **Notice of support liability based upon payment of public assistance — notice — contents — collection warrant — fair hearing.** (1) In the absence of a district court order the department may issue a notice of a support liability accrued or accruing based upon payment of public assistance to or for the benefit of any dependent child or children. The notice of liability shall be served upon the responsible parent in the manner prescribed for the service of summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure.

(2) The notice of liability shall include:

(a) a statement of the support debt accrued or accruing, computable on the basis of the amount of public assistance previously paid and to be paid in the future;

(b) a statement of the amount of the monthly public assistance payment;

(c) a statement of the name of the recipient and the name of the child or children for whom assistance is being paid;

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(d) a demand for immediate payment of the support debt or, in the alternative, a demand that the responsible parent make answer within 20 days of the date of service to the department stating defenses to liability under [section 11];

(e) a statement that if no answer is made on or before 20 days from the date of the service the support debt shall be assessed and determined subject to computation and is subject to collection action;

(f) a statement that the property of the responsible parent will be subject to distraint and seizure and sale.

(3) If no answer is had by the department to the notice of liability on or before 20 days of the date of service, the support debt shall be assessed and determined subject to the computation and the department shall issue a warrant of distraint authorizing a collection action under [this act].

(4) If the responsible parent, within 20 days of the date of service of notice of liability, makes answer to the department alleging defenses to liability under [section 11], the responsible parent may receive a fair hearing pursuant to [section 16]. The decision of the department in the hearing shall establish the obligation of the responsible parent, if any, for repayment of public assistance funds spent to date as an assessed and determined support debt.

Section 14. **Finding of support liability based upon payment of public assistance — warrant of distraint — bond to release warrant — action to collect.** (1) If the department reasonably believes that the parent is not a resident of this state or is about to move from this state or has concealed himself, absconded, absented himself or has removed or is about to remove, secrete, waste, or otherwise dispose of property which could be made subject to collection action to satisfy the support debt, the department may issue a warrant of distraint pursuant to [section 17] during the pendency of the fair hearing or thereafter, whether or not appealed. No further action may be taken on the warrant until final determination after fair hearing and/or appeal. The department shall in such cases make and file in the record of the fair hearing an affidavit stating the reasons upon which the belief is founded. The responsible parent may furnish a bond, not to exceed the amount of the support debt, during pendency of the hearing or thereafter, and in such case warrants issued shall be released. If the decision resulting from the hearing is in favor of the responsible parent, all warrants issued shall be released.

(2) The department may commence action under the provisions of [this act] to collect the support debt on the date of issuance of the decision resulting from the hearing.

Section 15. **Notice and finding of financial responsibility of responsible parent — administrative procedure.** (1) In lieu of the procedures provided in [sections 13 and 14], the department may, in the absence of a district court order, serve on the responsible parent a notice and finding of financial responsibility requiring a responsible parent to appear and show cause at a hearing held by the department why the finding of liability and the amount of support liability should not be finally

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ordered. This notice and finding shall relate to the support debt accrued or accruing under [this act] and/or Title 53, chapter 4, including periodic payments to be made in the future for the period of time any child of the responsible parent is in need. The hearing shall be held pursuant to [this act] and the rules of the department, which shall provide for a fair hearing.

(2) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure. Any responsible parent who objects to all or any part of the notice and finding shall have the right for not more than 20 days from the date of service to request in writing a hearing, notice of which shall be served upon the department personally or by registered or certified mail. If no request is made, the notice and finding of financial responsibility becomes final. If a request is made, the execution of notice and finding of financial responsibility shall be stayed pending the decision on such hearing or any direct appeal to the courts from the decision.

(3) The notice and finding of financial responsibility shall include:

(a) the amount the department has determined the responsible parent owes, the support debt accrued or accruing, and, as appropriate, the amount to be paid thereon each month, all computable on the basis of the amount of the monthly public assistance payment previously paid or need alleged and the ability of the responsible parent to pay all or any portion of the debt;

(b) a statement of the name of the recipient or custodian and the name of any child for whom assistance is being paid or need is alleged; or a statement of the amount of periodic future support payments for which financial responsibility is found;

(c) a statement that the responsible parent may object to all or any part of the notice and finding and request a hearing to show cause why he should not be determined to be liable for any or all of the past and future debt determined and the amount to be paid thereon;

(d) a statement that if the responsible parent fails to request a hearing, the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed, determined, and ordered by the department and that this debt is subject to collection action;

(e) a statement that the property of the debtor, without further advance notice or hearing, will be subject to distraint and seizure and sale to satisfy the debt.

Section 16. **Administrative hearing — nature — place — time — determinations — failure to appear — entry of findings.** (1) The administrative hearing is defined as a "contested case".

(2) The administrative hearing may be held in the county of residence or other county convenient to the responsible parent.

(3) If a hearing is requested, it shall be scheduled within 30 days.

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(4) The hearing officer shall determine the liability and responsibility, if any, of the alleged responsible parent under [section 11] and shall also determine the amount of periodic payments to be made to satisfy past, present, or future liability under [section 11]. In making these determinations, the hearing officer shall include in his consideration the scale of suggested minimum contributions adopted under [section 9].

(5) If the responsible parent fails to appear at the hearing, upon a showing of valid service, the hearing officer shall enter a decision and order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed, determined, and subject to collection action. Within 20 days of entry of the order, the responsible parent may petition the department to vacate the order upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

(6) The hearing officer shall, within 20 days of the hearing, enter findings, conclusions, and a final decision determining liability and responsibility and/or future periodic support payments. The determination of the hearing officer entered pursuant to this section shall be entered as an order unless such findings are set aside pursuant to [section 25] and shall limit the support debt under [section 11] to the amounts stated in the decision.

(7) The decision establishing liability and future periodic support payments is superseded upon entry of a district court order for support to the extent the district court order is inconsistent with the hearing order or decision. In the absence of a district court order the responsible parent may petition the department for issuance of an order to appear and show cause based on a showing of good cause and material change of circumstances to require the other party to appear and show cause why the decision previously entered should not be prospectively modified. The order to appear and show cause together with a copy of the affidavit upon which the order is based shall be served by the petitioning party on the nonmoving party in the manner of a summons in a civil action. A hearing shall be set not less than 15 or more than 30 days from the date of service, unless extended for good cause shown. Prospective modification may be ordered but only upon a showing of good cause and material change of circumstances.

(8) The department, in its original determinations, and the hearing officer, in making determinations based on objections to original determinations or on petitions to modify, shall consider the standards promulgated for determination of support payments used by the district court of the county of residence of the responsible parent.

(9) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under [this act] without further necessity of action by the hearing officer.

Section 17. **Warrant of distraint — execution.** (1) Twenty-one days after receipt or refusal of notice of debt under provisions of [section 12] or 21 days after service of notice of debt or as otherwise appropriate under the provisions of [sections 13 and 14], the department may issue an

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abstract of any final order in the form of a warrant of distraint under its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person owing the support debt within his county for the payment of the debt, interest, and cost of executing the warrant and to return the warrant to the department and pay to it the money collected within 60 days from the date of the issuance of the warrant.

(2) The sheriff shall, within 5 days after the receipt of the warrant, file a copy of the warrant with the clerk of the district court of his county and the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the debtor mentioned in the warrant and, in appropriate columns, the amount of the support debt and the date when such copy is filed. The amount of the warrant so docketed is a lien upon the title to and interest in real property or chattels real of the person against whom it is levied in the same manner as a judgment docketed in the office of such clerk. This lien has the same preference against the assets of the debtor as claims for taxes.

(3) The sheriff shall proceed to levy upon and sell the property of the debtor in the same manner prescribed by law for executions issued against property upon judgments of a court of record and is entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

(4) If the net proceeds of the sale, upon application to the debt claimed, do not satisfy the debt in full, the department shall have judgment for any deficiency remaining unsatisfied.

Section 18. **Civil liability upon failure to comply with warrant or to honor assignment of wages.** Should any person, firm, corporation, association, political subdivision, or department of the state fail or refuse to deliver property pursuant to the order; or after actual notice of filing of a support lien, pay over, release, sell, transfer, or convey real or personal property subject to a support lien to or for the benefit of the debtor or any other person; or fail or refuse to surrender upon demand property distrained under [section 17] or fail or refuse to honor an assignment of wages presented by the department, the person, firm, corporation, association, political subdivision, or department of the state is liable to the department in an amount equal to 100% of the value of the debt which is the basis of the distraint or assignment of wages or the value of the distrained property, whichever is less, together with costs, interest, and reasonable attorney fees.

Section 19. **Release of excess to debtor.** Whenever any person, firm, corporation, association, political subdivision, or department of the state has in its possession earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the department plus $100, that person, firm, corporation, association, political subdivision, or department of the state may, without liability under [this act], release the excess to the debtor.

Section 20. **Banks and savings and loan associations — service effective only as to branch office served.** In the case of a

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bank, bank association, mutual savings bank, or savings and loan association maintaining branch offices, service of any notice or document authorized by [this act] is only effective as to the accounts, credits, or other personal property of the debtor in the particular branch upon which service is made.

Section 21. **Satisfaction of debt after levy on property — redemption.** Any person owning real property or any interest in real property against which a warrant of distraint has been issued and levied upon may pay the amount due, together with expenses of the proceedings and reasonable attorney fees to the department. Upon full payment the sheriff shall restore the property to him, and all further proceedings on the warrant shall cease. The person shall also have the right within 240 days after sale of property levied upon to redeem the property by making payment to the purchaser in the amount paid by the purchaser plus interest at the statutory interest rate payable on judgments recovered in the courts of this state.

Section 22. **Debt payment schedule.** The department may at any time after notice to the debtor set or reset a level and schedule of payments to be paid upon the debt consistent with the income, earning capacity, and resources of the debtor.

Section 23. **Release of distraint, return of seized property — effect.** The department may at any time release a distraint on all or part of the property of the debtor or order the sheriff to return seized property without liability, if assurance of payment is determined to be adequate by the department or if the action will facilitate the collection of the debt. The release or return does not operate to prevent future action to collect from the the same or other property.

Section 24. **Interest on debts due — waiver.** Interest on any support debt due and owing to the department at the statutory interest rate payable on judgments recovered in the courts of this state under [section 11] may be collected by the department. No provision of [this act] may be construed to require the department to maintain interest balance due accounts, and interest may be waived by the department, if waiver would facilitate the collection of the debt.

Section 25. **Administrative findings and order — judicial review.** (1) It is the intent of [this act] that administrative findings and orders be subject to judicial review but that administrative remedies be exhausted prior to judicial review. The administrative procedures described in [this act] are subject to review in the appropriate district court. Such review shall be conducted pursuant to the Montana Administrative Procedure Act. Upon a showing by the department that administrative remedies have not been exhausted, the district court shall refuse review until such remedies are exhausted.

(2) Nothing in [this act] may be construed to abridge or in any way affect the defendant's right to counsel during any and all judicial or administrative proceedings pursuant to [this act].

Section 26. **Statutory limitations.** Debts ensuing as a result of determinations made through the administrative procedures described in

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[this act] are subject to statutory limitations as set forth in Title 27, chapter 2.

Section 27. **Charging off child support debts as uncollectible.** Any support debt due the department from a responsible parent which the department determines uncollectible may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. In the event a warrant of distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien. At any time after 6 years from the date a support debt was incurred, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the debt may be collected. No proceedings or action under the provisions of [this act] may be begun after expiration of the 6-year period to institute collection of a support debt. Nothing herein may be construed to render invalid or nonactionable a warrant of distraint filed with the clerk of court prior to the expiration of the 6-year period or an assignment of earnings executed prior to the expiration of the 6-year period.

Section 28. **Employee debtor rights protected — limitation.** No employer may discharge or prejudice an employee for reason that an assignment of earnings has been presented in settlement of a support debt or that a warrant of distraint has been served against the employee's earnings. This provision does not apply if more than three warrants are served upon the same employer within any period of 12 consecutive months.

Section 29. **Assignment of earnings to be honored — effect.** Any person, firm, corporation, association, political subdivision, or department of the state employing a person owing a support debt or obligation shall honor, according to its terms, a duly executed assignment of earnings, whether executed voluntarily or pursuant to court order, presented by the department as a plan to satisfy or retire a support debt or obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself are applicable whether the earnings are to be paid presently or in the future and continue in force until released in writing by the department. Payment of money pursuant to an assignment of earnings presented by the department serves as full acquittance under any contract of employment. The state shall defend and hold harmless any action taken pursuant to the assignment of earnings. The department shall be released from liability for improper receipt of money under an assignment of earnings upon return of any money so received.

Section 30. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 7, 1979.

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CHAPTER NO. 613

AN ACT TO PERMIT THE GOVERNING BODY OF A COUNTY TO EXCEED EXISTING MILL LEVY LIMITS IF A MAJORITY VOTING ON THE QUESTION ARE IN FAVOR OF THE ADDITIONAL LEVY OR LEVIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **County may exceed maximum mill levy — election required.** The governing body of a county may raise money by taxation for the support of county government services, facilities, or other capital projects in excess of the levy or levies allowed by law under the following conditions:

(1) The governing body must pass a resolution indicating its intent to exceed the current statutory mill levy on the approval of a majority of the qualified electors voting in an election under subsection (2). The resolution must include:

(a) the specific purpose for which the additional money will be used;

(b) the specific amount to be raised;

(c) the approximate number of mills required; and

(d) the specific mill levy limitation to be exceeded.

(2) The governing body must submit the question of the additional mill levy to the qualified electors of the county at the next regular primary election held in the even-numbered years. If the majority voting on the question are in favor of the additional levy or levies, the governing body is authorized to exceed the statutory mill levy limit in the amount specified in the resolution for a period not to exceed 2 years.

Section 2. **Purpose of additional mill levy to be stated.** The submission of the question shall expressly state the purpose for which the additional levy is to be made.

Section 3. **Notice of election on question of additional mill levy.** Whenever the question of making an additional mill levy is submitted to the qualified electors, notice shall be given in the manner prescribed by law for noticing of elections.

Section 4. **Form of ballot.** (1) If at any time it is desired to submit the question of additional levies for more than one purpose, such propositions shall be submitted on separate ballots.

(2) Each of the ballots shall be in substantially the following form:

Shall the county governing body be authorized to make a levy of (here insert the number) mills taxes in addition to the regular levy now authorized by law for the purpose of (here insert the purpose for which the additional levy is to be made and the period for which it shall be in effect)?

☐ FOR additional levy

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☐ AGAINST additional levy

Section 5. **Conduct of election.** (1) The electors shall mark the ballot or ballots in the same manner as other ballots are marked under the election laws of this state.

(2) The election shall be held and the votes canvassed and returned as in other county elections as provided in Title 13.

Section 6. **Use of proceeds from additional mill levy.** (1) Except as provided in subsection (1), if authorized, the money raised by the additional levy shall be used only for that specific purpose provided for in [section 2].

(2) If any balance remains on hand after the purpose for which the levy was made has been accomplished, the balance may by vote of the governing body be transferred to any other fund of the county.

Section 7. **Emergency provisions in effect.** Nothing in [this act] shall affect the emergency levy as provided by law.

Approved May 7, 1979.

CHAPTER NO. 614

AN ACT TO GENERALLY REVISE THE LAWS THAT PERMIT THE GOVERNING BODY OF A MUNICIPALITY TO EXCEED EXISTING MILL LEVY LIMITS IN CERTAIN CASES; REPEALING SECTION 7-6-4433, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-4431, MCA, is amended to read:

"7-6-4431. Authorization to exceed maximum mill levy — election required. *The governing body of a municipality may raise money by taxation for the support of municipal government services, facilities, or other capital projects in excess of the levy or levies allowed by law under the following conditions:*

(1) The governing body must pass a resolution indicating its intent to exceed the current statutory mill levy on the approval of a majority of the qualified electors voting in an election under subsection (2). The resolution must include:

(a) the specific purpose for which the additional money will be used;

(b) the specific dollar amount to be raised;

(c) the approximate number of mills required; and

(d) the specific mill levy limitation to be exceeded.

(2) The governing body must submit the question of the additional mill levy to the qualified electors of the municipality at the next regular

primary or general election on either odd-numbered or even-numbered years. The question may not be submitted more than once in any calendar year. If the majority voting on the question are in favor of the additional levy or levies, the governing body is authorized to exceed the statutory mill levy limit in the amount specified in the resolution for a period not to exceed 2 years."

Section 2. Section 7-6-4432, MCA, is amended to read:

"**7-6-4432. Purpose of additional mill levy to be stated.** The submission of *the* question shall expressly *state the* purpose *for which the* additional levy is to be made."

Section 3. Section 7-6-4434, MCA, is amended to read:

"**7-6-4434. Notice of election on question of additional mill levy.** Where the question of making *an* additional levy is submitted *to the qualified electors*, notice shall be given *in the manner prescribed by law for noticing of elections*."

Section 4. Section 7-6-4435, MCA, is amended to read:

"**7-6-4435. Form of ballot.** (1) If at any time it is desired to submit the question of additional levies for more than one purpose, such propositions shall be submitted on separate ballots.

(2) Each of the ballots shall be in substantially the following form:

Shall the city (or town) *governing body* be authorized to make a levy of (here insert the number) mills taxes in addition to the regular levy now authorized by law for the purpose of (here insert the purpose for which the additional levy is to be made *and the period for which it shall be in effect*)?

☐FOR additional levy

☐AGAINST additional levy"

Section 5. Section 7-6-4436, MCA, is amended to read:

"**7-6-4436. Conduct of election.** (1) The *electors* shall mark the ballot or ballots in the same manner as other ballots are marked under the election laws of this state.

(2) The election shall be held and the votes canvassed and returned as in other *municipal* elections."

Section 6. Section 7-6-4437, MCA, is amended to read:

"**7-6-4437. Use of proceeds from additional mill levy.** (1) Except as provided in subsection (2), if authorized, the money raised *by the* additional levy shall be used only for that specific purpose provided for in 7-6-4432.

(2) If any balance remains on hand after the purpose for which *the* levy was made has been accomplished, *the* balance may by vote of the *governing body* be transferred to any other fund of *the municipality*."

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Section 7. **Emergency provisions not affected.** Nothing in [this act] shall affect the emergency expenditures provided by law.

Section 8. **Repealer.** Section 7-6-4433, MCA, is repealed.

Approved May 7, 1979.

CHAPTER NO. 615

AN ACT TO ESTABLISH REPORTING REQUIREMENTS FOR PRODUCT LIABILITY INSURERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Product liability insurer — report.** (1) Each insurance company doing business in this state that insures against product liability losses shall make and file with the department of insurance, on or before April 1 of each year, a report for the year ending December 31 immediately preceding, upon a form to be prescribed and that may be furnished by the department.

(2) The report shall include the following information:

(a) the amount of product liability insurance premiums collected for the year, indicating the amount of premiums allocable to Montana and the total nationwide amount;

(b) information for product liability insurance experience separately allocated to Montana and nationwide showing the:

(i) total amount of earned premiums;

(ii) total amount of incurred losses, including all loss adjustment expense;

(iii) amount of reserves for both reported and unreported incurred losses; and

(iv) amount of other reserves for other product liability losses; and

(c) for any claim, loss, or action for bodily injury, death, or property damage allocated to Montana experience if there has been a final judgment or a settlement in any amount or if there has been a final disposition not resulting in a loss payment on behalf of the insured:

(i) a description of the type of product involved in each claim;

(ii) the date of occurrence from which each claim arose;

(iii) the state or other jurisdiction wherein each claim was adjudicated, settled, or other disposition made;

(iv) the date legal action commenced, if filed;

(v) a brief description of the occurrence out of which the claim arose;

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(vi) the total number of all claims;

(vii) the total number of all claims closed without payments;

(viii) the total number of final verdicts or final judgments for defendants;

(ix) the total number of final verdicts or final judgments for plaintiffs; and

(x) such other information as the department may require.

Section 2. **Department to make reports available.** The department of insurance shall make the reports required under [section 1] available to the public on request at a fee prescribed by the department, not to exceed reasonable costs, and in a manner that does not reveal the names of any manufacturer, distributor, seller, or other person involved.

Section 3. **Insurer not liable for making report.** No liability may arise against any insurer or against its agents or employees as a result of making a report pursuant to [section 1].

Approved May 7, 1979.

CHAPTER NO. 616

AN ACT TO AMEND SECTION 15-6-201, MCA, GOVERNING CATEGORIES OF TAX-EXEMPT PROPERTY TO CLARIFY ITS APPLICATION TO REAL PROPERTY OWNED BY CERTAIN NONPROFIT AND RELIGIOUS ORGANIZATIONS WHICH OPERATE A CEMETERY OR CEMETERIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) *The following categories of property are exempt from taxation:*

(a) *the* property of*:*

(i) the United States, the state, counties, cities, towns, school districts*;*

(ii) irrigation districts organized under the laws of Montana and not operating for profit*;*

(iii) municipal corporations*; and*

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship *or* for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings*;*

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, *and for* hospitals;

(d) property *that meets the following conditions:*

(i) is owned and held by any association or corporation organized under Title 35, chapter *2, 3,* 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3 ; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence; and

(i) a truck canopy cover or topper weighing less than than 300 pounds and having no accommodations attached.

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" *include* only *those* art galleries and observatories, whether of public or private ownership, *that* are open to the public without charge at all reasonable hours and are used for the purpose of education only."

Approved May 7, 1979.

CHAPTER NO. 617

AN ACT TO CLARIFY CERTAIN PERCENTAGE LIMITS ON LOCAL GOVERNMENT INDEBTEDNESS; AMENDING SECTIONS 7-7-2203, 7-7-4201, 7-7-4202, 7-14-2524, AND 7-14-2525, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-2203, MCA, is amended to read:

"7-7-2203. Limitation on amount of bonded indebtedness. (1) Except as provided in subsections (2) and (3), no county *may* issue *general obligation* bonds for any purpose which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will

exceed *9%* of the *taxable* value of the property therein, to be ascertained by the last assessment for state and county taxes *prior* to the *proposed* issuance of bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants, will exceed *9%* but will not exceed *29%* of the *taxable* value of such property, when necessary to do so, for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes.

(3) The foregoing limitation shall not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932."

Section 2. Section 7-7-4201, MCA, is amended to read:

"7-7-4201. Limitation on amount of bonded indebtedness. (1) Except as otherwise provided, no city or town may issue bonds *or incur other indebtedness* for any purpose in an amount which with all outstanding and unpaid indebtedness will exceed 18% of the taxable value of the property therein subject to taxation, to be ascertained by the last assessment for state and county taxes.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness."

Section 3. Section 7-7-4202, MCA, is amended to read:

"7-7-4202. Special provisions relating to water and sewer systems. (1) Notwithstanding the provisions of *7-7-4201*, for the purpose of constructing a sewer system, procuring a water supply, or constructing or acquiring a water system for a city or town which *owns and controls* the water supply and water system and *devotes* the revenues therefrom to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds.

(2) The additional total indebtedness that may be incurred by borrowing money or issuing bonds for the construction of a sewer system, for the procurement of a water supply, or for both such purposes, including all indebtedness theretofore contracted which is unpaid or outstanding, may not in the aggregate exceed *36%* over and above the 18%, referred to in *7-7-4201*, of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes."

Section 4. Section 7-14-2524, MCA, is amended to read:

"7-14-2524. Limitation on amount of bonds issued — excess void. (1) Except as otherwise provided hereafter and in 7-7-2203 and 7-7-2204, no county shall issue bonds which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed *9%* of the *taxable* value of the property therein. The taxable property shall be ascertained by the last assessment for state and county taxes prior to the issuance of such bonds.

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(2) A county may issue bonds which, with all outstanding bonds and warrants *except county high school bonds*, will exceed *9%* but will not exceed *18%* of the *taxable* value of such property when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county, *except county high school bonds*, shall not exceed *18%* of the *taxable* value of the property within the county as ascertained by the last preceding general assessment.

(4) All bonds issued by any county in excess of the limitations herein fixed *are* null and void."

Section 5. Section 7-14-2525, MCA, is amended to read:

"7-14-2525. Refunding agreements and refunding bonds authorized. (1) Whenever the total indebtedness of a county exceeds *18%* of the *taxable* value of the property therein and the board determines that the county is unable to pay such indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest thereon in satisfaction thereof;

(b) enter into such agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders shall be embodied in full in the resolution providing for the issue of the bonds."

Approved May 7, 1979.

CHAPTER NO. 618

AN ACT PERTAINING TO SUPPLEMENTAL APPROPRIATIONS; PROVIDING FOR THE ATTORNEY GENERAL TO FILE A COMPLAINT WHEN LIMITS ON EXPENDITURES ARE EXCEEDED; AMENDING SECTIONS 17-8-103 AND 17-8-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-8-103, MCA, is amended to read:

"17-8-103. Limit on expenditures. (1) It shall be unlawful for the board of trustees, executive board, managerial staff, president, deans and faculty, or any other authority of any state institution maintained in whole or in part by the state or any officer, department, board, commission, or

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bureau, having charge of the disbursement or expenditure of the income provided by legislative appropriation or otherwise, to expend, contract for the expenditure, or to incur or permit the incurring of any obligation whatsoever, in any one year, in excess of the *legislative appropriation or authorized budget amendment* provided for such year or for any supervisory board or authority either directly or indirectly to authorize, direct, or order any such institution, officer, department, board, commission, or bureau to increase any expenditures, except as specifically provided by law.

(2) It shall be and is hereby made the duty of any and all of such institutions, officers, departments, boards, commissions, and bureaus to keep such expenditures, obligations, and liabilities within the amount of such *legislative appropriation or authorized budget amendment.*"

Section 2. Section 17-8-104, MCA, is amended to read:

"17-8-104. Penalty for violation. Any authority or member of a board of trustees or any person, officer, or employee violating the provisions of 17-8-103 shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $500 or imprisoned in the county jail for not less than 30 days or more than 6 months or by both such fine and imprisonment; and in addition thereto, said authority, member, person, officer, or employee shall be personally liable and the surety or sureties on his bond shall also be liable to the state for the amount of the excess thus unlawfully expended, and said authority, member, person, or officer shall be guilty of misfeasance in office, and such employee shall be guilty of wrongdoing, and each shall be subject to removal from office or from such employment, upon complaint of *the attorney general or of* any taxpayer filed in a district court of this state and upon proof of violation of 17-8-103, in accordance with law."

Section 3. Deficiency appropriations, commonly referred to as a "supplemental appropriation", for a legislative branch agency must be included in a separate appropriation bill and may not be included in the bill appropriating money for the operation of the legislature, commonly referred to as the "feed bill".

Approved May 7, 1979.

CHAPTER NO. 619

AN ACT TO FURTHER DEFINE THE CRITERIA FOR AWARDING COAL IMPACT GRANTS; CREATING A COAL TAX OVERSIGHT SUBCOMMITTEE OF THE REVENUE OVERSIGHT COMMITTEE; APPROPRIATING FUNDS FOR THE EXPENSES OF THE SUBCOMMITTEE; AMENDING SECTION 90-6-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-206, MCA, is amended to read:

"90-6-206. Basis for awarding grants. (1) Such grants shall be awarded on the basis of:

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(a) need;

(b) degree of severity of impact from the coal development;

(c) availability of funds; and

(d) degree of local effort in meeting these needs.

(2) *In determining the degree of local effort, the board shall review the millage rates levied for the present fiscal year in relation to the average millage rates levied during the 3 years immediately preceding coal development in that area or 1970, whichever is later, which impacts the local government unit applying for assistance.*

(3) Millage rates for the present fiscal year which are lower than the average millage rate levied during the 3 years immediately preceding coal development in that area or 1970, whichever is later, shall be deemed by the board to indicate the lack of local effort. The application under such circumstances may be rejected.

(4) Further, in determining the degree of local effort, the board shall consider the possibility of requiring that local government unit to increase its bonded indebtedness to provide all or part of the governmental service or facility which is needed as a direct consequence of coal development.

(5) To the extent funds are needed to evaluate and plan for the impact needs caused by coal development, consideration of bond issues and millage levies may be waived.

(6) To the extent the applicant has no history of mill levies, subsections (2) and (3) do not apply."

Section 2. **Coal tax oversight subcommittee.** (1) There is a coal tax oversight subcommittee of the revenue oversight committee for the biennium ending June 30, 1981.

(2) The subcommittee consists of four legislators who are not members of the revenue oversight committee. Two members must be from the senate and two members must be from the house of representatives. No more than two members may be members of the same political party. The subcommittee shall be appointed by the speaker of the house and the senate committee on committees.

(3) The subcommittee may:

(a) review the programs financed by the coal severance tax funds; and

(b) consider any matters relating to coal taxation.

(4) The subcommittee shall elect a chairman and may meet upon the call of that chairman. The subcommittee shall report and make recommendations to the revenue oversight committee.

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Section 3. **Appropriation.** There is appropriated $8,000 from the local impact and education trust fund account in the earmarked revenue fund to the legislative council for the expenses of the coal tax oversight subcommittee.

Approved May 7, 1979.

CHAPTER NO. 620

AN ACT TO INCREASE AND REQUIRE THE SALARY COMMISSION TO REVIEW THE SALARY FOR THE CHAIRMAN AND MEMBERS OF THE STATE TAX APPEAL BOARD; AMENDING SECTION 15-2-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-2-102, MCA, is amended to read:

"15-2-102. Qualification and compensation. *(1)* To be appointed a member of the state tax appeal board, a person must possess knowledge of the subject of taxation and skill in matters pertaining thereto. No person so appointed may hold any other office under the laws of this state or any other state or any office under the government of the United States or under the government of any other state. He shall devote his entire time to the duties of the office and shall not hold any other position of trust or profit or engage in any occupation or business interfering or inconsistent with his duties. The state tax appeal board is transferred to the department of administration for administrative purposes only as is specified in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(2) The member designated chairman as provided for in 15-2-103 shall receive *a salary of $20,276 in fiscal 1980 and $21,779 in fiscal 1981.* The *remaining* state tax appeal board *members* shall be paid *a salary of $19,843 in fiscal 1980 and $21,200 in fiscal 1981. All members of the board shall receive* travel expenses as provided for in 2-18-501 through 2-18-503, as amended, when away from the capital on official business.

(3) The salary commission must review the salary for members of the board and shall recommend an appropriate salary to the legislature."

Approved May 7, 1979.

CHAPTER NO. 621

AN ACT TO AUTHORIZE IMPOSITION OF A COUNTY MOTOR FUEL EXCISE TAX TO DERIVE REVENUE FOR STREETS AND ROADS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Local option motor fuel tax authorized.** (1) The people of a county by initiative may impose a motor fuel excise tax of not more than 2 cents per gallon upon gasoline distributed within the county for use in motor vehicles operated upon public streets and roads.

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(2) A county imposing the tax authorized under subsection (1) shall provide a means to provide refunds to persons who have paid the tax on motor fuel for uses other than on public streets and roads.

(3) The term "gasoline" has the meaning ascribed to it in 15-70-201.

Section 2. **Use of local motor fuel tax revenue.** (1) A county or municipality receiving revenue from the tax authorized by [section 1] shall use the revenue derived only for the construction, reconstruction, maintenance, and repair of public streets and roads.

(2) Two percent of the motor fuel tax revenue collected in a county is allocated to the county governing body for use in administering the tax; one percent of the motor fuel tax revenue in a county is to be reimbursed at the point of collection for use in administering the tax.

Section 3. **Allocation of revenue from county-imposed motor fuel tax.** Revenue derived from a motor fuel tax imposed by a county under [section 1] must be divided among the county and municipalities in the county in the proportion of motor vehicles registered in the county outside of the municipalities to those registered within the municipalities during the preceding year.

Section 4. **Penalties.** Penalties for violation of [this act] shall be the same as provided in 15-70-232.

Approved May 7, 1979.

CHAPTER NO. 622

AN ACT TO REVISE THE MILEAGE ALLOWANCE FOR NON-COMMERCIAL AIRPLANE TRAVEL FOR STATE BUSINESS; AMENDING SECTION 2-18-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-503, MCA, is amended to read:

"2-18-503. Mileage — allowance. (1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds, when using their own automobiles in the performance of official duties, are entitled to collect mileage for the distance actually traveled by automobile and no more unless otherwise specifically provided by law.

(2) When the individual is authorized to operate a privately owned vehicle even though a government-owned or leased vehicle is available, a rate of 3 cents less per mile than the mileage rate allowed by the United States internal revenue service for the preceding year shall be paid.

(3) When a privately owned vehicle is used because a government-owned or leased vehicle is not available or because such use is in the best interest of the governmental entity, a rate equal to the mileage allotment

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allowed by the United States internal revenue service for the preceding year shall be paid for the first 1,000 miles and 3 cents per mile less for all miles thereafter traveled within a given calendar month.

(4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds, when using their own airplanes in the performance of official duties, are entitled to collect mileage for the *nautical air miles* actually traveled at a rate of *twice the mileage allotment for automobile travel* and no more unless specifically provided by law.

(5) This section does not alter 5-2-301.

(6) The department of administration shall prescribe rules necessary for the effective administration of this section for state government."

Approved May 7, 1979.

CHAPTER NO. 623

AN ACT AMENDING SECTION 15-30-131, MCA, TO ALLOW NONRESIDENT TAXPAYERS WHO RESIDE IN A STATE THAT DOES NOT IMPOSE A TAX ON THE INCOME OF NATURAL PERSONS RESIDING IN THAT STATE TO DEDUCT EITHER THOSE DEDUCTIONS RELATING TO THE PRODUCTION OF MONTANA INCOME OR A PRORATED AMOUNT OF THE DEDUCTIONS ALLOWED UNDER SECTION 15-30-121, MCA, WHICHEVER IS GREATER.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-131, MCA, is amended to read:

"15-30-131. Nonresident and temporary resident taxpayers — adjusted gross income — deductions. (1) In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income from sources within this state but shall not include income from annuities, interest on bank deposits, interest on bonds, notes, or other interest-bearing obligations, or dividends on stock of corporations except to the extent to which the same shall be a part of income from any business, trade, profession, or occupation carried on in this state. Adjusted gross income from sources within and without this state shall be allocated and apportioned under rules prescribed by the department.

(2) In the case of a taxpayer other than a resident of this state who is a resident of a state that imposes a tax on the income of natural persons residing within that state, the deductions allowed in computing net income are restricted to those directly connected with the production of Montana income.

(3) In the case of a taxpayer other than a resident of this state who is a resident of a state that does not impose a tax on the income of natural persons residing within that state, the deductions allowed in computing net income are restricted to the greater of those directly relating to the production of Montana income or a prorated amount of those allowed under 15-30-121. For the purposes of this subsection, deductions allowed under 15-30-121 apply only to earned income and must be prorated according to the ratio that the taxpayer's Montana earned income bears to his federal earned income.

(4) A temporary resident shall be allowed those deductions allowed a resident to the extent that such deductions were actually incurred or expended in the state of Montana during the course of his residency.

(5) For the purposes of this section, "earned income" shall be defined as the same term is defined in section 43 of the Internal Revenue Code, or as that section may subsequently be amended."

Section 2. **Applicability.** This act applies to taxable years beginning after December 31, 1978.

Approved May 7, 1979.

CHAPTER NO. 624

AN ACT TO ALLOW THE ISSUING OF ALTERNATIVE RENEWABLE ENERGY SOURCES RESEARCH AND DEVELOPMENT GRANTS FOR COMMERCIAL PROJECTS; AMENDING SECTION 90-4-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-101, MCA, is amended to read:

"90-4-101. Purpose. The purposes of this part are to stimulate research, development, and demonstration of energy sources which are harmonious with ecological stability by virtue of being renewable, thereby to lessen that reliance on nonrenewable energy sources which conflicts with the goal of long-range ecological stability and to provide for the funding and administration of such research."

Approved May 7, 1979.

CHAPTER NO. 625

AN ACT TO REQUIRE THE DEPARTMENT OF REVENUE TO WAIVE THE SPECIAL FUEL DEALER'S OR SPECIAL FUEL USER'S BOND REQUIREMENT UPON APPLICATION OF A LICENSED PUBLIC CONTRACTOR; AMENDING SECTION 15-70-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-304, MCA, is amended to read:

"15-70-304. Bonding, release of surety, and additional bond. (1) Except as herein provided, no special fuel dealer's license or special

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fuel user's license shall be issued to any person or continued in force unless such person has furnished bond, as defined in 15-70-301 and in such form as the department may require, to secure its compliance with this part and the payment of any and all taxes, interest, and penalties due and to become due hereunder. Upon application, the department may waive the bond requirement of any resident special fuel user who establishes to the reasonable satisfaction of the department that the tax as herein provided is not delinquent or that interest or penalties are not accrued under the provisions of this part. *Upon application, the department shall waive the bond requirement of any public contractor licensed under Title 15, chapter 50 , who has posted a performance bond conditioned on payment of all lawful taxes with the contracting entity.*

(2) The total amount of the bond or bonds required of any special fuel dealer or special fuel user shall be equivalent to twice his estimated monthly tax payments as hereinafter provided, determined in such manner as the department may deem proper; provided, however, that the total amount of the bond or bonds shall never be less than $5,000 for any special fuel user awarded a contract in accordance with 15-70-321 or less than $500 for any other special fuel user and not less than $1,000 for a special fuel dealer.

(3) Any surety on a bond furnished by a special fuel dealer or special fuel user as provided herein shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of 30 days from the date upon which such surety shall have lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the 30-day period. The department shall, promptly upon receiving any such request, notify the special fuel dealer or special fuel user who furnished the bond, and unless the special fuel dealer or special fuel user shall, on or before the expiration of the 30-day period, file a new bond in accordance with the requirements of this section or make a deposit in lieu thereof as provided in 15-70-301(1), the department forthwith shall cancel the special fuel dealer's or special fuel user's license.

(4) The department may require a special fuel dealer or special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301(1) if, in its opinion, the security of the surety bond theretofore filed by such special fuel dealer or special fuel user or the market value of the properties deposited as security by such special fuel dealer or special fuel user shall become impaired or inadequate, and upon failure of the special fuel dealer or special fuel user to give such new additional surety bond or to deposit additional securities within 30 days after being requested so to do by the department, said department forthwith shall cancel his license."

Approved May 7, 1979.

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CHAPTER NO. 626

AN ACT TO REQUIRE THAT LOANS FROM THE GENERAL FUND OR THE UNIVERSITY UNRESTRICTED SUBFUND TO UNIVERSITY FUNDS BEAR INTEREST AND TO DEPOSIT THE INTEREST IN THE GENERAL FUND; TO PROHIBIT NEGATIVE BALANCES IN CERTAIN FUNDS AND SUBFUNDS; AND AMENDING SECTION 17-2-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-2-107, MCA, is amended to read:

"17-2-107. Accurate accounting records and interaccount loans. (1) The department of administration shall record receipts and disbursements for treasury funds and for accounts within treasury funds and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each account. The department of administration shall adopt the necessary procedures to insure that interdepartmental or intradepartmental transfers of money do not result in inflation of figures reflecting total governmental costs and revenues.

(2) When the expenditure of an appropriation is necessary and the cash balance in the account from which the appropriation was made is insufficient, the department of administration may authorize a transfer, as a temporary loan bearing no interest, of unrestricted moneys from other accounts, provided that there is reasonable evidence that the income provided for the remainder of the fiscal year will be sufficient to restore the amount so transferred and provided the loan is recorded in the state accounting records. No account shall be so impaired that all proper demands thereon cannot be met.

(3) Any loan from the general fund or the university current unrestricted subfund to funds designated in subsections (10)(d) and (11) through (15) of 17-2-102 shall bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investment's short-term investment pool. Except for investment earnings on restricted donations, all designated and restricted subfund investment earnings are credited to the state general fund.

(4) No accounting entity may have a negative cash balance at fiscal yearend. The department of administration may, however, allow any entity to carry a negative balance at any point during the fiscal year subject to the following restrictions:

(a) Accounting entity negative cash balances may not exist more than 7 working days in the funds provided in subsections (1) through (9) of 17-2-102.

(b) Units of the university system must maintain positive cash balances in the subfunds provided in subsections (10)(a) through (d) and (11) through (15) of 17-2-102."

Approved May 7, 1979.

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CHAPTER NO. 627

AN ACT TO REVISE THE LAW RELATING TO THE GASOLINE TAX REFUND; PROVIDING THAT NO REFUND IS ALLOWED FOR MOTORBOAT USE; PROVIDING THAT ONLY AGRICULTURAL USERS MAY APPLY FOR A REFUND ON THE BASIS OF ESTIMATED OFF-HIGHWAY USE; REVISING THE METHOD OF RECORDKEEPING REQUIRED TO CLAIM A REFUND; AMENDING SECTIONS 15-70-201 AND 15-70-221 THROUGH 15-70-226, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-201, MCA, is amended to read:

"15-70-201. Definitions. As used in this part, *unless the context requires otherwise,* the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person whose major endeavor and primary source of earned income is from the business of farming or ranching.

(2) "Aviation dealer" means any person in this state engaged in the business of selling aviation gasoline, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as herein provided for.

(3) "Aviation gasoline" means gasoline or any other liquid fuel by whatsoever name such liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks thereat or gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks thereat or gasoline imported into this state and placed in storage at refineries or pipeline terminals shall be deemed to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from such tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from such tanks, refinery, or terminal, such gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, shall be deemed to be "distributed" after it has arrived in and is brought to rest in this state.

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(6) "Distributor" means:

(a) any person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) any person who imports gasoline for sale, use, or distribution;

(c) any dealer licensed as of January 1, 1969, except a dealer at an established airport.

(7) "Gasoline" includes all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation gasoline, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Gasoline does not include special fuels as defined in 15-70-301(6).

(8) "Import" shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of any gasoline shipped or transported into this state from point of origin without this state other than in the fuel supply tank of a motor vehicle.

(9) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(10) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(11) "Use" shall include and mean the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision thereof."

Section 2. Section 15-70-221, MCA, is amended to read:

"15-70-221. Refund authorized. (1) Any person who shall purchase and use any gasoline on which the Montana gasoline license tax has been paid for operating or propelling stationary gasoline engines, tractors used off the public highways and streets, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state shall be allowed a refund of the amount of tax paid directly or indirectly on the gasoline so used. Such refund or drawback should in no instance exceed the tax paid or to be paid to the state and no refund shall be allowed of that portion of the tax per gallon upon aviation gasoline allocated to the department of community affairs by 67-1-301.

(2) Any distributor paying the gasoline license tax to this state erroneously shall be allowed a credit or refund of the amount of tax so paid."

Section 3. Section 15-70-222, MCA, is amended to read:

"15-70-222. Required records. (1) Gasoline purchased and delivered into bulk storage for use in motor vehicles on public roads and

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nonhighway use must be fully accounted for by detailed withdrawal records to accurately show the manner in which used. Gasoline on hand, determined by actual measurement, shall be deducted from a claim and shall be reported as an opening inventory on the next claim.

(2) If separate storage tanks are maintained *on claimant's premises for use in licensed vehicles and in unlicensed equipment*, the bulk *delivery* invoices shall be so marked by the dealer at the time of delivery. No further record is required, provided *refunds are claimed only on the number of gallons delivered into the unlicensed equipment tank.* Withdrawal of gasoline from the *unlicensed vehicle* tank for licensed vehicles will invalidate this method of determining refundable gallonage.

(3) Special storage facilities *used* for certain periods must be identified and explained. If such storage is used entirely for off-highway purposes and is not used in licensed vehicles, no records will be required other than purchase invoices showing the delivery into such storage.

(4) Service stations, bulk dealers, and marinas must prepare a separate and complete invoice for each withdrawal of gasoline for own use upon which a refund is to be claimed.

(5) When no highway use of gasoline is deducted from the claim, the applicant must substantiate purchases of gasoline and miles traveled for licensed motor vehicles upon request of the department of revenue.

(6) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state license tax on the gasoline used to operate the vehicle on roads or property in private ownership if such person has maintained the following records:

(a) the total number of miles *traveled on and off public roads by each licensed vehicle*;

(b) total gallons of gasoline used in each vehicle;

(c) purchase invoices supporting all gasoline handled through bulk storage, as well as all fuels purchased at service stations or received from other sources."

Section 4. Section 15-70-223, MCA, is amended to read:

"15-70-223. Estimate allowed for agricultural use. (1) *An applicant whose use qualifies as agricultural use may apply for a refund of 60% of the applicable tax on the gallons of gasoline as indicated by bulk delivery invoices as an estimate of off-roadway use.*

(2) If any invoice is either lost or destroyed, the purchaser may support his claim for refund by submitting an affidavit relating the circumstances of such loss or destruction and by producing such other evidence as may be required by the department of revenue.

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(3) *An applicant whose use does not qualify as agricultural use may not estimate and must maintain records as required by 15-70-222.*"

Section 5. Section 15-70-224, MCA, is amended to read:

"**15-70-224. Determination of highway use.** Highway use for each vehicle *is* determined by *dividing the average miles per gallon rate into the number of miles traveled on public roads.*"

Section 6. Section 15-70-225, MCA, is amended to read:

"**15-70-225. Application for refund — filing — correction by department.** (1) The application for refund shall be a signed statement, on a form furnished by the department of revenue, accompanied by the original *bulk delivery* invoice or invoices issued to the claimant at the time of *each* purchase and delivery, showing the total amount of gasoline purchased, the total amount of gasoline on which a refund is claimed, and the amount of the tax claimed for refund. Such further information pertaining to such claim shall be furnished as required by the department.

(2) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery under 15-70-201 is not valid for refund purposes.

(3) All applications for refunds shall be filed with the department within 14 months after the date on which the gasoline was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid within 3 years after the date of such erroneous payment.

(4) Should the department find that the statement contains errors which are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement."

Section 7. Section 15-70-226, MCA, is amended to read:

"**15-70-226. Approval or rejection of claim.** (1) The department shall have 120 days after receiving the claim to approve or reject it. If approved, the department of revenue shall issue a credit in lieu of refund for the amount of the claim if the claimant is a distributor; for all other persons, a warrant shall be drawn upon the state treasurer for the amount of the claim.

(2) If the department determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the department *shall* reject such claim in full. If a claim is rejected, the department may suspend claimant's right to refund for a period not to exceed 1 year."

Approved May 7, 1979.

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CHAPTER NO. 628

AN ACT TO GENERALLY REVISE THE ESCHEATED PROPERTY ACT; ELIMINATING PROPERTY OTHER THAN THAT OF ESTATES FROM COVERAGE UNDER THE PROVISIONS OF THAT ACT; PROVIDING FOR DISPOSITION OF UNSOLD TANGIBLE PERSONAL PROPERTY OF ESTATES BY AUCTION BY THE COUNTY TREASURER AND DELIVERY OF PROCEEDS TO THE DEPARTMENT OF REVENUE; SHORTENING THE TIME DURING WHICH ESCHEATED PROPERTY IS HELD IN TRUST FOR POTENTIAL CLAIMANTS; LENGTHENING THE PERIOD OF TIME IN WHICH TO FILE CLAIMS; PROVIDING FOR THE DETERMINATION OF INHERITANCE TAX BY THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 72-14-101, 72-14-102, 72-14-205 THROUGH 72-14-210, 72-14-302, 72-14-303, 72-14-401, AND 72-14-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-14-101, MCA, is amended to read:

"72-14-101. Short title. Parts 1 through 3 of this chapter are to be known as the "Escheated *Estates* Act"."

Section 2. Section 72-14-102, MCA, is amended to read:

"72-14-102. When title to escheated property vests in state. Whenever the title to any property, either real or personal or mixed, fails for any reason, including want of heirs or next of kin, such title *vests* in the state of Montana immediately upon the death of the owner without an inquest or other *similar* proceeding, and there *is* no presumption that such owner died leaving heirs or next of kin."

Section 3. Section 72-14-205, MCA, is amended to read:

"72-14-205. Unsold intangible personal property — how disposed of — auction sale. (1) If the *intangible* personal property in an *escheated* estate was not sold by the *personal representative* at the final settlement of the *estate* as by law provided, then it shall be the duty of *the personal representative* to *deliver* all of such property to the department of revenue with a statement setting forth the name of the estate to which it belongs, and the department must within 1 year of the receipt of such property cause the same to be sold to the highest bidder at a public auction sale at the department's office in Helena, Montana.

(2) The department shall give notice of such sale by publication in a newspaper published in the city of Helena, Montana, once a week for 2 successive weeks making in all two publications, the last publication to be at least 20 days prior to the date of such sale. Such notice shall give the time and place of such sale and shall contain a list and description of the stocks, bonds, securities, or other *intangible* personal property to be sold.

(3) All of the expenses of such sale shall be deducted from the proceeds thereof by the department, and the balance of such proceeds shall

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be delivered by the department to the state treasurer for deposit in the agency fund of the state of Montana."

Section 4. Section 72-14-206, MCA, is amended to read:

"72-14-206. Unsold real property — how disposed of — auction sale. (1) If the real property was not sold by the *personal representative* at the final settlement of the estate as by law provided, then it shall be the duty of the *personal representative* to make and execute to the state of Montana *a* deed and to deliver the same to the county clerk and recorder of the county wherein such real property is situated, and it shall then become the duty of the county clerk and recorder to file and record said deed, without charge, and after being so recorded the county clerk and recorder shall mail the deed to the department of revenue, which shall make a record thereof and deliver the deed to the board of land commissioners.

(2) Within 1 year after the receipt of such recorded deed, the board shall cause such property to be sold to the highest bidder at public auction sale to be held at the courthouse in the county where such real property or any part thereof is situated.

(3) The board shall give notice of such sale by publication in a newspaper published in the county wherein such real estate or any part thereof is situated once a week for 2 weeks, making in all two publications, the last publication to be at least 20 days prior to the date of such sale. Such notice shall give the time and place of such sale and contain a description of the real property to be sold.

(4) All expenses of such sale shall be deducted by the board from the proceeds thereof, and the balance of such proceeds shall be turned over to the state treasurer who shall deposit the same in the agency fund of the state of Montana. The board shall provide the department with a statement indicating the sale price, expenses, and net proceeds resulting from each such sale."

Section 5. Section 72-14-207, MCA, is amended to read:

"72-14-207. Unsold tangible personal property — how disposed of — auction sale. *(1) If* the *tangible* personal property in an *escheated* estate *was not sold by the personal representative at the final settlement of the estate as provided by law, it is the duty of the personal representative to deliver such property to the county treasurer. The county treasurer must, within 1 year of the receipt of such property, cause it to be sold to the highest bidder at a public auction sale at the county seat of the county of administration of the estate.*

(2) The county treasurer shall give notice of such sale by publication in a newspaper published in the county of administration once a week for 2 successive weeks making in all two publications, the last publication to be at least 20 days prior to the date of such sale. The notice shall give the time and place of such sale and contain a description of the property to be sold.

(3) All expenses of such sale shall be deducted from the proceeds thereof by the county treasurer, and the balance of such proceeds shall

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be delivered by the county treasurer to the department of revenue for deposit in the agency fund of the state of Montana."

Section 6. Section 72-14-208, MCA, is amended to read:

"72-14-208. Sales by department of revenue and county treasurer — how conducted. All hereinbefore mentioned sales by the department of revenue *or county treasurer* must be *for cash* at public auction and shall be made to the highest bidder. However, the *seller* may reject all bids which are disproportionate to the value of the property being sold."

Section 7. Section 72-14-209, MCA, is amended to read:

"72-14-209. Deposit of all sums escheated — agency fund. All sums escheated under the provisions of parts 1 through 3 *of this chapter* shall be delivered by the department of revenue to the state treasurer and deposited by the treasurer in the agency fund."

Section 8. Section 72-14-210, MCA, is amended to read:

"72-14-210. Agency fund moneys to be held in trust — deposit in public school subfund. Moneys and properties placed in the agency fund shall be held in trust for a period of 5 years prior to deposit in the public school subfund in the trust and legacy fund by the state treasurer; such trust *being for the benefit of persons claiming property pursuant to part 3 of this chapter. Such a claim may be brought for* an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the same to the possession of the state."

Section 9. Section 72-14-302, MCA, is amended to read:

"72-14-302. Statute of limitations. Such action must be brought within 5 years from the date on which the money or property is received by the state treasurer, saving, however, to infants and persons of unsound mind or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or 5 years after their respective disabilities cease."

Section 10. Section 72-14-303, MCA, is amended to read:

"72-14-303. Inheritance tax — determination — objections. The *inheritance tax on estates subject to parts 1 through 3 of this chapter is to be determined and objections filed in accordance with Title 72, chapter 16, part 4. The determination of the department of revenue shall* fix the amount of inheritance tax, if any, which is due from *a person claiming under this part* to the state of Montana upon the money or property claimed, and none of *the* money or property shall be turned over to *the* claimant until *such* inheritance tax is paid. The department of revenue shall issue its interlocutory certificate showing the amount of said inheritance tax due, if any, and shall have the right to file objections and be heard upon the final determination of said tax."

Section 11. Section 72-14-401, MCA, is amended to read:

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"72-14-401. Fiduciary deposit of money when interested person under disability or similar circumstances — receipt as voucher. When property in the hands of *a personal representative*, trustee, or other fiduciary is assigned or distributed to any heir, legatee, devisee, creditor, beneficiary, or person interested in any estate or trust who has no agent in this state or who cannot be found or who refuses to accept the same or to give a proper voucher therefor or to a minor or incompetent person who has no legal guardian to receive the same or person authorized to receipt therefor and the same or any part thereof consists of money, the *personal representative*, trustee, or other fiduciary may deposit the money in a special fund in the name of the heir, legatee, devisee, creditor, beneficiary, or person interested with the county treasurer of the county in which the proceedings are pending or in which such property is located, who shall give a receipt for the same and be liable upon his official bond therefor; and said receipt shall be deemed and received by the court or judge thereof as a voucher in favor of the *personal representative*, trustee, or other fiduciary with the same force and effect as if executed by such heir, legatee, devisee, creditor, beneficiary, or person interested."

Section 12. Section 72-14-403, MCA, is amended to read:

"72-14-403. Deposit of unclaimed property in state treasury — escheat. (1) All money or other property distributed in the administration of an estate of a decedent or as the subject of a trust and deposited before or after July 1, 1947, with the county treasurer to the credit of the distributee or beneficiary and any money remaining on deposit to the credit of an estate after final distribution must be delivered into the state treasury for deposit in the agency fund by the county treasurer upon the expiration of 1 year from the day of such deposit.

(2) Money or other property so deposited in the state treasury, if not claimed by the person or persons entitled thereto by bringing an action as provided in *part 3 of this chapter*, shall escheat to the state of Montana and be placed in the public school subfund of the trust and legacy fund as provided therein."

Section 13. **Effective date.** This act is effective on passage and approval.

Approved May 7, 1979.

CHAPTER NO. 629

AN ACT TO MAKE IT A MISDEMEANOR TO LEAVE SNARES AND TRAPS UNATTENDED AND TO WASTE FURS OR FUR-BEARING ANIMALS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Wasting of fur-bearing animals.** A person who fails to pick up traps or snares at the end of the trapping season or attends his traps or snares so that furs or fur-bearing animals are wasted is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

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Section 2. **Enforcement.** The fish and game department shall enforce the provisions of [this act].

Section 3. **Exclusion.** Federal, state, and county predator control programs are exempt from this act.

Approved May 7, 1979.

CHAPTER NO. 630

AN ACT TO EXTEND THE PERIOD DURING WHICH COUNTY TAX APPEAL BOARDS MAY MEET; PROVIDING THAT TAXPAYERS' APPLICATIONS ARE GRANTED IF A COUNTY TAX APPEAL BOARD REFUSES OR FAILS TO HEAR THE APPLICATION; AMENDING SECTIONS 15-15-101 THROUGH 15-15-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-15-101, MCA, is amended to read:

"15-15-101. County tax appeal board — meetings and compensation. (1) The board of county commissioners of each county shall appoint a three-member county tax appeal board, with the members to serve staggered terms of 3 years each. The members of each county tax appeal board shall be residents of the county in which they serve. They shall receive compensation of $25 a day and travel expenses as provided for in 2-18-501 through 2-18-503, as amended, only when the county tax appeal board is in session to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation shall be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards shall be furnished by the county. All other incidental expenses shall be paid from the appropriation of the state tax appeal board.

(2) The county tax appeal board must meet on the third Monday of April in each year to hear protests concerning assessments made by the department of revenue. It must continue in session for that purpose from time to time until the business of hearing protests is disposed of, but not later than *60 days after the department of revenue or its agent:*

(a) has mailed notice of classification and appraisal to all property owners as required in 15-7-102; and

(b) has notified the county tax appeal board that classification and appraisal notices have been mailed to all property owners.

(3) In connection with any such appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. The

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county clerk shall publish a notice to taxpayers, giving the time the county tax appeal board will meet to hear protests concerning assessments and the latest date the county tax appeal board may take applications for such hearings. The notice shall be published in a newspaper if any is printed in the county or, if none, then in such manner as the board may direct. The notice shall be published at least 7 days prior to the first meeting of the county tax appeal board."

Section 2. Section 15-15-102, MCA, is amended to read:

"15-15-102. Application for reduction in valuation. No reduction may be made in the valuation of property unless the party affected or his agent makes and files with the county tax appeal board on or before the first Monday in June *or 15 days after receiving a notice of classification and appraisal from the department of revenue, whichever is later,* a written application therefor. The application shall state the post-office address of the applicant, shall specifically describe the property involved, and shall state the facts upon which it is claimed such reduction should be made."

Section 3. Section 15-15-103, MCA, is amended to read:

"15-15-103. Examination of applicant. Before the county tax appeal board grants any application or makes any reduction applied for, it must examine on oath the person or agent making the application, touching the value of the property of each person. No reduction must be made unless such person or agent makes an application, as provided in 15-15-102, and attends and answers all questions pertinent to the inquiry. The testimony of all witnesses upon such hearing must be taken in shorthand or by stenotype or electronically recorded and preserved for 1 year. If the decision of the county tax appeal board is appealed, all testimony must be transcribed or otherwise reduced to writing and forwarded, together with all exhibits, to the state tax appeal board. The date of hearing, the proceedings before the board, and the decision must be entered upon the minutes of the board, and the board shall notify the applicant of its decision by registered or certified mail within 3 days thereafter. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than 3 days after the *board holds its final hearing of the year.*"

Section 4. **Failure or refusal to hear application.** (1) If a county tax appeal board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, except that listed in 15-2-302, the taxpayer's application is considered to be granted on the day following the board's final meeting for that year.

(2) The county treasurer shall enter the appraisal or classification sought in the application in the assessment book.

Approved May 7, 1979.

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CHAPTER NO. 631

AN ACT TO RESTRICT AND REGULATE THE APPROPRIATION AND SALE OF GROUND WATER IN MONTANA; AMENDING SECTIONS 69-3-101 AND 85-1-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-101, MCA, is amended to read:

"85-1-101. Policy considerations. It is hereby declared as follows:

(1) The general welfare of the people of Montana, in view of the state's population growth and expanding economy, requires that water resources of the state be put to optimum beneficial use and not wasted.

(2) The public policy of the state is to promote the conservation, development, and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens.

(3) The state, in the exercise of its sovereign power, acting through the department of natural resources and conservation, shall coordinate the development and use of the water resources of the state so as to effect full utilization, conservation, and protection of its water resources.

(4) The development and utilization of water resources and the efficient, economic distribution thereof are vital to the people in order to protect existing uses and to assure adequate future supplies for domestic, industrial, agricultural, and other beneficial uses.

(5) The water resources of the state must be protected and conserved to assure adequate supplies for public recreational purposes and for the conservation of wildlife and aquatic life.

(6) The public interest requires the construction, operation, and maintenance of a system of works for the conservation, development, storage, distribution, and utilization of water, which construction, operation, and maintenance is a single object and is in all respects for the welfare and benefit of the people of the state.

(7) It is necessary to coordinate local, state, and federal water resource development and utilization plans and projects through a single agency of state government, the department of natural resources and conservation.

(8) The greatest economic benefit to the people of Montana can be secured only by the sound coordination of development and utilization of water resources with the development and utilization of all other resources of the state.

(9) Any attempt to gain control of or speculate on large quantities of ground water of the state of Montana is not in the interest of the people and is to be restricted.

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(10) To achieve these objectives and to protect the waters of Montana from diversion to other areas of the nation, it is essential that a comprehensive, coordinated multiple-use water resource plan be progressively formulated, to be known as the "state water plan"."

Section 2. **Limitation on appropriation of ground water.** (1) After [the effective date of this act] no application for a permit to appropriate ground water in excess of 3,000 acre feet per year may be granted, except pursuant to an act of the legislature permitting the specific appropriation.

(2) Subsection (1) applies to any permit to appropriate ground water for which application has been made but which has not been granted as of the effective date of this act.

(3) This section does not apply to appropriations by municipalities for municipal use or to appropriations for public water supplies as defined in section 75-6-102, MCA; or to appropriations for the irrigation of cropland owned and operated by the applicant.

Section 3. Section 69-3-101, MCA, is amended to read:

"**69-3-101. Meaning of term public utility.** The term "public utility", within the meaning of this chapter, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, any part of a plant or equipment, *or any water right* within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

(1) heat;

(2) street-railway service;

(3) light;

(4) power in any form or by any agency;

(5) water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;

(6) telegraph or telephone service."

Section 4. **Penalty.** Any person, association, corporation, or other entity that applies for a permit to appropriate ground water, singularly or collectively, for the purpose of circumventing [section 2] is punishable by a fine not exceeding $5,000.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved May 7, 1979.

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CHAPTER NO. 632

AN ACT TO INCREASE THE GASOLINE LICENSE TAX AND THE TAX ON DIESEL FUEL AND VOLATILE LIQUIDS BY 1 CENT AND TO PROVIDE FOR ITS DISTRIBUTION; AMENDING SECTIONS 15-70-101, 15-70-204, AND 15-70-321, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purpose of this bill is to provide an additional 1 cent per gallon tax on gasoline, diesel fuel, and volatile liquids to raise funds to, firstly, fully fund the accelerated interstate highway construction program; secondly, fully fund the highway patrol costs; and lastly, provide $2 million, if funds are available, to cities and counties for the construction, reconstruction, maintenance, and repair of streets and roads.

Section 2. Section 15-70-204, MCA, is amended to read:

"15-70-204. Gasoline license tax — rate. (1) Every distributor shall pay to the department of revenue a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to 1 cent for each gallon of aviation gasoline, which shall be allocated to the department of community affairs as provided by 67-1-301, as amended, and 8 cents for each gallon of all other gasoline distributed by him within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported or sold for export out of the state shall not be included in the measure of the distributor's license tax.

(3) In addition to the tax imposed by subsection (1) of this section, there is levied an additional tax of 1 cent a gallon on each gallon of nonaviation gasoline. This additional tax of 1 cent a gallon expires July 1, 1983."

Section 3. Section 15-70-321, MCA, is amended to read:

"15-70-321. Tax on diesel fuel and volatile liquids. *(1)* The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax in an amount equal to 10 cents for each gallon of diesel fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the state or used in motor vehicles, motorized equipment, and the internal combustion of any and all engines, including stationary engines, used in connection with any and all work performed under any and all contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any and all public agencies, including federal, state, county, municipal, or other political subdivisions.

(2) In addition to the tax imposed by subsection (1) of this section, there is levied an additional tax of 1 cent a gallon on each gallon of diesel fuel or other volatile liquid, except liquefied petroleum gas. This additional tax of 1 cent a gallon expires July 1, 1983."

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Section 4. Section 15-70-101, MCA, is amended to read:

"15-70-101. Disposition of funds. All taxes, interest, and penalties collected under this chapter shall be turned over promptly to the state treasurer who shall place the same in the earmarked revenue fund to the credit of the department of highways, except those funds hereinbelow allocated to cities, towns, and counties, which funds shall be paid by the state treasurer directly to such cities, towns, and counties.

(1) $6,500,000 of the funds collected under this chapter shall be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (a) and (b) hereof:

(a) $2,950,000 shall be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state;

(b) $3,550,000 shall be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds hereby allocated to counties, cities, and towns shall be used exclusively for the construction, reconstruction, maintenance, and repair of rural roads, city or town streets and alleys or for the share which such city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets which are part of the federal-aid primary or secondary highway system or urban extensions thereto.

(3) Upon receipt of the allocation provided herein, the governing bodies of the recipient counties, cities, and towns shall inform the department of highways of the purposes for which the funds will be expended so that the county commissioners, the governing body, and the department of highways may coordinate the expenditure of public funds for road improvements.

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(4) All funds hereby allocated to counties, cities, and towns shall be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases where the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

(5) For the purposes of this section where distribution of funds is made on a basis related to population, the population shall be determined by the last preceding official federal census.

(6) For the purposes of this section where determination of mileage is necessary for distribution of funds, it shall be the responsibility of the cities, towns, and counties to furnish to the department of highways and state treasurer a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted shall be subject to review and approval by the department of highways.

(7) None of the funds authorized by this section shall be used for the purchase of capital equipment."

Section 5. **Distribution of revenue generated by additional tax.** (1) The estimated revenue to be raised by the tax on gasoline imposed in 15-70-204 and on diesel fuel and volatile liquids imposed in 15-70-321 is:

	Fiscal year 1980	Fiscal year 1981
1st quarter	$17,087,000	$17,292,000
2nd quarter	13,326,000	13,949,000
3rd quarter	12,852,000	13,190,000
4th quarter	12,735,000	13,069,000

(2) The revenue collected each quarter from the additional tax imposed in 15-70-204(3) and 15-70-321(2) will be used as follows:

(a) primarily, for the purpose of matching federal funds available for completion of the federal and interstate system as defined in 32 U.S.C. 103 and spent only after any existing highway construction and maintenance funds currently allocated and scheduled for use have been obligated, as appropriated in HB 483 of the 46th legislature;

(b) secondarily, for the department of justice's highway patrol costs, as appropriated in HB 483 of the 46th legislature; and

(c) thirdly, subject to the limitations imposed in (3) through (5), $2,000,000 for each year is hereby appropriated to cities, towns, and counties for the purposes described in 15-70-101(1) under the formula established in (6) of this section.

(3) If the revenue collected in any quarter from the additional tax is up to $500,000 less than the estimated revenue listed for that quarter in (1), the amount paid to cities, towns, and counties for the purposes described in 15-70-101(1) will be decreased $1 for every dollar by which the revenue collected is less than the estimated revenue for that quarter.

(4) If the revenue collected in any quarter from the additional tax is more than $500,000 less than the estimated revenue listed for that quarter in (1):

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(a) no funds from the additional tax shall be paid to cities, towns, and counties for the purposes described in 15-70-101(1);

(b) the department of highways shall inform the governing body of each county, city, and town that no funds from the additional tax will be available for that quarter; and

(c) the amount of money deposited to the credit of the department of justice for the costs of the highway patrol will be decreased $1 for every dollar by which actual revenue collections are $500,000 less than the estimated revenue listed in (1) for that quarter.

(5) If the revenue collected in any quarter from the additional tax exceeds the estimated revenue listed in (1) for that quarter, $1 for each $1 in excess shall be paid to cities, towns, and counties for the purposes described in 15-70-101(1) under the provisions of (6) of this section.

(6) Any money collected from the additional tax and paid to the cities, towns, and counties in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys shall be divided 65% for cities and towns and 35% to counties and allocated among the cities and towns and among the counties by the method provided in subsections (1)(a)(i) and (ii) and (1)(b)(i) and (ii) of 15-70-101.

Section 6. **Effective date of sections 1 and 4.** Sections 1 and 4 are effective for fiscal years 1980 and 1981 only.

Approved May 7, 1979.

CHAPTER NO. 633

AN ACT TO PRESCRIBE DUTIES OF CLERKS AND RECORDERS WITH REGARD TO SUBDIVISION FILING REQUIREMENTS; AMENDING SECTIONS 76-3-301 AND 76-3-404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-301, MCA, is amended to read:

"76-3-301. General restriction on transfer of title to subdivided lands. (1) Except as provided in 76-3-303, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of 76-3-611(1) in proper form.

(2) The clerk and recorder shall notify the governing body or its designated agent of any land division described in 76-3-207(1).

(3) If transfers *not in accordance with this chapter* are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of such action shall be imposed against the *party not prevailing.*"

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Section 2. Section 76-3-404, MCA, is amended to read:

"76-3-404. Certificate of survey. (1) Within 180 days of the completion of a survey, the registered land surveyor responsible for the survey, whether he is privately or publicly employed, shall prepare and *submit for filing* a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in such map;

(c) discloses evidence to suggest alternate locations of lines or points;

(d) establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of such map without trigonometric calculations.

(2) A certificate of survey will not be required for any survey which is made by the United States bureau of land management or which is preliminary or which will become part of a subdivision plat being prepared for recording under the provisions of this chapter.

(3) Certificates of survey shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and shall conform to monumentation and surveying requirements promulgated under this chapter."

Approved May 7, 1979.

CHAPTER NO. 634

AN ACT CHANGING THE METHOD OF TAXING BANKS AND SAVINGS AND LOAN ASSOCIATIONS FOR LOCAL GOVERNMENTS; REMOVING THE CORPORATION LICENSE TAX EXEMPTION FOR INTEREST FROM STATE AND LOCAL OBLIGATIONS; REPEALING THE TAX ON MONEYED CAPITAL AND SHARES OF BANKS; PROVIDING FOR A DIFFERENT METHOD OF DISTRIBUTING CORPORATION LICENSE TAXES PAID BY BANKS AND SAVINGS AND LOAN ASSOCIATIONS; AMENDING SECTIONS 7-6-206, 15-1-501, 15-8-104, 15-8-111, 15-24-701, 15-24-801, 15-31-101, 15-31-114, 15-31-502, 17-5-408, 20-9-343, AND 32-1-413, MCA; REPEALING SECTIONS 15-6-106, 15-24-501 THROUGH 15-24-508, AND 15-24-603, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The legislature recognizes that the property tax on moneyed capital and bank shares is an important element in the tax bases of many local governments. Since, however, the current method of

valuing bank shares has legal defects, may be causing the undercapitalization of Montana's banks, and imposes an inequitable tax burden on some financial institutions, the legislature hereby repeals this tax. Banks and savings and loan associations will be taxed on a more equitable basis, their net income. To make their basis for computing net income comparable to other businesses, the legislature repeals the corporation license tax deduction for interest on public obligations. To replace the property tax revenue lost to local governments, a portion of the corporation license taxes paid by banks and savings and loan associations will be received by counties and distributed to the various local governments, based on their current mill levies.

Section 2. Section 15-31-101, MCA, is amended to read:

"15-31-101. Organizations subject to tax. (1) The term "corporation" includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity, and all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States.

(2) The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) Every corporation, except as hereinafter provided and except as provided in 33-2-705(5), engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state such percentage or percentages of its total net income for the preceding taxable year at the rate hereinafter set forth. In the case of corporations having income from business activity which is taxable both within and without this state, the license fee shall be measured by the net income derived from or attributable to Montana sources as determined under part 3. This tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation; however, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

(4) Every bank organized under the laws of the state of Montana, of any other state, *or* of the United States *and every savings and loan association organized under the laws of this state or of the United States is* subject to the Montana corporation license tax provided for under this chapter. For taxable years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."

Section 3. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. In computing the net income, the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

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(1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

(2) (a) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such allowance to be determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation shall be the same as the elections made for federal income tax purposes. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(b) (i) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deductions allowed by this section, 15-31-114, over the gross income, with the modifications specified in (ii) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five taxable periods following the taxable period of such loss. A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the three preceding taxable periods, shall be a net operating loss carryover to each of the seven taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in (ii)(B) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.

(ii) The modifications referred to in (i) of this subsection shall be as follows:

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(A) No net operating loss deduction shall be allowed.

(B) The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.

(C) Any net operating loss carried over to any taxable years beginning after December 31, 1978, must be calculated under the provisions of this section effective for the taxable year for which the return claiming the net operating loss carryover is filed.

(iii) A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(iv) In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(v) Notwithstanding the provisions of 15-31-531, interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(vi) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall be allowed only with respect to taxable periods beginning on or after January 1, 1971.

(3) In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements; such reasonable allowance to be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes.

(4) The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this part.

(5) (a) Taxes paid within the year except the following:

(i) Taxes imposed by this part.

(ii) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(iii) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

(iv) Taxes imposed by any other state or country upon or measured by net income or profits.

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(b) Taxes deductible under this part shall be construed to include taxes imposed by any county, school district, or municipality of this state.

(6) That portion of an energy-related investment allowed as a deduction under 15-32-103."

Section 4. Section 15-31-502, MCA, is amended to read:

"15-31-502. Assessment and payment of tax, penalty, and interest. All taxpayers shall compute the amount of tax payable under this chapter and shall remit such amount to the department of revenue on or before the 15th day of the 5th month following the close of the taxable period. If the tax is not paid on or before the due date, there shall be assessed a penalty of 10% of the amount of the tax unless it is shown that the failure was due to reasonable cause and not due to neglect. If any tax due under this chapter is not paid when due, by reason of extension granted or otherwise, interest shall be added thereto at the rate of 9% per annum from the due date until paid."

Section 5. **Department of revenue — special duties for transmitting corporation license tax revenues collected from banks or savings and loan associations to counties.** (1) Within 30 days after receiving corporation license tax returns and payments from banks or savings and loan associations, the department of revenue shall transmit to the county treasurer of the county in which the business is located the revenues calculated under [section 6(1)(b)].

(2) If the department of revenue determines, under the provisions of 15-31-503 and 15-31-531, that a bank or savings and loan association owes more taxes than shown on the original return or has paid more than the tax, penalty, or interest due in any year, it shall notify the bank or savings and loan association. Additional payment is due within 10 days after receipt of the final determination of taxes due. County treasurers shall issue warrants for their portion of the overpayment received and interest, as provided in 15-31-531.

(3) The department shall continue to exercise all its duties and powers outlined in this title with respect to auditing returns and enforcing payment of the corporation license taxes owed by banks and savings and loan associations. Any delinquent taxes collected from the sale of property of a bank or savings and loan association under the provisions of 15-31-525 shall be transmitted to the county in which the corporation owing the delinquent taxes is located. The only duties of the county treasurers in this regard are issuing refunds and distributing the taxes to local taxing jurisdictions.

Section 6. **Distribution of corporation license taxes collected from banks or savings and loan associations.** (1) All corporation license taxes collected from banks and savings and loan associations shall be distributed in the following manner:

(a) 20% must be remitted to the state treasurer to be allocated as provided in 15-1-501(2); and

(b) 80% must be allocated to the various taxing jurisdictions within the county in which the bank or savings and loan association is located.

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(2) The corporation license taxes distributed under subsection (1)(b) shall be allocated to each taxing jurisdiction in the proportion that its mill levy for that fiscal year bears to the total mill levy of the taxing authorities of the district in which the bank or savings and loan association is located.

(3) "Taxing jurisdictions" means, for the purposes of this section, all taxing authorities within a county permitted under state law to levy mills against the taxable value of property in the taxing district in which the bank or savings and loan association is located.

(4) If a return filed by a bank or savings and loan association involves branches or offices in more than one taxing jurisdiction, the department of revenue shall provide a method by rule for equitable distribution among those taxing jurisdictions.

Section 7. **Moneyed capital and shares of banks exempt.** (1) Moneyed capital and shares of banks are exempt from taxation.

(2) "Moneyed capital" means money, bonds, notes, and other evidence of indebtedness, including evidence of indebtedness secured by a mortgage on real or personal property, in the hands of individual citizens and corporations coming into competition with the business of national banks or employed in conducting a banking or investment business.

Section 8. Section 7-6-206, MCA, is amended to read:

"7-6-206. Time deposits. (1) Such public money not necessary for immediate use by such county, city, or town which is not invested in direct obligations of the United States government as authorized in 7-6-202 may be placed in time or savings deposits with any bank or savings and loan association in the county, city, or town.

(2) When more than one bank or savings and loan association is available in any county for the deposit of such county funds or in any city or town for the deposit of such city or town funds, such funds may be distributed ratably among all of such banks and savings and loan associations qualifying therefor and substantially in proportion to the total property taxes paid during the preceding year in such county or the county in which such city or town is located *and the corporation license taxes paid* by each bank or savings and loan association willing to receive such time or savings deposits under the terms of this part.

(3) In lieu of a ratable distribution among banks and savings and loan associations within the county, city, or town, the local governing body may solicit bids without advertising from any bank or savings and loan association in a county having at least two such financial institutions. Such institutions may request in writing that they be listed for solicitation on bids for public money not necessary for immediate use by the unit of local government. In counties having less than two such institutions, the local governing body may solicit bids from and deposit public money in such institutions in neighboring counties unless the local financial institution agrees to pay the same rate of interest bid by the neighboring financial institutions. The governing body may solicit bids by notice sent by mail to the investment institutions whose names are listed as provided herein.

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The provisions of this subsection shall be considered as meeting the requirements of subsection (2)."

Section 9. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of moneys from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund all moneys received by him from the collection of:

(a) automobile driver's license fees under subsections (1) through (6) of 61-5-111;

(b) electric energy producer's license taxes under chapter 51;

(c) metalliferous mines license taxes under chapter 37;

(d) oil producer's license taxes under chapter 36;

(e) liquor license taxes under Title 16;

(f) telephone license taxes under chapter 53; and

(g) inheritance and estate taxes under Title 72, chapter 16.

(2) Seventy-five percent of all moneys received from the collection of income taxes under chapter 30 and corporation license and income taxes under chapter 31, *except as provided in [section 6],* shall be deposited in the general fund subject to the prior pledge and appropriation of such income tax and corporation license tax collections for the payment of long-range building program bonds. The remaining 25% of the proceeds of the corporation license tax, *excluding that allocated to the counties under [section 6],* corporation income tax, and income tax shall be deposited to the credit of the earmarked revenue fund for state equalization aid to the public schools of Montana.

(3) The state treasurer shall also deposit to the credit of the state general fund all moneys received by him from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code."

Section 10. Section 15-8-104, MCA, is amended to read:

"15-8-104. Department audit of taxable value — costs of audit paid by county — penalty for underreporting. (1) When in the judgment of the director of revenue it is necessary, audits may be made for the purpose of determining the taxable value of net proceeds of mines and oil and gas wells, business inventories, and all other types of property subject to ad valorem taxation. The costs incurred by the department, including per diem and mileage expense as well as salaries and benefits, shall be reimbursed from the amount collected as a result of the audit. In the event the property subject to audit is assessed within two or more counties, the department shall allocate the cost among the collections due each of the counties. Reimbursement shall be made solely for audit expense and not for other services provided to the counties by the department and may not exceed the amounts collected.

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(2) The taxable value of any underreported portion of any business inventory found as a result of an audit to have been underreported by the owner shall be increased by 25% as a penalty for underreporting.

(3) The 25% penalty may be waived by the department if reasonable cause for failure to report the total value of a business inventory is provided to the department.

(4) The cost of the audit shall be paid to the state treasurer for credit to the general fund."

Section 11. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as provided in subsection (5) of this section and in 15-7-111 through 15-7-114.

(2) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in class one and classes seven through eighteen. For purposes of taxation, assessed value is the same as appraised value.

(4) The taxable value for all property in class one and classes seven through eighteen is the percentage of market value established for each class of property in 15-6-102 and 15-6-108 through 15-6-119.

(5) The assessed value of properties in 15-6-103, *15-6-104, 15-6-105,* 15-6-107, and 15-6-120 is as follows:

(a) Properties in 15-6-103, under class two, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(b) Properties in 15-6-104, 15-6-105, and 15-6-120, under classes three, four, and nineteen are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-107, under class six, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(6) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

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(7) The taxable value of all property in classes two through *four and class* six is the percentage of assessed value established in 15-6-103, *15-6-104, 15-6-105, and* 15-6-107, *and 15-6-120* for each class of property."

Section 12. Section 15-24-701, MCA, is amended to read:

"15-24-701. Production credit associations — assessment and payment. Every production credit association organized under the provisions of section 1131d of Title 12, United States Codes Annotated, shall be assessed for and pay taxes upon all real and personal property owned by such association."

Section 13. Section 15-24-801, MCA, is amended to read:

"15-24-801. Savings and loan associations — taxation. Every savings and loan association subject to regulation under Title 32, chapter 2, shall be assessed for and pay taxes upon all real and personal property owned by the association. The secretary of an association shall furnish to the department of revenue or its agent in the county in which the principal office of the association is located, within 5 days after demand, a condensed statement verified by his oath of the resources and liabilities of the association as disclosed by its books at noon on January 1 in each year. If the secretary fails to make the statement hereby required, the department or its agent shall immediately obtain the information from any other available source, and for this purpose it shall have access to the books of the association. The department or its agent shall thereupon make an assessment of the real estate and personal property owned by the association, which assessment shall be as fair and equitable as it may be able to make from the best information available, or the assessor may, for the purpose of the assessment, adopt the figures disclosed by any prior report made by the association to any state or federal officer under a state or federal law. A person required by this section to make the statement provided for in this section who fails to furnish it is guilty of a misdemeanor."

Section 14. Section 17-5-408, MCA, is amended to read:

"17-5-408. Percentage of income, corporation license, and cigarette tax pledged. (1) The state pledges and appropriates and directs to be credited as received to the sinking fund account 11% of all money, *except as provided in [section 6 of this act],* received from the collection of the income tax and the corporation license tax referred to in 15-1-501 and such additional amount of said taxes, if any, as may at any time be needed to comply with the principal and interest and reserve requirements stated in 17-5-405(4), provided that no more than 11% of such tax collections shall be deemed to be pledged for the purpose of 17-5-403(2). The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of said taxes.

(2) The state pledges and appropriates and directs to be credited to the sinking fund account 15% of all money received from the collection of the 9-cent excise tax on cigarettes which is levied, imposed, and assessed by 16-11-111(1). The state also pledges and appropriates and directs to be credited as received to the sinking fund account all money received from

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the collection of each of the excise taxes on cigarettes which are levied, imposed, and assessed by subsection (2) and (3) of 16-11-111, as amended, after the payment and redemption in full of the outstanding bonds for which said taxes have heretofore been pledged and appropriated or after the necessary funds have been set aside for such payment and redemption as provided in this part. The state also pledges and appropriates and directs to be credited as received to the sinking fund account all money received from the collection of the taxes on other tobacco products which are or may hereafter be levied, imposed, and assessed by law for that purpose, including the tax levied, imposed, and assessed by 16-11-202. Nothing herein shall impair or otherwise affect the provisions and covenants contained in the resolutions authorizing the presently outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of all taxes referred to in this subsection (2)."

Section 15. Section 20-9-343, MCA, is amended to read:

"20-9-343. Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means those moneys deposited in the earmarked revenue fund as required in this section plus any legislative appropriation of moneys from other sources for distribution to the public schools for the purpose of equalization of the foundation program.

(2) The following shall be paid into the earmarked revenue fund for state equalization aid to public schools of the state:

(a) 25% of all moneys received from the collection of income taxes under chapter 30 of Title 15;

(b) 25% of all moneys, *except as provided in [section 6 of this act],* received from the collection of corporation license taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) 10% of the moneys received from the collection of the severance tax on coal under chapter 35 of Title 15;

(d) 62 ½ % of the moneys received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income moneys described in 20-9-341 and 20-9-342;

(f) income from the local impact and education trust fund account; and

(g) in addition to these revenues, the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333 shall be paid into the same earmarked revenue fund."

Section 16. Section 32-1-413, MCA, is amended to read:

"32-1-413. Borrowing money for capital purposes — status of capital. Notwithstanding any other provision of law, any commercial bank, savings bank, trust company, or investment company, now in existence or which may be hereafter formed, shall have the power to borrow

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money for capital purposes upon such terms and conditions as may be approved by the department and for this purpose may issue capital notes or debentures therefor, such notes or debentures to be subordinate in right of payment to the payment in full of all deposits of such bank, savings bank, trust company, or investment company. The amount of money so borrowed shall be considered as capital for the purpose of determining the maximum amount of money that may be loaned by such bank, savings bank, trust company, or investment company to any person, partnership, or corporation and for the purpose of determining the maximum amount of money which such bank may borrow and for all other purposes of bank capital as may be required by law."

Section 17. **Repealer.** Sections 15-6-106, 15-24-501 through 15-24-508, and 15-24-603, MCA, are repealed.

Section 18. **Effective date.** This act is effective for taxable years beginning on or after December 31, 1978.

Approved May 7, 1979.

CHAPTER NO. 635

AN ACT TO REVISE THE LAWS RELATING TO THE PRISONER FURLOUGH PROGRAM BY ALLOWING MORE FLEXIBILITY IN THE AMOUNT OF COMPENSATION A FURLOUGHEE MUST RECEIVE, REQUIRING A FURLOUGHEE TO PAY FOR COUNSEL TO REPRESENT HIM AT HEARINGS, AND CLARIFYING ELIGIBILITY TO PARTICIPATE; AMENDING SECTIONS 46-23-402, 46-23-405, 46-23-411, 46-23-422, AND 46-23-425, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-23-402, MCA, is amended to read:

"46-23-402. Purpose of prisoner furlough program. (1) The purpose and intent of this part is to:

(a) establish a program for the rehabilitation, education, and betterment of selected prisoners confined in the state prison, placing the establishment, regulation, guidance, and control of such program under the direction of the department of institutions;

(b) increase their responsibility to society;

(c) make it possible that they may work gainfully to support their dependents in whole or in part while serving their sentences, continue their education or training, and at the same time fulfill the obligations of the sentence of imprisonment imposed.

(2) The prisoner program shall operate by supplementing and not replacing established penal procedures now or hereafter established by law and shall serve to extend the limits of confinement for treatment as well as jurisdictional purposes.

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(3) This part is to be liberally construed to effect the overall objectives set forth in this section."

Section 2. Section 46-23-405, MCA, is amended to read:

"46-23-405. Establishing program — rules. The department is authorized and directed to establish a furlough program and make rules in accordance with Title 2, chapter 4, to implement and control the same. Rules shall include *guidelines* for:

(1) *prisoner eligibility*;

(2) participating in an educational, treatment, or training program;

(3) approval of supervising agency; and

(4) review of determinations in furlough application."

Section 3. Section 46-23-411, MCA, is amended to read:

"46-23-411. Application to participate — eligibility. Any prisoner confined in the state prison, except a prisoner serving a sentence imposed under 46-18-202(2), may make application to participate in the furlough program *if he* has served *at least* one-half of the time required to be considered for parole *and qualifies under the rules established by the department*."

Section 4. Section 46-23-422, MCA, is amended to read:

"46-23-422. Violation of furlough agreement by prisoner. (1) If any prisoner released from actual prison confinement under the furlough program fails to comply with the rules of the furlough agreement, he shall be called by the department or by the supervising agency to appear before the department or supervising agency.

(2) If a conference is not sufficient to resolve the situation and if the prisoner continues in his noncompliance, the prisoner shall be granted a hearing on the violation within a reasonable time on or near the site of the alleged violation to determine whether a violation of the furlough agreement exists. The prisoner *may be represented by* counsel at the hearing *at his own expense*. The hearing shall be conducted by a hearing officer of the board of pardons. The prisoner on furlough shall have all opportunities provided under 46-23-1024 and 46-23-1025 pertaining to on-site hearings for parole revocation. If reasonable grounds are established for violation of the furlough agreement, the furlough shall be cancelled and the prisoner shall be returned to the prison.

(3) At the next meeting of the board of pardons after the return of the prisoner to the prison, the prisoner shall be granted a due process hearing in order to determine if the prisoner has in fact violated the terms of the prisoner's furlough release. If it is determined that the prisoner has in fact violated the terms of the prisoner's furlough, the prisoner shall remain at the prison. If the terms of the prisoner's release have not been violated, the prisoner's case shall be assigned to a parole agent and a new furlough arrangement shall be worked out."

Section 5. Section 46-23-425, MCA, is amended to read:

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"46-23-425. When prisoner not benefiting from program. (1) The prisoner, the department, or the supervising agency may request that a conference be held with the department, the prisoner, and a representative of the supervising agency to consider the problem of the prisoner's unemployment, disability, or inability to benefit from schooling or training if the prisoner:

(a) while not disabled from working by temporary illness, is unemployed for a period of 30 days or more after his availability for employment is reported in writing by the supervising agency to the department of labor and industry office serving the area in which the prisoner is furloughed and to any union to which the prisoner belongs;

(b) has become so disabled as to be unemployable; or

(c) is on an educational furlough and has demonstrated for a period of 6 weeks or more that he is unable to benefit from schooling, treatment, or training.

(2) At this conference the prisoner may request that supervision be transferred to another supervising agency, and a representative of the new agency may be at the conference.

(3) If the conference does not result in a resolution of the problem of the prisoner's unemployment, disability, or inability to benefit, the department may request a hearing by the board of pardons to determine an alternate proposal. In this hearing the prisoner *may be represented by* counsel *at his own expense.* Upon determining that the prisoner is not benefiting from the furlough program and will not benefit from continued participation in the program, the board shall order the prisoner returned to the prison."

Approved May 7, 1979.

CHAPTER NO. 636

AN ACT TO REMOVE THE DISTINCTION FOR INHERITANCE TAX PURPOSES BETWEEN A SURVIVING JOINT TENANT WHO IS THE SPOUSE OF THE DECEDENT AND ONE WHO IS AN ISSUE; AMENDING SECTION 72-16-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-16-303, MCA, is amended to read:

"72-16-303. Joint estates — transfer by right of survivorship taxable. (1) Whenever any property, however acquired, real or personal, tangible or intangible, including government bonds of the United States, is inscribed in co-ownership form, held by two or more persons in joint tenancy or as tenants by the entirety, or is deposited in any bank or other depositary in the joint names of two or more persons and payable to the survivor or survivors of them upon the death of one of them, the right of

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the survivor or survivors to the immediate possession or ownership is a taxable transfer.

(2) The tax is upon the transfer of decedent's interest, one-half or other proper fraction, as evidenced by the written instrument creating the same, as though the property to which the transfer relates belonged to the joint tenants, tenants by the entirety, joint depositors, holders in co-ownership form, or persons, as tenants in common and had been, for inheritance tax purposes, bequeathed or devised to the survivor or survivors by will, except such part thereof as may be shown to have originally belonged to the survivor and never to have belonged to the decedent when the surviving joint tenant is a spouse *or issue* of the decedent. In all other cases, the full value of the property shall be taxable, except *the* portion thereof that originally belonged to the survivor and as to which the decedent had made no contribution; if the decedent had made a contribution to the ownership of *the* property, the amount of *the* contribution shall be taxable.

(3) This section shall not be construed to repeal or modify the provisions of 72-16-301(3)."

Approved May 7, 1979.

CHAPTER NO. 637

AN ACT TO PROVIDE FOR EXPANDED DAY-CARE ASSISTANCE; AND PROVIDING FOR AN APPROPRIATION OF $375,000.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Expanded day-care assistance.** (1) In addition to the payments authorized under 53-4-514 and available federal funding, the department of social and rehabilitation services shall pay to a licensed day-care facility, for each child eligible to receive public financial support, a portion of the total cost of day-care as determined under subsection (2).

(2) The level of expanded day-care assistance provided under this act shall decrease as family income increases according to the following criteria:

(a) A family whose family income is 150% of the AFDC level is eligible for 100% of day-care costs.

(b) A family whose family income is equal to or above 75% of the state's median income for families of like size is not eligible to receive expanded day-care assistance.

(c) A family whose family income is between the levels established under (a) and (b) above is eligible to receive expanded day-care assistance established on a 12-step progressive scale establishing income brackets and support levels as nearly equal as possible. This additional day-care assistance will provide for the gradual assumption of the total cost of day-care

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by the parents of eligible children based upon the 12 income brackets and support levels established.

(d) The department of social and rehabilitation services shall establish an expanded day-care assistance schedule in accordance with the procedures of the Montana Administrative Procedure Act.

Section 2. **Appropriation.** There is appropriated the sum of $375,000 for the biennium ending June 30, 1981, from the general fund to the department of social and rehabilitation services to provide expanded day-care assistance by paying day-care costs to licensed day-care facilities for each child eligible to receive public financial support at the level established in accordance with [section 1] and 53-4-514.

Section 3. **Transfer of funds.** The department of social and rehabilitation services may transfer money between programs to affect the purposes of this act.

Section 4. **Report.** The department shall report to the next Legislature on the costs and benefits of this program.

Approved May 7, 1979.

CHAPTER NO. 638

AN ACT RELATING TO THE CLASSIFICATION OF PROPERTY SUBJECT TO TAXATION; PROVIDING THAT LAND AND IMPROVEMENTS OWNED BY A NONPROFIT MONTANA CORPORATION USED FOR GOLFING PURPOSES ARE CLASS FIFTEEN PROPERTY; AMENDING SECTION 15-6-116, MCA; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-116, MCA, is amended to read:

"15-6-116. Class fifteen property — description — taxable percentage. (1) Class fifteen property includes:

(a) all golf courses, including land and improvements actually and necessarily used for that purpose, that:

(i) consist of at least 9 holes and not less than 3,000 lineal yards; and

(ii) were used as a golf course on January 1, 1979, and were owned by a nonprofit Montana corporation; and

(b) so much of the market value of any improvement on real property, a trailer affixed to land, or mobile home and appurtenant land not exceeding 5 acres as does not exceed $35,000, when such dwelling and land are owned or under contract for deed and are actually occupied for at least 10 months per year as the primary residential dwelling of:

(i) a widow or widower 62 years of age or older who qualifies under the income limitations of (iii) of this subsection;

(ii) a widow or widower of any age with dependent children who qualifies under the income limitations of (iii) of this subsection; or

(iii) a recipient or recipients of retirement or disability benefits whose total income from all sources is not more than $7,000 for a single person or $8,000 for a married couple.

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(2) (a) A person applying for classification of property under *subsection (1)(b)* must make an affidavit to the department of revenue on a form provided by the department without cost as to:

(i) his income, if applicable;

(ii) his retirement benefits, if applicable;

(iii) his marital status, if applicable;

(iv) the fact that he maintains the land and improvements as his primary residential dwellings; and

(v) such other information as is relevant to the applicant's eligibility.

(b) This application must be made before March 1 of the year after the applicant becomes eligible under this classification.

(c) For the purpose of the affidavit required for classification of property under *subsection (1)(b)*, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for the purposes of 45-7-202, relating to the criminal offense of false swearing.

(3) Class fifteen property is taxed at 6% of its market value or so much of 6% as is determined under 15-7-121, whichever is less."

Section 2. **Period of effectiveness.** The provisions of this act terminate on January 1, 1983.

Section 3. **Codification.** If HB 213 introduced in the 46th legislature is signed by the governor, then the property listed in section 1 (1)(a) of this act shall be codified as section 4(1)(e) of HB 213 and shall be subject to the tax rate imposed in subsection (2)(b).

Approved May 7, 1979.

CHAPTER NO. 639

AN ACT PROVIDING FOR SPECIAL TAX TREATMENT FOR A CAPITAL INVESTMENT IN A RECOGNIZED NONFOSSIL FORM OF ENERGY GENERATION, BY EXEMPTING A PORTION OF THE APPRAISED VALUE FROM PROPERTY TAXATION FOR 10 YEARS; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) (a) The property of the United States, the state, counties, cities, towns, school districts, irrigation districts organized under the laws of Montana and not operating for profit, municipal corporations, public libraries; buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship and for residences of the clergy, together with adjacent land reasonably

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necessary for convenient use of such buildings owned by a church; such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, hospitals, and all property, both real and personal, without limitation as to amount except that real property owned shall not exceed 640 acres, owned and held by any association or corporation organized under Title 35, chapter 20 or 21, Cemeteries, provided such cemeteries and any land claimed to be exempt are not maintained and operated for private or corporate profit; institutions of purely public charity; evidence of debt secured by mortgages of record upon real or personal property in the state of Montana; and public art galleries and public observatories not used or held for private or corporate profit are exempt from taxation, but no more land than is necessary for such purpose is exempt.

(b) As used in this subsection, the term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit, and the terms "public art galleries" and "public observatories" mean only such art galleries and observatories, whether of public or private ownership, as are open to the public without charge or fee at all reasonable hours and are used for the purpose of education only.

(2) All household goods and furniture, including clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence are exempt from taxation.

(3) A truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached is exempt from taxation.

(4) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 2. **Effective date.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1978.

Approved May 7, 1979.

CHAPTER NO. 640

AN ACT TO PROVIDE MONEY TO REMOVE THE UNFUNDED LIABILITY IN THE STATE GAME WARDENS' RETIREMENT ACCOUNT BY UTILIZING MONEY RECEIVED AS FINES FOR FISH AND GAME VIOLATIONS; AMENDING SECTIONS 19-8-504 AND 87-1-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-8-504, MCA, is amended to read:

"19-8-504. State's contribution. Each month the state treasurer shall pay to the account, out of the department of fish and game moneys,

a sum equal to 7% of the total of all members' salaries, and out of the moneys collected as fines and forfeited bonds under the provisions of 87-1-601, *all such collections until the unfunded liability in the account is solvent and a verification statement to that effect is given to the state treasurer by the board.*"

Section 2. Section 87-1-601, MCA, is amended to read:

"**87-1-601. Use of fish and game moneys.** (1) All moneys collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source shall be turned over to the state treasurer and placed by him in the earmarked revenue fund to the credit of the department. Any moneys received from federal sources shall be deposited in the federal and private revenue fund to the credit of the department.

(2) Those moneys shall be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. Those moneys shall be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game moneys in the earmarked revenue fund and federal and private revenue fund.

(4) All money collected or received from fines and forfeited bonds relating to violations of state fish and game laws under Title 87 shall be deposited by the state treasurer and credited to the department of fish and game in an earmarked revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution shall be paid to the county where the trial was held in any case where the fine is not imposed in addition to the costs of prosecution."

Approved May 7, 1979.

CHAPTER NO. 641

AN ACT TO STREAMLINE ANNEXATION BY PETITION BY ELIMINATING THE ELECTION IN CERTAIN CIRCUMSTANCES; TO EXTEND THE PROCEEDING TO ALL MUNICIPALITIES; AND AMENDING SECTION 7-2-4609, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **When annexation election not needed.** (1) The governing body of a municipality, upon receiving a written petition containing a description of territory requested to be annexed and signed by more than 50% of the resident freeholder electors of the territory to be annexed,

need not submit the question of annexation to the qualified electors as provided in 7-2-4601. The governing body may approve or disapprove the petition upon its merits. When the governing body approves the petition, it shall pass a resolution providing for the annexation.

(2) The resolution must include:

(a) a statement that a petition has been filed with the governing body containing the signatures of more than 50% of the resident freeholder electors of the territory to be annexed;

(b) a description of the boundaries of the territory to be annexed; and

(c) a statement that the boundaries of the municipality are to be extended to include the territory described in the petition for annexation.

(3) The resolution shall be incorporated in the minutes of the governing body.

(4) Upon incorporation in the minutes, the resolution must be filed and becomes effective as provided in 7-2-4607.

Section 2. Section 7-2-4609, MCA, is amended to read:

"7-2-4609. Applicability of part. (1) This part *does* not repeal parts 43 and 45 having reference to extension of the corporate limits of cities of the first, second, and third classes to include contiguous land but is intended and does provide an alternative method for the annexation of territory or territories to municipal corporations.

(2) When any proceedings for annexation of territory or territories to any municipal corporation are commenced under this part, the provisions of this part and no other shall apply to such proceedings."

Approved May 7, 1979.

CHAPTER NO. 642

AN ACT TO STREAMLINE THE VARIOUS METHODS OF ANNEXATION; ESTABLISHING THAT EACH ANNEXATION METHOD IS SEPARATE AND DISTINCT; AND AMENDING SECTION 7-2-4718, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-4718, MCA, is amended to read:

"7-2-4718. Construction. The method of annexation authorized in this part *is* independent from other methods of annexation authorized by state law."

Section 2. **Provision of services.** In all cases of annexation under current Montana law, services will be provided as specified in Title 7, chapter 2, part 47, except where mutually agreed upon by the municipality and the freeholders of the area to be annexed.

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Section 3. **Applicability of part.** When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

Section 4. **Codification.** Section 3 is intended to be codified as five separate sections, each of which is to be an integral part of parts 42, 43, 44, 45, and 46 respectively, of Title 7, chapter 2; and the provisions contained in Title 7, chapter 2, parts 42, 43, 44, 45, or 46 apply respectively to section 3 as so codified.

Approved May 7, 1979.

CHAPTER NO. 643

AN ACT TO PROVIDE FOR TRAVEL EXPENSES AND MEAL REIMBURSEMENT FOR PERSONS IN STATE SERVICE; AMENDING SECTION 2-18-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-501, MCA, is amended to read:

"2-18-501. Meals, lodging, and transportation of persons in state service. Every elected official, appointed members of boards, commissions, councils, department directors, and all other state employees shall be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) For travel within the state of Montana, the following provisions apply:

(a) The governor shall be authorized actual and necessary expenses not to exceed $40 per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding *$21* per day *except as provided in subsection (2)(c),* plus $2 for the morning meal, *$3.50* for the midday meal, and *$6.50* for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) For travel out of the state of Montana, the following provisions apply:

(a) The governor shall be authorized actual and necessary travel expenses not to exceed $70 per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding *$40* per day

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plus $3 for the morning meal, *$5* for the midday meal, and *$8.50* for the evening meal. All claims for the lodging expense reimbursement allowed under this subsection must be documented by an appropriate receipt.

(c) All elected state officials, appointed members of boards, commissioners, council, department directors, and all other state employees shall be authorized the actual cost of lodging when traveling in the normal course of their duties to certain designated areas. The department of administration shall designate those areas in the United States where the actual cost of lodging shall be reimbursed.

(3) When other than commercial, nonreceiptable lodging facilities are utilized by a state employee while conducting official state business in a travel status, the amount of $7 will be authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1)(b) or (2)(b) above. However, when overnight accommodations are provided at the expense of any government entity, no reimbursement may be claimed for lodging.

(4) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status shall be subject to reimbursement.

(5) The provisions of this section shall not be construed as affecting the validity of 5-2-301.

(6) The department of administration shall prescribe rules necessary to effectively administer this section for state government.

(7) All commercial air travel shall be by the least expensive class service available."

Approved May 7, 1979.

CHAPTER NO. 644

AN ACT TO AUTHORIZE THE BOARD OF EXAMINERS TO ISSUE $12,000,000 IN ADDITIONAL LONG-RANGE BUILDING PROGRAM BONDS; AMENDING SECTION 17-5-410, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-410, MCA, is amended to read:

"17-5-410. Authorization of bonds. The board is authorized to issue and sell long-range building program bonds in an amount not exceeding *$12,000,000*, over and above the amount of the long-range building program bonds outstanding January 1, *1979*, upon the conditions and in the manner stated in this part. The board is also authorized to issue and sell long-range building program bonds in such amount as may be required to

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provide funds for the payment or redemption of outstanding bonds as contemplated in 17-5-402 and 17-5-407. *The authority contained in this section is in addition to any other authorization to the board to issue long-range building program bonds.*"

Approved May 7, 1979.

CHAPTER NO. 645

AN ACT TO EXTEND THE ARREST POWERS OF HIGHWAY PATROLMEN TO OFFENSES OCCURRING ON HIGHWAY REST AREAS AND STATE HIGHWAY PROPERTIES ADJACENT TO THE HIGHWAY; AMENDING SECTION 44-1-1003, MCA.

Be it enacted by the Legislture of the State of Montana:

Section 1. Section 44-1-1003, MCA, is amended to read:

"**44-1-1003. Offenses on highways, rest areas, and state highway properties adjacent to the highway or involving motor vehicles.** Patrolmen are considered police officers for the purpose of making arrests for all offenses occurring on the highways, *highway rest areas, state highway properties adjacent to the highway,* or involving the use of motor vehicles or the registration thereof and for the purpose of serving warrants of arrest in connection with such violations."

Approved May 7, 1979.

CHAPTER NO. 646

AN ACT TO CONTROL THE PRODUCTION AND USE OF PRINTED MATTER OF ALL KINDS BY STATE GOVERNMENT; REQUIRING FULL DISCLOSURE OF THE COST OF PRINTING AND CIRCULATION OF THE PRINTED MATTER.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "State Printing Control Act".

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) The term "public document" includes any publication of a state agency meant for dissemination to the public, but does not include educational materials published by a unit of the university system or the superintendent of public instruction, reports of the legislative auditor, travel promotion materials, standard forms, bid specifications, opinions of the attorney general, opinions of the supreme court, session laws, the administrative rules of Montana, Montana code annotated, regular periodical

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publications sold to the general public solely through subscription and newstand sale, or a publication specifically exempted by the publishing policy committee when inclusion of that publication under [this act] is not considered in the best interests of the state.

(2) The term "agency" as used herein includes each state office, department, board, commission, council, committee, unit of the university system, or other entity or instrumentality of the executive branch, office of the legislative branch, or office of the judicial branch of state government.

(3) The term "department" as used herein means the department of administration provided for in Title 2, chapter 15, part 10.

(4) The term "committee" means the publishing policy committee created in [section 3].

Section 3. **Publishing policy committee.** (1) There is a publishing policy committee.

(2) The committee consists of the budget director, the director of administration, and a director of a state department designated by the governor.

(3) The committee shall:

(a) adopt standards for the efficient and economical publication of public documents;

(b) review proposals for publishing of all public documents prior to publication to determine:

(i) that the publication is necessary; and

(ii) that the publication meets the standards of efficient and economical publication; and

(c) prepare a report for submission to each legislature detailing the savings to state government resulting from [this act].

Section 4. **Department to prepare standards.** The department may prepare recommended standards for state printing of public documents.

Section 5. **Printed matter prohibitions.** No agency of state government may use public funds to print or cause to be printed any public document except with approval of the committee.

Section 6. **Public disclosure of costs.** All public documents caused to be printed by any agency of state government shall contain the following statement, with required information inserted, to be printed on the exterior cover of the publication: "... copies of this public document were published at an estimated cost of $... per copy, for a total cost of $..., which includes $... for printing and $... for distribution." This statement shall be printed in the same size type as the body copy of the document and shall be set in a box composed of a 1-point rule. If the committee determines that the cost of publication cannot be reasonably estimated at

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the time of publication, the publications shall contain the following statement on the exterior cover in lieu of the statement concerning estimated cost: "This document printed at state expense. Information on the cost of publication can be obtained by writing department of administration, Helena, Montana."

Section 7. **Estimation of costs.** The following factors shall be utilized in estimating cost data:

(1) printing, including all expenditures for production, whether on bid or in-house; and

(2) circulation, including all expenditures for postage and for salaries of agency or department personnel involved in distribution of the public document.

Approved May 7, 1979.

CHAPTER NO. 647

AN ACT TO INCREASE THE MAXIMUM SALARIES OF DISTRICT COURT REPORTERS; AMENDING SECTION 3-5-602, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-602, MCA, is amended to read:

"3-5-602. Salary and expenses — apportionment. (1) Each reporter is entitled to receive an annual salary of not less than $12,500 or more than *$18,000* and no other compensation except as provided in 3-5-604. The salary shall be set by the judge in the district in which the reporter works. It is payable in monthly installments out of the general funds of the counties comprising the district for which the reporter is appointed, in proportion to the number of civil and criminal actions commenced in the district court in and for each county in the preceding year. The judge of the district shall, on January 1 of each year or as soon thereafter as possible, apportion the amount of the salary to be paid by each county in his district on the basis prescribed in this subsection.

(2) In judicial districts comprising more than one county, the reporter is allowed, in addition to the salary and fees provided for in subsection (1), his actual and necessary expenses of transportation and living when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto. The expenses shall be apportioned and payable in the same way as the salary."

Approved May 7, 1979.

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CHAPTER NO. 648

AN ACT TO REVISE THE LAWS RELATING TO THE COLLECTION OF THE INDIVIDUAL INCOME TAX; ADOPTING "PURPOSELY" AND "KNOWINGLY" AS THE REQUIRED MENTAL STATE; PROVIDING FOR A PERIOD OF LIMITATION FOR PROSECUTION; AMENDING SECTIONS 15-30-101, 15-30-145, AND 15-30-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends as herein defined. "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(3) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(4) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories and possessions.

(5) "Information agents" include all individuals, corporations, associations, and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(6) "Knowingly" is as defined in 45-2-101.

(7) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(8) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(9) "Purposely" is as defined in 45-2-101.

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(10) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(11) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and has not established a residence elsewhere.

(12) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(13) "Taxable year" means the taxpayer's taxable year for federal income tax purposes.

(14) "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations."

Section 2. Section 15-30-145, MCA, is amended to read:

"15-30-145. Revision of return by department — examination of records and persons. (1) If, in the opinion of the department, any return of a taxpayer is in any essential respect incorrect, it may revise such return. If any taxpayer fails to make return as herein required, the department is authorized to make an estimate of the taxable income of such taxpayer from any information in its possession and to audit and state an account according to such return or the estimate so made by it for the taxes, penalties, and interest due the state from such taxpayer. Except in the case of *a person who, with intent to evade the tax, purposely or knowingly files a* false or fraudulent return *violating the provisions of this chapter*, the amount of tax due under any return shall be determined by the department within 5 years after the return was made and the department thereafter shall be barred from revising any such returns or recomputing the tax due thereon, and no proceeding in court for the collection of such tax shall be instituted after the expiration of said period, notwithstanding the provisions of 15-30-322. In the case of a *person who, with intent to evade the tax, purposely or knowingly files a* false or fraudulent return *violating the provisions of this chapter*, the amount of tax due may be determined at any time after the return is filed and the tax may be collected at any time after it becomes due and, where no return has been filed, the tax may be assessed at any time.

(2) The department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, may also examine or cause to have examined by any agent or representative designated by it for that purpose any books, papers, or records of memoranda bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or any officer or employee of such person or the attendance of any person having knowledge in the premises

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and may take testimony and require proof material for its information, with power to administer oaths to such person or persons."

Section 3. Section 15-30-321, MCA, is amended to read:

"15-30-321. Penalties for violation of chapter. (1) If any person, without *purposely or knowingly violating* any *requirement* imposed by this chapter, fails to file a return of income on or before its due date (determined with regard to an extension of time granted for filing the return), there shall be imposed a penalty of 5% of any balance of tax unpaid with respect to such return as of its due date, but in no event shall the penalty for failure to file a return by its due date be less than $5. The department may abate the penalty if the taxpayer establishes that the failure to file on time was due to reasonable cause and was not due to neglect on his part. If any person, without *purposely or knowingly violating* any *requirement* imposed by this chapter, fails to pay any tax on or before its due date (determined with regard to an extension of time granted for the filing of a return), there shall be added to the tax a penalty of 10% of said tax, but not less than $5, and interest shall accrue on the tax at the rate of 9% per annum for the entire period it remains unpaid. The department may abate the penalty if the taxpayer establishes that the failure to pay on time was due to reasonable cause and was not due to neglect on his part.

(2) If any person fails, *purposely or knowingly violating* any *requirement* imposed by this chapter, to make a return of income or to pay a tax if one is due at the time required by or under the provisions of this chapter, there shall be added to the tax an additional amount equal to 25% thereof, but such additional amount shall in no case be less than $25, and interest at 1% for each month or fraction of a month during which the tax remains unpaid.

(3) Any individual, corporation, or partnership or any officer or employee of any corporation or member or employee of any partnership who, with intent to evade any tax or any requirement of this chapter or any lawful requirement of the department thereunder, *purposely or knowingly,* fails to pay the tax or to make, render, *or* sign any return or to supply any information within the time required by or under the provisions of this chapter or who, with like intent, *purposely or knowingly* makes, renders, *or* signs any false or fraudulent return or statement or supplies any false or fraudulent information shall be liable to a penalty of not more than $1,000, to be recovered by the attorney general in the name of the state by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall upon conviction be fined not to exceed $1,000 or be imprisoned not to exceed 1 year, or both, at the discretion of the court.

(4) *With respect to the imposition of a civil penalty, evidence produced by the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied as required under the provisions of this chapter is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied."*

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Section 4. **Time limitations for prosecution.** A prosecution for an offense under 15-30-321 must be commenced within 5 years after the offense is committed.

Section 5. **Effective date — applicability.** This act is effective on passage and approval but has no effect on prosecutions commenced prior to the effective date of this act.

Approved May 7, 1979.

CHAPTER NO. 649

AN ACT TO AMEND SECTION 31-1-110, MCA, TO CHANGE THE INTEREST RATE ON JUDGMENTS FROM 6% PER ANNUM TO 10% PER ANNUM.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-110, MCA, is amended to read:

"31-1-110. Interest — judgment. Interest is payable on judgments recovered in the courts of this state at the rate of *10%* per annum and no greater rate. Such interest must not be compounded in any manner or form."

Section 2. **Application.** This act applies to all judgments entered before and remaining unsatisfied on July 1, 1979, except that the 10% interest rate becomes effective on July 1, 1979.

Approved May 7, 1979.

CHAPTER NO. 650

AN ACT TO INCREASE THE SALARY FOR MONTANA'S ELECTED OFFICIALS FOR THE FISCAL YEAR 1980 AND FOLLOWING YEARS; AMENDING SECTIONS 5-2-301 AND 2-16-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-16-405, MCA, is amended to read:

"2-16-405. Salaries of certain elected state officials. The salaries paid to certain elected officials of the state of Montana *for fiscal year 1980 and following years* are:

	Fiscal Year 1980	*Following June 30, 1980*
Governor	*$37,500*	*$40,000*
Lieutenant governor	*$26,800*	*$28,700*
Chief justice of the		

supreme court	*$39,000*	*$41,000*
Justices of the supreme court, each	*$38,000*	*$40,000*
Attorney general	*$34,500*	*$36,500*
State auditor	*$24,500*	*$26,500*
Superintendent of public instruction	*$29,400*	*$31,500*
Public service commissioners	*$26,800*	*$28,700*
Secretary of state	*$24,500*	*$26,500*
Clerk of the supreme court	*$23,875*	*$25,750*"

Section 2. Section 5-2-301, MCA, is amended to read:

"**5-2-301. Compensation and expenses for members while in session.** (1) Legislators are entitled to a salary commensurate to that of the daily rate of a grade 8, step 2 classified state employee, for those days during which the legislature is in session. The president of the senate and the speaker of the house shall receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators are entitled to $40 a day, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments shall stop when the legislature recesses for more than 3 days and shall resume when the legislature reconvenes.

(3) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel:

(a) to the place of the holding of the session and to return to their place of residence at the conclusion of the session; and

(b) for one additional round trip to their place of residence during each session.

(4) Legislators are not entitled to any additional mileage allowance under subsection (3)(a) or (3)(b) for a special session if it is convened within 7 days of a regular session."

Approved May 7, 1979.

CHAPTER NO. 651

AN ACT TO INCREASE THE SALARY FOR DISTRICT JUDGES; AMENDING SECTION 3-5-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-211, MCA, is amended to read:

"**3-5-211. Salaries of district judges.** The annual salary of each district judge is *as follows:*

(1) For the fiscal year beginning July 1, 1979, and ending June 30, 1980, $37,000.

(2) After June 30, 1980, $39,000."

Approved May 7, 1979.

CHAPTER NO. 652

AN ACT TO FURTHER DEFINE "RECOGNIZED NONFOSSIL FORMS OF ENERGY GENERATION" TO INCLUDE PASSIVE SOLAR ENERGY; AMENDING SECTION 15-32-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-102, MCA, is amended to read:

"15-32-102. Definitions. As used in this part the following definitions apply:

(1) "Building" means a single or multiple dwelling, including a mobile home, or a building used for commercial, industrial, or agricultural purposes, which is enclosed with walls and a roof.

(2) "Capital investment" means any material or equipment purchased and installed in a building or land with or without improvements.

(3) "Energy conservation purpose" means one or more of the following results of an investment: reducing the waste or dissipation of energy or reducing the amount of energy required to accomplish a given quantity of work.

(4) "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building. The department may adopt rules to define standard components of conventional buildings and to establish other necessary elements of this definition consistent with the intent of this section.

(5) "Recognized nonfossil forms of energy generation" means a system for the utilization of solar *energy including passive solar systems*, wind, solid wastes, or the decomposition of organic wastes for capturing energy or converting energy sources into usable sources, for the production of electric power from solid wood wastes, and also means a small system for the utilization of water power by means of an impoundment not over 20 acres in surface area."

Approved May 7, 1979.

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CHAPTER NO. 653

AN ACT TO CLARIFY AND REVISE THE COAL SEVERANCE TAX ALLOCATIONS FOR ACQUISITION OF STATE PARKS, RECREATION AREAS, MONUMENTS, AND HISTORICAL SITES AND FOR GRANTS FOR CULTURAL AND AESTHETIC PROJECTS; REQUIRING THAT THE LEGISLATURE MUST APPROVE EACH PURCHASE OR GRANT; AMENDING SECTION 15-35-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"15-35-108. Disposal of severance taxes. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 25% of total collections a year. After December 31, 1979, 50% of coal severance tax collections are allocated to this trust fund. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) to the county in which coal is mined, 2% of the severance tax paid on the coal mined in that county until January 1, 1980, for such purposes as the governing body of the county may determine;

(b) 2 ½% until December 31, 1979, and thereafter 5% to the earmarked revenue fund to the credit of the alternative energy research development and demonstration account;

(c) 26 ½% until July 1, 1979, and thereafter 37 ½% to the earmarked revenue fund to the credit of the local impact and education trust fund account;

(d) for each of the 2 fiscal years following June 30, 1977, 13% to the earmarked revenue fund to the credit of the coal area highway improvement account;

(e) 10% to the earmarked revenue fund for state equalization aid to public schools of the state;

(f) 1% to the earmarked revenue fund to the credit of the county land planning account;

(g) 2 ½% to the sinking fund to the credit of the renewable resource development bond account;

(h) 5% to the earmarked revenue fund to the credit of a trust fund for the purpose of parks acquisition or management, protection of works

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of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) ⅓ for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) ⅔ for the acquisition of sites and areas described in 23-1-102 and the operation and maintenance of sites so acquired;

(i) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 2. **Cultural and aesthetic projects grants.** (1) Any person, association, or representative of a governing unit seeking a grant for a cultural or aesthetic project from the income of the trust fund created in 15-35-108 must submit a grant proposal to the board of trustees of the Montana historical society by December 1 of the year preceding the convening of a legislative session.

(2) The board of trustees of the Montana historical society shall present to the legislature by the 15th day of any legislative session a list of grant proposals to be made from the cultural and aesthetic projects account to any department, agency, board, commission, or other division of the state government or to any local government unit. These grant proposals shall be for the purpose of protecting works of art in the state capitol or other cultural and aesthetic projects.

(3) The legislature must appropriate funds from this account before any grant is awarded.

(4) The grant proposals approved by the legislature shall be administered by the Montana historical society.

Section 3. **Acquisition of certain state parks, monuments, or historical sites.** (1) Any person, association, or representative of a governing unit may submit a proposal for the acquisition of a site or area described in 23-1-102 from the income of the trust fund created in 15-35-108 to the department of fish and game by December 1 of the year preceding the convening of a legislative session.

(2) The fish and game commission shall present to the legislature by the 15th day of any legislative session a list of areas, sites, or objects that were proposed for purchase for use as state parks, state recreational areas, state monuments, or state historical sites with the money contained in the parks account.

(3) The legislature must appropriate funds from this account before any park, area, monument, or site may be purchased.

Approved May 7, 1979.

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CHAPTER NO. 654

AN ACT TO REVISE THE FEE SCHEDULE FOR TRANSACTIONS RELATING TO THE REGISTRATION OF MOTOR VEHICLES BY INCREASING THE FEES FOR REGISTRATION AND CLARIFYING THE METHOD OF DISPOSITION OF THE FEES; AND PROVIDING FOR FUNDING OF THE LAW ENFORCEMENT ACADEMY BUREAU, THE LAW ENFORCEMENT TELETYPE SYSTEM BUREAU, AND THE DIVISION OF FORENSIC SCIENCE AND THE MONTANA CRIMINAL LAW INFORMATION CENTER; PROVIDING THAT THE FEE INCREASES AND THE FUNDING OF THE VARIOUS PROGRAMS FROM THE FEE INCREASES TERMINATES ON JUNE 30, 1981; AMENDING SECTIONS 61-3-204 AND 61-3-321, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-204, MCA, is amended to read:

"61-3-204. Lost certificates. In the event any certificate of ownership *is* lost, mutilated, or *becomes* illegible, *the owner* shall immediately make application for and obtain a duplicate thereof, upon furnishing satisfactory *evidence* of such facts and upon payment of a fee of $2. *Revenue from this fee shall be deposited in the motor vehicle recording account of the earmarked revenue fund.*"

Section 2. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles — public owned vehicles exempt from license or registration fees — disposition of fees. (1) Registration or license fees shall be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under, other than motortrucks, $5;

(b) motor vehicles weighing over 2,850 pounds, other than motortrucks, $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles, $2;

(e) tractors and/or trucks, $10;

(f) buses shall be classed as motortrucks and licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds maximum gross loaded weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds maximum gross loaded weight, except housetrailers, $5;

(i) trailers and semitrailers over 6,000 pounds maximum gross loaded weight, $10;

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(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, and bridge material exclusively, new and secondhand, and trailers used exclusively for the transportation of road machinery and bridge materials, shall pay a fee of $15 annually, regardless of size or capacity;

(k) bicycles with motor attachment, $1.

(2) All rates shall be 25% higher for motor vehicles, trailers, and semitrailers when not equipped with pneumatic tires.

(3) Tractors, as specified in this section, shall mean any motor vehicle except passenger cars used for towing a trailer or semitrailer.

(4) If any motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half of the regular fee above given.

(5) *An* additional fee of *$2* per year for each registration of a vehicle shall be *collected as a* registration fee. Revenue from this fee shall be forwarded by the respective county treasurers to the state treasurer for deposit in the motor vehicle recording account of the earmarked revenue fund.

(6) The provisions of this part with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers, or tractors owned or controlled by the United States of America or any state, county, or city.

(7) The provisions of this section relating to the payment of registration fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317(1), 61-3-332(7), and 61-3-335."

Section 3. **Disposition of fees — use.** (1) All fees payable to the division shall be deposited in a motor vehicle recording account of the earmarked revenue fund.

(2) Funds deposited in the motor vehicle recording account of the earmarked revenue fund may be expended for the following purposes:

(a) to pay the salaries and operating expenses of the division, including the manufacture and delivery of license plates;

(b) to fund the forensic science division of the department of justice;

(c) to fund the Montana law enforcement academy bureau;

(d) to fund the law enforcement teletype system bureau of the department of justice;

(e) to fund the Montana criminal law information center to the extent that all of the above programs have been previously funded and funds remain available.

(3) Any fund balance remaining in the motor vehicle recording account at the end of a biennium that has not been appropriated for that biennium must be transferred to the general fund.

Approved May 7, 1979.

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CHAPTER NO. 655

AN ACT TO REESTABLISH THE OFFICE OF THE COMMISSIONER OF INSURANCE AND THE INSURANCE DEPARTMENT IN THE STATE AUDITOR'S OFFICE UNDER EXISTING STATUTORY AUTHORITY AND RULES; AMENDING SECTION 2-8-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, will terminate the office of the insurance commissioner in the state auditor's office and require a performance evaluation of the office of the insurance commissioner by the legislative audit committee; and

WHEREAS, as a result of the performance evaluation, the legislative audit committee recommends that the office of the insurance commissioner be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The office of the commissioner of insurance and the insurance department in the state auditor's office is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of public accountants, department of professional and occupational licensing, created by 2-15-1641;

(c) board of architects, department of professional and occupational licensing, created by 2-15-1651;

(d) state banking board, department of business regulation, created by 2-15-1803;

(e) state electrical board, department of professional and occupational licensing, created by 2-15-1654;

(f) board of professional engineers and land surveyors, department of professional and occupational licensing, created by 2-15-1653;

(g) office of the investment commissioner, state auditor's office, created by 2-15-1901;

(h) board of landscape architects, department of professional and occupational licensing, created by 2-15-1652;

(i) board of county printing, department of community affairs, created by 2-15-1102;

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(j) board of plumbers, department of professional and occupational licensing, created by 2-15-1655;

(k) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(l) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(m) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(n) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

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(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(t) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(u) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horse racing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish and game, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631;

(j) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(k) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agency shall terminate on July 1, 1985: office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved May 7, 1979.

CHAPTER NO. 656

AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS RELATING TO INDUSTRIAL REVENUE PROJECTS AND FINANCING; AUTHORIZING ADDITIONAL TYPES OF PROJECTS; ALLOWING LOCAL GOVERNMENTS TO LOAN THE PROCEEDS OF BOND SALES; AMENDING SECTIONS 90-5-101 THROUGH 90-5-106 AND 90-5-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-5-101, MCA, is amended to read:

"90-5-101. Definition of terms. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Agricultural enterprises" *include* but *are* not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested.

(3) "Mortgage" means a mortgage or deed of trust or other security device.

(4) "Municipality" means any incorporated city or town in the state.

(5) "Project" means any land; any building or other improvement; and *any other* real *or* personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; *local,* state, and federal governmental facilities; *multifamily* housing, hospitals, long-term care facilities, or medical facilities; *and any combination of these projects.*"

Section 2. Section 90-5-102, MCA, is amended to read:

"90-5-102. General municipal and county powers. (1) In addition to any other powers which it may now have, each municipality and each county shall have without any other authority the following powers:

(a) to acquire, whether by construction, purchase, devise, gift, or lease or any one or more of such methods, one or more projects which shall be located within this state and may be located within, without, partially within, or partially without the municipality or county;

(b) to lease to others any or all of its projects for such rentals and upon such terms and conditions as the governing body may deem advisable and as shall not conflict with the provisions of this part;

(c) to enter into agreements, upon terms the governing body considers advisable and not in conflict with the provisions of this part, to loan the proceeds of its revenue bonds to others for the purpose of defraying the cost of acquiring or improving any project;

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(d) to issue revenue bonds for the purpose of defraying the cost of acquiring or improving any project or projects and to secure the payment of such bonds as provided in this part, which revenue bonds may be issued in two or more series or issues where deemed advisable, and each such series or issue may contain different maturity dates, interest rates, priorities on revenues available for payment of such bonds and priorities on securities available for guaranteeing payment thereof, and such other differing terms and conditions as are deemed necessary and are not in conflict with the provisions of this part; and

(e) to sell and convey any real or personal property acquired as provided by subsection (1)(a) of this section and make such order respecting the same as may be deemed conducive to the best interest of the municipality or county; provided, that such sale or conveyance shall be subject to the terms of any lease but shall be free and clear of any other encumbrance.

(2) No municipality or county *may* operate *any project financed by the sale of revenue bonds* as a business or in any manner except as the lessor thereof, nor shall they have any power to acquire any such project or any part thereof by condemnation."

Section 3. Section 90-5-103, MCA, is amended to read:

"90-5-103. Limited obligation bonds — form and contents — sale — negotiability. (1) All bonds issued by a municipality or county under the authority of this part shall be limited obligations of the municipality or county. Bonds and interest coupons issued under the authority of this part shall not constitute or give rise to a pecuniary liability of the municipality or county or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds.

(2) The bonds referred to in subsection (1) of this section may be executed and delivered at any time and from time to time, be in such form and denominations, be of such tenor, be in registered or bearer form either as to principal or interest or both, be payable in such installments and at such time or times not exceeding 30 years from their date, be payable at such place or places, bear interest at such rate or rates, payable at such place or places, and evidenced in such manner, be redeemable prior to maturity, with or without premium, and contain such provisions not inconsistent herewith as shall be deemed for the best interest of the municipality or county and provided for in the proceedings of the governing body whereunder the bonds shall be authorized to be issued.

(3) Any bonds issued under the authority of this part may be sold at public or private sale in such manner, at such time or times, *and at such price above or below par* as may be *agreed upon by the lessee of the project or the borrower of the funds.* The municipality or county may pay all expenses, premiums, and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale, and issuance thereof from the proceeds of the sale of said bonds or from the revenues of the projects.

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(4) All bonds issued under the authority of this part and all interest coupons applicable thereto shall be construed to be negotiable instruments despite the fact that they are payable solely from a specified source."

Section 4. Section 90-5-104, MCA, is amended to read:

"**90-5-104. Hearing.** Prior to the issuance of any bonds under the authority of this part by any municipality or county, the governing body shall give notice and hold a public hearing on the proposed project. At least once a week for 3 consecutive weeks prior to the date set for the hearing, the governing body shall publish in a newspaper of general circulation in the municipality or county a notice of the time and place of the hearing, *the general nature of the project, the name of the lessee or borrower, and the estimated cost of the project.* The governing body *may* not *issue* the bonds unless it appears after the public hearing that *the acquisition or improvement of the project* is in the public interest of the municipality or county."

Section 5. Section 90-5-105, MCA, is amended to read:

"**90-5-105. Provisions for security of bondholders.** (1) The *payment of the* principal of and interest on any bonds issued under the authority of this part shall be secured by a pledge of the revenues out of which such bonds shall be made payable.

(2) The principal of and interest on any bonds issued under the authority of this part may be secured by:

(a) a mortgage covering all or any part of the project;

(b) a pledge of the lease *or loan agreement relating to* such project; or

(c) such other security device as may be deemed most advantageous by the issuing authority.

(3) (a) The proceedings under which the bonds are authorized to be issued under the provisions of this part and any mortgage given to secure the same, *including a mortgage given by the borrower or lessee,* may contain any agreements and provisions customarily contained in instruments securing bonds, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this part, including, without limiting the generality of the foregoing, provisions respecting the:

(i) fixing and collection of rents *or payments under any lease or loan agreement concerning the* project covered by such proceedings or mortgage;

(ii) terms to be incorporated in the lease *or loan agreement*;

(iii) maintenance and insurance of such project;

(iv) creation and maintenance of special funds from the revenues of such project; and

(v) rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage.

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(b) In making any such agreements or provisions, a municipality or county shall not have the power to obligate itself except with respect to the project and the application of the revenues therefrom and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(4) The proceedings authorizing any bonds under the provisions of this part and any mortgage, *including a mortgage given by the lessee or borrower,* securing such bonds may provide that in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with such proceedings or the provisions of such mortgage.

(5) Any mortgage made *by the municipality or county or by the lessee or borrower* to secure *these* bonds may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and *the project* sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a municipality or county or any charge upon their general credit or against their taxing powers."

Section 6. Section 90-5-106, MCA, is amended to read:

"90-5-106. Determination of costs — terms of lease. (1) Prior to the leasing of any project *or entering into a loan agreement concerning a project*, the governing body must determine and find the following:

(a) the amount necessary to pay the principal of and the interest on the bonds proposed to be issued to finance such project;

(b) the amount necessary to be paid into any reserve funds which the governing body may deem it advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project including taxes; and

(c) the estimated cost of maintaining the project in good repair and keeping it properly insured, unless the terms *of the lease or loan agreement* provide that the lessee *or borrower* shall maintain the project and carry all proper insurance with respect thereto.

(2) The determinations and findings of the governing body required to be made by subsection (1) shall be set forth in the proceedings under which the proposed bonds are to be issued. Prior to the issuance of *any* bonds authorized by this part, the municipality or county shall lease the project to a lessee or lessees *or enter into a loan agreement with a borrower* under *a lease or loan* agreement conditioned upon completion of the project *by the lessees or borrowers* and providing for payment to the

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municipality or county of such rentals *or payments* as, upon the basis of such determinations and findings, will be sufficient to:

(a) pay the principal of and interest on the bonds issued to finance the project;

(b) pay the taxes on the project;

(c) build up and maintain any reserves deemed by the governing body to be advisable in connection therewith; and

(d) pay the costs of maintaining the project in good repair and keeping it properly insured, unless the *lease or loan* agreement obligates the lessees *or borrowers* to pay for the maintenance and insurance of the project.

(3) Subject to the limitations of this part, the lease, *loan agreement,* or extensions or modifications thereof may contain such other terms and conditions as may be mutually acceptable to the parties and, notwithstanding any other provisions of law relating to the sale of property owned by municipalities and counties, an option *may be granted to a lessee* to purchase the project on such terms and conditions as may be mutually acceptable to the parties."

Section 7. Section 90-5-108, MCA, is amended to read:

"90-5-108. Use of proceeds of bond sales. *(1)* The proceeds from the sale of any bonds issued under authority of this part shall be applied only for the purpose for which the bonds were issued *or to discharge any existing indebtedness secured by a lien against a hospital or long-term care facility leased or owned by a nonprofit corporation. However, if the project is not a hospital or long-term care facility leased or owned by a nonprofit corporation, the proceeds from the sale of bonds may not be used to discharge indebtedness without an improvement to the project.*

(2) Any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold. If for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds."

Section 8. **Board of aeronautics.** The board of aeronautics may exercise the power and authority of a municipality under Title 90, chapter 5, part 1, MCA, with respect to projects suitable for use by commercial enterprises providing scheduled air transportation services primarily within the state if such projects are located within or based and used primarily within the state. For purposes of this section, the board of aeronautics shall be considered a municipality and a governing body thereof under Title 90, chapter 5, part 1, MCA, and shall give notice of the public hearing required by 90-5-104 in three newspapers published and circulating generally in the state and shall not issue any bonds unless it appears, after the public hearing, that the acquisition or improvements of the project is in the public interest of the state. For purposes of this section, projects suitable for commercial enterprises providing scheduled air transportation

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services shall include but are not limited to aircraft parts, aircraft, hangars, storage and aircraft maintenance facilities, fuel facilities, and other personal or real property suitable for use by a scheduled air transportation enterprise.

Approved May 7, 1979.

CHAPTER NO. 657

AN ACT TO REQUIRE HEALTH SERVICE CORPORATIONS TO FILE ANNUAL STATEMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Annual statement.** Every health service corporation shall file an annual statement on a form containing substantially the same information as that contained in form No. 13 N.A.I.C. with the commissioner of insurance.

Section 2. **Codification.** Section 1 is intended to be codified as an integral part of Title 39, chapter 71.

Approved May 7, 1979.

CHAPTER NO. 658

AN ACT AUTHORIZING THE STATE BOARD OF EXAMINERS, UPON RECOMMENDATION OF THE DEPARTMENT OF ADMINISTRATION, TO ISSUE AND SELL NOTES IN ANTICIPATION OF TAXES AND REVENUES APPROPRIATED FOR EXPENDITURE DURING A FISCAL YEAR; PROVIDING A LIMITATION ON THE AMOUNT OF NOTES THAT MAY BE ISSUED AND PRESCRIBING A METHOD FOR ISSUANCE AND PAYMENT OF THE NOTES; PROVIDING THAT THE ACT IS EFFECTIVE ON PASSAGE BY A TWO-THIRDS VOTE OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE AND APPROVAL BY THE GOVERNOR.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Issuance of notes in anticipation of revenue.** (1) The board of examiners, upon recommendation of the department of administration, may issue notes in anticipation of the receipt of taxes or revenues, direct or indirect, as the legal demands on the treasury during any fiscal year render it necessary.

(2) The notes issued in any fiscal year shall be for the purposes and within the amounts of appropriations made for the fiscal year and must be designated tax or revenue anticipation notes. Appropriations during any biennium are limited to projected revenue, exclusive of notes issued in anticipation of revenue.

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Section 2. **Limitation on amount of notes.** (1) The total amount of notes issued under [Section 1] may not exceed an aggregate of $100 million and no more than $50 million of such notes may be outstanding at any time.

(2) No notes may be issued after June 30, 1981.

Section 3. **Interest rate.** The notes shall bear interest at such rate as, in the judgment of the board of examiners, may be sufficient or necessary to effect the issuance and sale of the notes in the manner determined by the board of examiners upon recommendation of the department of administration.

Section 4. **Payment of notes — pledge of taxes and revenue.** (1) The notes and interest on the notes must be paid from taxes and revenues not later than the end of the fiscal year in which issued.

(2) An amount of taxes and revenues as will be sufficient to pay the amount borrowed, with interest, is pledged to the payment of the notes.

Section 5. **Effective date.** This act is effective on passage by a two-thirds vote of the members of each house of the legislature and approval by the governor.

Approved May 7, 1979.

CHAPTER NO. 659

AN ACT TO ESTABLISH AN APPEAL PROCEDURE FOR CLASSIFICATION OF PROPERTY AS AIR POLLUTION CONTROL EQUIPMENT FOR PROPERTY TAX PURPOSES; AMENDING SECTION 15-6-119, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-119, MCA, is amended to read:

"15-6-119. Class eighteen property — description — taxable percentage. (1) Class eighteen property includes:

(a) a dwelling house and the lot on which it is erected, owned and occupied by a resident of the state who:

(i) has been honorably discharged from active service in any branch of the armed services; and

(ii) is rated 100% disabled due to a service-connected disability by the United States veterans' administration or its successor. In the event of the veteran's death, the dwelling house and the lot on which it is erected shall remain in this class as long as the surviving spouse remains unmarried and the owner and occupant of the property.

(b) all property used and owned by cooperative rural electrical and cooperative rural telephone associations as provided in (2)(a) of this section;

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(c) air pollution control equipment as defined in this section; and

(d) new industrial property as defined in this section.

(2) (a) The property of all cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana is included in this class, except that when less than 95% of the electricity consumers or telephone users within the incorporated limits of a city or town are served by the cooperative organization, the property is included in class eighteen.

(b) "Air pollution control equipment" means facilities, machinery, or equipment, attached or unattached to real property, utilized to reduce, eliminate, control, or prevent air pollution. The department of health and environmental sciences determines if such utilization is being made. *The department's determination may be appealed to the board of health and environmental sciences and may not be appealed to either a county tax appeal board or the state tax appeal board. However, the appraised value of the equipment as determined by the department of revenue may be appealed to the county tax appeal board and the state tax appeal board.*

(c) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, except mobile machinery, which is used by a new industry during the first 3 years of its operation. The property may not have been assessed prior to July 1, 1961, within the state of Montana.

(i) New industrial property is limited to industries that:

(A) manufacture, mill, mine, produce, process, or fabricate materials;

(B) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials; or

(C) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget.

(ii) New industrial property does not include:

(A) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions;

(B) a plant that will create adverse impact on existing state, county, or municipal services; or

(C) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

(d) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant or plants in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries.

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(3) The department of revenue shall promulgate rules for the determination of what constitutes an adverse impact, taking into consideration the number of people to be employed and the size of the community in which the location is contemplated. Any person, firm, or other group seeking to qualify its property for inclusion in this class shall make application to the department in such a manner and form as the department requires. Once the department has made an initial determination that the industrial facility qualifies as new industrial property, the department shall then, upon proper notice, hold a hearing to determine if the new industrial classification should be retained by the property. The local taxing authority may appear at the hearing and may waive its objection to retention of this classification if the industry agrees to the prepayment of taxes sufficient to satisfy tax requirements created by the location and construction of the facility during the construction period. When a prepayment of taxes is required, the maximum amount of prepayment shall be the amount of tax the industry would have paid without the application of the class seven percentage to such property.

(4) If a major new industrial facility qualifies under class eighteen, the reduction of its yearly payment of property taxes for reimbursement of its prepaid taxes as provided for in 15-16-201 does not begin until the class eighteen qualification expires.

(5) Class eighteen property shall be taxed at 2.8% of its market value or, in the case of property classified under (1)(a) of this section, so much of 2.8% as is determined under 15-7-121, whichever is less."

Approved May 8, 1979.

CHAPTER NO. 660

AN ACT TO ESTABLISH A SPECIAL PROPERTY TAX CLASSIFICATION FOR PROPERTY USED IN THE PRODUCTION OF GASOHOL; AMENDING SECTION 15-8-111, MCA; PROVIDING A DATE OF APPLICABILITY; AND PROVIDING FOR COORDINATION WITH HOUSE BILL 213.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Class twenty-one property — description — taxable percentage.** (1) Class twenty-one property includes any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation.

(2) Class twenty-one property is taxed at 3% of its market value.

Section 2. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as provided in subsection (5) of this section and in 15-7-111 through 15-7-114.

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(2) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in class one, classes seven through eighteen, *class twenty, and class twenty-one.* For purposes of taxation, assessed value is the same as appraised value.

(4) The taxable value for all property in class one and classes seven through eighteen is the percentage of market value established for each class of property in 15-6-102 and 15-6-108 through 15-6-119.

(5) The assessed value of properties in 15-6-103 through 15-6-107 and 15-6-120 is as follows:

(a) Property in 15-6-106, under class five, is assessed at 100% of book value by the method established in 15-6-106 and the sections cited therein.

(b) Properties in 15-6-103, under class two, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(c) Properties in 15-6-104, 15-6-105, and 15-6-120, under classes three, four, and nineteen are assessed at 100% of the annual gross proceeds.

(d) Properties in 15-6-107, under class six, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(6) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(7) The taxable value of all property in classes two through six is the percentage of assessed value established in 15-6-103 through 15-6-107 for each class of property."

Section 3. **Applicability date.** This act applies to taxable years beginning after December 31, 1979.

Section 4. **Coordination with House Bill 213.** If House Bill 213, introduced in the 46th Legislature, is passed and signed by the governor:

(a) section 1 of this act is replaced with the following section (section 5 of House Bill 213 with the indicated change):

Section 1. **Class five property — description — taxable percentage.** (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in subsection (1)(c) of [section 7 of House Bill 213];

(b) air and water pollution control equipment as defined in this section;

(c) truck campers, motor homes, and camping and travel trailers, including fifth-wheel trailers, owned by and actually used primarily by a person 60 years of age or older who:

(i) is retired from full employment; and

(ii) whose total income from all sources is not more than $7,000 for a single person or $8,000 for a married couple;

(d) new industrial property as defined in this section;

(e) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation.

(2) "Air and water pollution equipment" means facilities, machinery, or equipment used to reduce or control water or atmospheric pollution or contamination by removing, reducing, altering, disposing, or storing pollutants, contaminants, wastes, or heat. The department of health and environmental sciences shall determine if such utilization is being made.

(3) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials; or

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget.

(5) New industrial property does not include:

(a) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions;

(b) a plant that will create adverse impact on existing state, county, or municipal services; or

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(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

(6) Class five property is taxed at 3% of its market value.

(b) section 2 of this act is stricken.

Approved May 8, 1979.

CHAPTER NO. 661

AN ACT TO REVISE THE ALLOWABLE COST SCHEDULE FOR SPECIAL EDUCATION PROGRAMS; ELIMINATING CERTAIN ALLOWABLE COSTS; PROVIDING FOR SPECIAL EDUCATION TUITION; ESTABLISHING PROCEDURES IF APPROVED BUDGETS EXCEED APPROPRIATIONS; AMENDING SECTIONS 20-7-421, 20-7-422, 20-7-423, AND 20-7-431, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-431, MCA, is amended to read:

"20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting. (1) For the purpose of determining the maximum-budget-without-a-vote for special education as defined in 20-9-321, the following schedule of allowable costs shall be followed by the school district in preparation of its special education budget for state aid request purposes and by the superintendent of public instruction in his review and approval of the budget (for the purposes of determining the amount of the maximum-budget-without-a-vote for special education for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with 20-9-311 and 20-9-313):

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses including:

(i) salaries and benefits of special program teachers, regular program teachers, teacher aides, special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(ii) teaching supplies and textbooks if used exclusively for special programs—the actual total cost;

(iii) other expenses:

(A) contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies—the actual total cost;

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(B) transportation costs for special education personnel who must travel on an itinerant basis from school to school or district to district—the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes;

(b) supportive services, *including*:

(i) salaries and benefits of professional supportive personnel—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program. Professional supportive personnel may include counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) salaries and benefits of clerical personnel for professional personnel in supportive services—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(c) equipment:

(i) equipment—the actual total cost;

(ii) special equipment for district-owned school buses necessary to accommodate special students—the actual total cost;

(iii) special equipment for school buses contracted to transport special students—that portion of the contract price attributable to the cost of special equipment or personnel required to accommodate special students—the actual special cost;

(d) room and board costs when the special pupil has to attend a program at such a distance from his home that commuting is undesirable as determined by the superintendent of public instruction.

(2) The superintendent of public instruction shall, prior to September 1, 1977, revise the rules in accordance with the policies of the board of public education for:

(a) keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs;

(b) defining the total special program caseload that shall be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)*(c)* of this section; *and*

(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)*(d)(i)* of this section.

(3) An annual accounting of all expenditures of school district general fund moneys for special education shall be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for such accounting.

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(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the maximum-budget-without-a-vote for special education.

(5) If special education budgets approved by the superintendent of public instruction exceed legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations based upon its budget as a percent of all approved special education budgets. The amount of the approved budgets in excess of the available appropriations may not be reimbursed under the maximum-budget-without-a-vote for special education and is the responsibility of the school district."

Section 2. Section 20-7-421, MCA, is amended to read:

"**20-7-421. Arranging attendance in another district in lieu of a special education program — tuition.** *(1)* With the approval of the superintendent of public instruction, the trustees may arrange for the attendance of a child in need of special education in a special education program in another district within the state of Montana. Arrangements for the attendance of a child in need of special education are not subject to the laws governing the attendance of pupils in schools outside the district, *except as provided in subsection (2).*

(2) The resident district of pupils attending a special education program in another district is responsible for payment of tuition as established in 20-5-305 and 20-5-312."

Section 3. Section 20-7-422, MCA, is amended to read:

"**20-7-422. Out-of-state tuition for special education children.** (1) If the trustees of any district recommend to the superintendent of public instruction the attendance of a child in need of special education in a special education program offered outside of the state of Montana, such arrangements shall not be subject to the out-of-state attendance provisions of the laws governing the attendance of pupils in schools outside the state of Montana.

(2) Whenever the attendance of a child at an out-of-state special education program is approved by the superintendent of public instruction, it shall be the responsibility of the superintendent of public instruction, in cooperation with the department of social and rehabilitation services and the department of institutions, to negotiate the program for the child and the amount and manner of payment of tuition. The amount of tuition shall be included as a contracted service in 20-7-431(1)(b)*(iii)*(A) in the maximum-budget-without-a-vote for special education."

Section 4. Section 20-7-423, MCA, is amended to read:

"**20-7-423. Arranging attendance in a private institution.** Whenever the trustees determine that a handicapped child is in need of

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services that can only be provided by a private institution and the superintendent of public instruction so approves, the board of trustees may negotiate the amount and manner of payment of tuition and it shall be included as a contracted service as allowed in 20-7-431(1)(b)*(iii)*(A)."

Section 5. **Effective date.** This act is effective July 1, 1980.

Approved May 8, 1979.

CHAPTER NO. 662

AN ACT TO INCREASE PAYMENT TO DAY-CARE FACILITIES; AMENDING SECTION 53-4-514, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-4-514, MCA, is amended to read:

"53-4-514. Payments for eligible children. The department shall pay to a licensed day-care facility for each child eligible to receive public financial support not less than *$4.50 until December 31, 1980, and $5 thereafter* for each day the child attends the facility. For those day-care facilities which meet federal requirements, the department shall pay an additional $1 per day for each eligible child."

Approved May 8, 1979.

CHAPTER NO. 663

AN ACT TO REVISE THE CURRENT METHOD OF ASSESSING LIVESTOCK; REQUIRING THAT ALL LIVESTOCK BE ASSESSED AND TAXED IN THEIR HOME COUNTY; PROVIDING FOR PRORATION OF PROPERTY TAX ON MIGRATORY CATTLE AMONG COUNTIES; INCREASING THE PENALTY FOR FAILURE TO PROVIDE ASSESSMENT INFORMATION; PROVIDING A RESERVE FUND FOR REFUNDING OVERPAYMENT OF PROPERTY TAX ON LIVESTOCK; AMENDING SECTIONS 15-6-207, 15-8-201, 15-24-302, 15-24-903, 15-24-904, 15-24-905, AND 15-24-908 THROUGH 15-24-910, MCA; AND REPEALING SECTION 15-24-907, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-8-201, MCA, is amended to read:

"15-8-201. General assessment day. (1) The department of revenue or its agent must, between January 1 and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county. The department or its agent must assess property to the person by whom it was owned or claimed or

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in whose possession or control it was at midnight of January 1 next preceding. It must also ascertain and assess all mobile homes arriving in the county after midnight of January 1 next preceding. No mistake in the name of the owner or supposed owner of real property, however, renders the assessment invalid.

(2) The procedure provided by this section may not apply to:

(a) motor vehicles that are required by 15-8-202 to be assessed on January 1 or upon their anniversary registration date;

(b) livestock;

(c) property defined in 61-1-104(2) as "special mobile equipment" that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate;

(d) mobile homes held by a distributor or dealer of mobile homes as a part of his stock-in-trade; and

(e) snowmobiles that are required by 15-8-203 to be assessed as of July 1.

(3) Credits must be assessed as provided in 15-1-101(1)(b)."

Section 2. Section 15-24-903, MCA, is amended to read:

"15-24-903. Duty of owner to assist in assessment. *(1)* The owner of livestock, as defined in 15-24-901, or his agent, at the time of assessment shall make and deliver to the department of revenue or its agent in the county or counties where his livestock were located since the last assessment date, a written statement, under oath, showing the different kinds of his livestock within the county or counties belonging to him or under his charge, with their marks and brands, and showing the times during that period that his livestock were within the county or counties.

(2) As used in this section, "agent" means any person, persons, company, or corporation, including a feedlot operator or owner of grazing land, who has charge of livestock on the assessment date."

Section 3. Section 15-24-904, MCA, is amended to read:

"15-24-904. Penalty for violation of law. *If any* person, persons, company, or corporation who is the owner or has in charge any livestock within this state *fails* to make the statement or statements as provided in 15-24-903, *the county assessor may, after 10 days' notice to the person who failed to file the report, increase the assessment by 10% as a penalty."*

Section 4. **Assessment and taxation of migratory livestock.** (1) All livestock that are assessed on the method provided in [section 10(1)(a)] must be assessed in the county in which they are located on March 1. The county in which livestock are assessed is their home county.

(2) A livestock owner must pay the total property tax levied on his livestock for the year of assessment to the county treasurer of the home county.

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Section 5. **Apportionment of migratory livestock tax among counties.** (1) When livestock that are assessed on the method provided in [section 10(1)(a)] are moved from the home county to another county, the owner must within 15 days notify the assessors of the home county and of the county to which the cattle have been moved. He must provide the information required in 15-24-903 to the assessor of the county to which the livestock are moved.

(2) The property tax on migratory livestock is prorated among the counties in which the livestock have been located in any year in proportion to the time the livestock spent in each county during the year.

(3) The home county assessor shall indicate on the assessment rolls any livestock that have been located in more than one county during the year. When the treasurer collects the tax on migratory livestock, he shall:

(a) remit to the state that portion of the tax raised by statewide levies; and

(b) place the remainder in a migratory livestock fund.

Section 6. **Distribution of migratory livestock fund.** (1) On or before July 1 of each year, the treasurer shall cause a warrant to be issued from the migratory livestock fund to each county for the amount of prorated livestock tax due to that county under the provisions of subsection (2) of [section 5].

(2) The amount remaining in the fund after the warrants have been issued must be distributed to the proper fund according to the tax levies made during the year the assessment was levied.

(3) Money received from other counties under subsection (1) must be distributed to the proper fund according to the tax levies made during the year the assessment was levied.

Section 7. Section 15-24-905, MCA, is amended to read:

"15-24-905. Livestock brought into state — notice to department of revenue or its agent — time for payment. *(1)* The owner or the agent, manager, or foreman of any person, corporation, or association bringing livestock into this state after January 1 shall immediately after said livestock crosses the state line forward to the department of revenue or its agent in the county into which the livestock is moved a registered or certified letter, which letter shall contain the name of the owner of such livestock, the number thereof, the brand thereon, and the ages of the same, together with the time and place at which said livestock was brought across the state line, provided that the department of livestock at least once each month furnish from its own records to the department of revenue or its agent in the county into which such livestock is moved a list of the number and kind of livestock so moved, together with the name of the owner thereof.

(2) The tax due on livestock brought into this state must be paid within 30 days after receiving the tax notice.

(3) Livestock on which tax is owed under this section may not be removed from the county until the taxes have been paid."

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Section 8. Section 15-6-207, MCA, is amended to read:

"15-6-207. Agricultural exemptions. The following agricultural products are exempt from taxation:

(1) all unprocessed, perishable fruits and vegetables in farm storage and owned by the producer;

(2) all nonperishable unprocessed agricultural products, except livestock, held in possession of the original producer for less than 7 months following harvest; and

(3) livestock, defined as cattle, sheep, horses, or mules, which have not attained the age of 9 months as of the last day of any month *if assessed on the average inventory basis or on March 1 if assessed as provided in [section 10(1)(a)]* and swine which have not attained the age of 3 months as of January 1."

Section 9. Section 15-24-302, MCA, is amended to read:

"15-24-302. Collection procedure. All property mentioned in [the preceding section] shall be assessed at the same value as property of like kind and character, and the assessment, levy, and collection of the tax shall be governed by the provisions of 15-8-408; 15-16-111 through 15-16-115; 15-16-404; chapter 17, part 9; and 15-24-202(1); as amended, except livestock taxation governed by 81-7-104 and Title 81, chapter 7, part 2."

Section 10. **Livestock assessment.** (1) The department of revenue or its agent must assess all livestock on the average inventory basis as provided in 15-24-908 through 15-24-910 unless:

(a) the owner elects to have his livestock assessed on March 1 of each year as provided in (4); and

(b) the assessor of the county in which the cattle are located on assessment date accepts this election.

(2) The owner shall file his election with the county assessor on the statement required in 15-24-903.

(3) The county assessor shall accept the onwer's election unless he determines that the election is made to evade property taxation. The livestock owner may appeal the assessor's decision to the county tax appeal board and the state tax appeal board under the procedures established in Title 15, chapter 15, part 1, and chapter 2, part 3.

(4) If an owner chooses the method of assessment provided in (1)(a), the department of revenue or its agent must assess the owner's livestock in each county as of March 1 of each year. This livestock shall be assessed to the person by whom owned or claimed or in whose possession or control it was at midnight of March 1 in each year.

Section 11. Section 15-24-908, MCA, is amended to read:

"15-24-908. Computation of estimated value of livestock. (1) *If the owner's livestock are assessed on the average inventory basis of*

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assessment, the estimated value of livestock in a county on assessment day is computed by adding the assessed value of all livestock more than 9 months of age owned by the taxpayer in the county on the last day of each month since the last assessment day and dividing the sum by 12.

(2) *The* taxpayer must file a current statement *as of the last day of the year* setting forth the number of all livestock more than 9 months of age owned by him in each county on the last day of each month during the current tax year.

(3) The taxpayer is entitled to an adjustment of the estimated assessed value of livestock and recomputation of any tax levied and a refund of taxes paid if the amount paid is higher than the estimate.

(4) All remedies available to the taxpayer who owned livestock are available to him notwithstanding the fact that an estimated assessed value of livestock is submitted on or after the tax assessment day, subject to the end-of-the-year adjustment."

Section 12. Section 15-24-909, MCA, is amended to read:

"15-24-909. Taxpayer not owning livestock on assessment day. (1) If a taxpayer *whose livestock are assessed on the average inventory basis of assessment* does not own livestock on assessment day but owned livestock during the preceding tax year, he is not subject to taxes for the current tax year if he files a statement with the appropriate county assessor stating that he does not intend to own or acquire livestock during the tax year.

(2) If the taxpayer does acquire livestock during the year, he must file a current statement on the last day of the year and be subject to the provisions of 15-24-908."

Section 13. Section 15-24-910, MCA, is amended to read:

"15-24-910. Procedure for correcting assessed value and receiving refunds for overpayments. (1) If the taxpayer owning livestock has filed an estimate pursuant to 15-24-908(1) and a current statement pursuant to 15-24-908(2) which shows that the number of livestock actually owned differs from the estimated number of livestock, the county assessor must within 30 days correct the assessed value of the livestock or provide the taxpayer with a written statement setting forth his reasons for not making the correction.

(2) If there is an increase in the assessed value as a result of the correction, the assessor shall make an additional assessment on the increase and the tax shall be collected as provided in 15-16-113.

(3) If the taxpayer has already paid the tax levied or any portion, the county treasurer must within 30 days make a refund *from the livestock reserve fund* to the taxpayer of that portion of the tax improperly levied or provide the taxpayer with a written statement setting forth his reasons for not making the refund.

(4) Within 60 days of receipt of the written statement from the county assessor, the taxpayer may commence a lawsuit to correct the assessment

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or recover the tax paid in a court of competent jurisdiction against the county treasurer, the county or municipality on whose behalf the tax was levied or collected, or the department of revenue, which must be served with summons and a copy of the complaint.

(5) When a tax is paid in installments, the first installment or a portion may be the basis of the lawsuit, and, if any subsequent installment becomes due before the lawsuit is finally determined, the subsequent installment or portion may be paid under protest and incorporated into the pending lawsuit with all rights, duties, and obligations determined by the result of the lawsuit.

(6) Payment and disposition of taxes paid under protest are governed by the provisions of 15-1-402."

Section 14. **Livestock reserve fund.** (1) The county treasurer may, at the discretion of the county governing body, deposit up to 5% of the property tax collected each year on livestock assessed on the average inventory basis in a livestock reserve fund.

(2) Refunds for overpayment of property tax on livestock made under the provisions of 15-24-910 shall be issued from this fund.

(3) When the amount in a livestock reserve fund exceeds 10% of the total property tax collected in a year on livestock assessed on the average inventory basis, the excess funds shall be transferred to the county general fund and included in the next year's county budget.

Section 15. **Repealer.** Section 15-24-907, MCA, is repealed.

Section 16. **Codification.** Sections 4 through 6 and 10 are intended to be codified as an integral part of Title 15, chapter 24, part 9, and the provisions contained in Title 15, chapter 24, part 9, apply to sections 4 through 6 and 10.

Approved May 8, 1979.

CHAPTER NO. 664

AN ACT PROVIDING DOMESTIC INSURERS AN ALTERNATIVE METHOD OF COMPUTING PREMIUM TAX DUE BASED ON INVESTMENT OF ASSETS IN MONTANA; AMENDING SECTIONS 15-31-101, 33-1-201, 33-2-311, AND 33-2-705, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-705, MCA, is amended to read:

"33-2-705. Report on premiums and other consideration — tax. (1) Each authorized insurer and each formerly authorized insurer with respect to premiums so received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a

report (except as to wet marine and transportation insurance taxed under subsection (3) below) in form as prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance whether designated as a premium or otherwise, received by it during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to such property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from such total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to such policies. As to title insurance, "premium" includes only the risk portion of the charge for such insurance. No deduction shall be made of the cash surrender values of policies. Considerations received on annuity contracts shall not be included in total direct premium income and shall not be subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a tax upon such net premiums. *This* tax *may* be computed *in either of the following ways:*

(a) (i) A domestic insurer may choose to compute its tax based on the percentage of its admitted assets invested in Montana securities according to the following schedule:

(A) 2 ¾% of net premiums if the insurer has 0% of its admitted assets invested in Montana securities;

(B) 2 ¼% of net premiums if the insurer has at least 25% of its admitted assets invested in Montana securities;

(C) 1 ¾% of net premiums if the insurer has at least 50% of its admitted assets invested in Montana securities;

(D) 1 ¼% of net premiums if the insurer has at least 75% of its admitted assets invested in Montana securities; and

(E) ¾% of net premiums if the insurer has 100% of its admitted assets invested in Montana securities.

(ii) "Admitted assets" are those assets allowed in 33-2-501.

(iii) An insurer choosing this method of computation must itemize its Montana securities on a detailed schedule attached to its annual tax report.

(b) (i) If the method provided for in subsection (a) is not used, the insurer shall compute its tax at the rate of 2 ¾ % of *the net* premiums.

(ii) An insurer choosing this method and having not less than 50% of its paid-in capital stock invested in Montana securities *is* allowed to deduct whatever tax it may have already paid to the state of Montana and its political subdivisions, during the same calendar year as to which premium tax is being paid, from the amount otherwise due under this section.

(3) For the purpose of *subsection (2):*

(a) "paid-in capital stock" as to a mutual or reciprocal insurer shall be deemed to be an amount equal to 10% of the insurer's assets; and

(b) "Montana securities" shall be deemed to include only general obligations of the state of Montana or of its political subdivisions, mortgage loans secured by a first lien upon real estate located in Montana, and real estate located in Montana owned by the insurer, all if otherwise lawful investments of the insurer under this code.

(4) (a) On or before March 1 of each year each insurer shall file with the commissioner, on forms as prescribed and furnished or accepted by him, a report of its gross underwriting profit on wet marine and transportation insurance, as defined in 33-1-209, written in this state during the calendar year next preceding and shall at the same time pay to the commissioner a tax of ¾ of 1% of such gross underwriting profit.

(b) Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such wet marine and transportation insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts. In the case of insurers issuing participating contracts, such gross underwriting profit shall not include for computation of the tax prescribed by this subsection (3) the amounts refunded, credited, or paid as participation dividends or savings by such insurers to the holders of such contracts.

(5) That portion of the tax paid hereunder by an insurer on account of premiums received for fire insurance shall be separately specified in the report as required by the commissioner, for apportionment as provided by law. Where insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make such reasonable allocation from such entire premium to the fire portion of the coverage as shall be stated in such report and as may be approved or accepted by the commissioner.

(6) With respect to authorized insurers the premium tax provided by this section shall be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(7) The commissioner may suspend or revoke the certificate of authority of any insurer which fails to pay its taxes as required under this section."

Section 2. Section 33-2-311, MCA, is amended to read:

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"33-2-311. Tax on surplus lines. There is imposed upon premiums collected for surplus line insurance transacted in this state a tax at the same rate and computed in the same manner as provided in *subsection (2)(b)(i) of* 33-2-705 as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes, and in excess of the premium otherwise required, shall not be deemed to be part of the premium for the purposes of such computation. Upon filing of the annual statement referred to in 33-2-310(2), the surplus line agent shall pay to the commissioner the amount of tax owing as to surplus line insurance business transacted by him during the preceding calendar year. If a surplus line policy covers risk or exposures only partially in this state, the tax payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state."

Section 3. Section 15-31-101, MCA, is amended to read:

"15-31-101. Organizations subject to tax. (1) The term "corporation" includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity, and all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States.

(2) The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) Every corporation, except as hereinafter provided and except as provided in 33-2-705*(6)*, engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state such percentage or percentages of its total net income for the preceding taxable year at the rate hereinafter set forth. In the case of corporations having income from business activity which is taxable both within and without this state, the license fee shall be measured by the net income derived from or attributable to Montana sources as determined under part 3. This tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation; however, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

(4) Every bank organized under the laws of the state of Montana or of any other state and every national bank organized under the laws of the United States are subject to the Montana corporation license tax provided for under this chapter. For taxable years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."

Section 4. Section 33-1-201, MCA, is amended to read:

"33-1-201. Definitions — insurance in general. (1) An "alien insurer" is one formed under the laws of any country other than the

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United States of America, its states, districts, territories, and commonwealths.

(2) An "authorized insurer" is one duly authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state.

(3) A "domestic insurer" is one *incorporated* under the laws of this state.

(4) A "foreign insurer" is one formed under the laws of any jurisdiction other than this state. Except where distinguished by context, foreign insurer includes also an alien insurer.

(5) "Insurance" is a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

(6) "Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance.

(7) "State", when used as to jurisdiction, means a state, the District of Columbia, a territory, commonwealth, or possession of the United States of America.

(8) "Transact", with respect to insurance, includes any of the following:

(a) solicitation and inducement;

(b) preliminary negotiations;

(c) effectuation of a contract of insurance;

(d) transaction of matters subsequent to effectuation of the contract of insurance and arising out of it.

(9) An "unauthorized insurer" is one not authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state."

Section 5. **Effective date and applicability.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1978.

Approved May 8, 1979.

CHAPTER NO. 665

AN ACT TO GENERALLY REVISE THE LAWS CONCERNING ADULT SERVICES; AMENDING SECTIONS 53-5-101, 53-5-302, AND 53-5-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-5-101, MCA, is amended to read:

"53-5-101. Functions of department of social and rehabilitation services. The department of social and rehabilitation services shall:

(1) consult with and advise organized efforts by communities, organizations, associations, and groups that are working toward any forms of assistance to problems of aging;

(2) study and identify problems of aging;

(3) review existing programs for the aging and make recommendations to the governor and the legislature for improvements in such programs;

(4) encourage the sponsorship of community projects which will seek to make optimum use of the time and talents of retired persons;

(5) coordinate, through area councils on aging, the delivery of community-based care, including but not limited to home health care, homemaker services, foster home care, nutrition, transportation, winterization, information and referral, and recreation."

Section 2. Section 53-5-302, MCA, is amended to read:

"53-5-302. Definitions. As used in this part, the following definitions apply:

(1) "Adult foster family care homes" means private homes owned by one or more persons 18 years of age or older which offer light personal care or custodial care to disabled adults who are not related to the owner by blood or marriage *or which offer light personal care or custodial care to aged persons.*

(2) "Aged person" means a person defined by the department as aged.

(3) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for his basic needs of food and shelter and having a specific person available to help him meet his basic needs.

(4) "Department" means the department of social and rehabilitation services.

(5) "Disabled adult" means a person 18 years of age or older defined by the department as disabled.

(6) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, hair grooming, and supervision of prescriptive medicine administration, but not administration of prescriptive medications.

(7) "Skilled nursing care" means 24-hour care supervised by a registered nurse or a licensed practical nurse under orders of an attending physician."

Section 3. Section 53-5-303, MCA, is amended to read:

"53-5-303. Purpose. In order to ensure the proper care of aged persons or disabled adults in foster family care homes and to implement provisions of federal law in Title XX, Social Services Amendments of 1974,

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the department may obtain, license, and supervise adult foster family care homes for *four* or fewer aged persons or disabled adults in need of such care."

Approved May 8, 1979.

CHAPTER NO. 666

AN ACT TO ALLOW PUBLIC UTILITIES AND FINANCIAL INSTITUTIONS TO MAKE LOW-INTEREST LOANS FOR INSTALLATION OF RECOGNIZED NONFOSSIL FORMS OF ENERGY GENERATION SYSTEMS; AMENDING SECTION 15-32-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-107, MCA, is amended to read:

"15-32-107. Loans by utilities and financial institutions — tax credit for interest differential. (1) A public utility providing electricity or natural gas may install or pay for the installation of energy conservation materials *or recognized nonfossil forms of energy generation systems* in a dwelling. The utility may agree with the occupant of the dwelling that the occupant shall reimburse the utility for its expenditure in periodic installment payments added to the occupant's regular bill for electricity or natural gas. The utility may charge interest not exceeding the equivalent of 7% per year on the declining balance of the sum advanced *for the installation of energy conservation materials. The utility shall charge interest equivalent to a rate between 5% and 7% per year on the declining balance of the sum advanced for installation of recognized nonfossil forms of energy generation systems.*

(2) A financial institution as defined in 32-6-103 may offer and make loans at an interest rate not less than 2 percentage points below the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district.

(3) A public utility *or a financial institution* lending money under this section may compute the difference between interest it actually receives on such transactions and the interest which would have been received at the prevailing average interest rate for home improvement loans, as prescribed in rules made by the public service commission. The utility may apply the difference so computed as a credit against its tax liability for the electrical energy producer's license tax under 15-51-101 or for the corporation license tax under chapter 31, part 1. *The public service commission shall regulate rates in such a manner that a utility making loans under this section may not make a profit as the result of this section. The financial institution may apply the difference so computed as a credit against its tax liability for the corporation license tax under chapter 31, part 1.*

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(4) A utility may not claim a tax credit under this section exceeding $200,000 in any tax year. A financial institution may not claim a tax credit under this section exceeding $2,000 in any tax year.

(5) The public service commission may make rules to implement this section *as it shall apply to public utilities only.*"

Approved May 8, 1979.

CHAPTER NO. 667

AN ACT RELATING TO THE CREATION AND FINANCING OF URBAN RENEWAL PROJECTS; REVISING THE METHODS OF CREATING URBAN RENEWAL PLANS AND CALCULATING AND USING TAX INCREMENTS; AMENDING SECTIONS 7-15-4216, 7-15-4217, 7-15-4221, 7-15-4260, 7-15-4283, 7-15-4285 THROUGH 7-15-4287, 7-15-4289, 7-15-4290, AND 7-15-4301, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4216, MCA, is amended to read:

"**7-15-4216. Requirements for approval of urban renewal plans and projects.** (1) The local governing body shall not approve an urban renewal plan until a comprehensive plan or parts of such plan for an area which would include an urban renewal area for the municipality have been prepared.

(2) A municipality shall not approve an urban renewal project for an urban renewal area unless the local governing body has by resolution determined such area to be a blighted area and designated such area as appropriate for an urban renewal project.

(3) An urban renewal plan adopted after July 1, 1979, must be approved by ordinance.

(4) All urban renewal plans approved by resolution prior to [the effective date of this act] are hereby validated."

Section 2. Section 7-15-4217, MCA, is amended to read:

"**7-15-4217. Criteria for approval of urban renewal project.** Following the hearing required by 7-15-4214, the local governing body may, *by ordinance,* approve an urban renewal project if it finds that:

(1) a workable and feasible plan exists for making available adequate housing for the persons who may be displaced by the project;

(2) the urban renewal plan conforms to the comprehensive plan or parts thereof for the municipality as a whole;

(3) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and

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(4) a sound and adequate financial program exists for the financing of said project."

Section 3. Section 7-15-4221, MCA, is amended to read:

"7-15-4221. Modification of urban renewal project plan. *(1)* An urban renewal project plan may be modified at any time by the local governing body. If modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification shall be subject to such rights at law or in equity as a lessee or purchaser or his successor or successors in interest may be entitled to assert.

(2) An urban renewal plan may be modified by ordinance.

(3) All urban renewal plans approved or modified by resolution prior to [the effective date of this act] are hereby validated.

(4) A plan may be modified by:

(a) the procedure set forth in 7-15-4212 through 7-15-4219 with respect to adoption of an urban renewal plan.

(b) the procedure set forth in the plan."

Section 4. Section 7-15-4260, MCA, is amended to read:

"7-15-4260. Exemption from levy and sale for certain property. All property of a municipality, including funds, owned or held by it for the purposes of this part and part 43 shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against a municipality be a charge or lien upon such property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this part or part 43 by a municipality on *an urban renewal project or the* rents, fees, grants, or revenues *derived* from *these* projects."

Section 5. Section 7-15-4283, MCA, is amended to read:

"7-15-4283. Definitions related to tax increment financing. For purposes of 7-15-4282 through 7-15-4292, the following definitions apply unless otherwise provided or indicated by the context:

(1) "Actual taxable value" means the taxable value of taxable property *at any time,* as calculated from the assessment roll last equalized.

(2) "Base taxable value" means the actual taxable value of all taxable property within an urban renewal area prior to the effective date of a tax increment financing provision. This value may be adjusted as provided in 7-15-4287 or [section 9].

(3) "Incremental taxable value" means the amount, if any, by which the actual taxable value *at any time* exceeds the *base* taxable value of all property within an urban renewal area subject to taxation.

(4) "Tax increment" means the collections realized from extending the tax levies, expressed in mills, of all taxing bodies in which the urban

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renewal area or a part thereof is located against the incremental taxable value.

(5) "Tax increment provision" means a provision for the segregation and application of tax increments as authorized by 7-15-4282 through 7-15-4292.

(6) "Taxes" means all taxes levied by a taxing body against property on an ad valorem basis.

(7) "Taxing body" means any city, town, county, school district, or other political subdivision or governmental unit of the state, including the state, which levies taxes against property within the urban renewal area."

Section 6. Section 7-15-4285, MCA, is amended to read:

"7-15-4285. Determination and report of original, actual, and incremental taxable values. The officer or officers responsible for assessing and determining the taxable value of the taxable property located within the urban renewal area shall, immediately upon receipt of the tax increment provision and each year thereafter, calculate and report to the municipality and to any other affected taxing body the *base*, actual, and incremental taxable values of such property."

Section 7. Section 7-15-4286, MCA, is amended to read:

"7-15-4286. Procedure to determine and disburse tax increment. (1) Mill rates of taxing bodies for taxes levied after the effective date of the tax increment provision shall be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area and the *base* taxable value of all taxable property located within the urban renewal area. The mill rate so determined shall be levied against the sum of the actual taxable value of all taxable property located within as well as outside the urban renewal area.

(2) (a) The tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the urban renewal area shall be paid into a special fund held by the treasurer of the municipality and used as provided in 7-15-4282 through 7-15-4292.

(b) The balance of the taxes collected in each year shall be paid to each of the taxing bodies as otherwise provided by law."

Section 8. Section 7-15-4287, MCA, is amended to read:

"7-15-4287. Provision for use of portion of tax increment. (1) At the time of adoption of a tax increment provision or at any time subsequent thereto, the governing body of the municipality may provide that a portion of the tax increment from the incremental taxable value shall be *released from segregation by an adjustment of the base taxable value, provided that:*

(a) all principal and interest then due on bonds for which the tax increment has been pledged has been fully paid; and

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(b) the tax increment resulting from the smaller incremental value is determined by the governing body to be sufficient to pay all principal and interest due later on the bonds.

(2) The *adjusted base value* determined *under subsection (1)* shall be reported by the clerk to the officers and taxing bodies to which the increment provision is reported.

(3) Thereafter, *the adjusted base value is used* in determining the mill rates of affected taxing bodies *unless the tax increment resulting from the adjustment is determined to be insufficient for this purpose. In this case, the governing body must reduce the base value to the amount originally determined or to a higher amount necessary to provide tax increments sufficient to pay all principal and interest due on the bonds.*"

Section 9. Section 7-15-4289, MCA, is amended to read:

"**7-15-4289. Use of tax increments for bond payments.** The tax increment may be pledged to the payment of the principal of premiums, if any, and interest on bonds which the municipality may issue for the purpose of providing funds to pay such costs."

Section 10. Section 7-15-4290, MCA, is amended to read:

"**7-15-4290. Use of property taxes for payment of bonds.** (1) *The tax increment may be pledged for the payment of revenue bonds issued for urban renewal projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay urban renewal costs described in 7-15-4289. Any municipality issuing such bonds may, by resolution of its governing body, enter into a covenant for the security of the bondholders, detailing the calculation and adjustment of the tax increment and the taxable value on which it is based.*

(2) No property taxes, except the tax increment derived from property within the urban renewal area *and tax collections used to pay for services provided to the municipality by an urban renewal project*, may be applied to the payment of bonds issued pursuant to 7-15-4301 for which a tax increment has been pledged."

Section 11. Section 7-15-4301, MCA, is amended to read:

"**7-15-4301. Authorization to issue urban renewal bonds and refunding bonds.** (1) A municipality shall have the power to:

(a) issue bonds from time to time in its discretion, to finance the undertaking of any urban renewal project under this part and part 42, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans for urban renewal projects; and

(b) issue refunding bonds for the payment or retirement of such bonds previously issued by it.

(2) Such bonds shall not pledge the general credit of the municipality and shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived

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from or held in connection with its undertaking and carrying out of urban renewal projects under this part and part 42, including the tax increment received and pledged by the municipality pursuant to 7-15-4282 through 7-15-4292. Payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source in aid of any urban renewal projects of the municipality under this part and part 42 *or by a mortgage on all or part of any such projects.*

(3) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body."

Section 12. **Adjustment of base taxable value following change in statutes.** If the base taxable value of an urban renewal area is affected after its original determination by a statutory change in the method of appraising property, the tax rate applied to it, or the tax exemption status of property, the governing body of the municipality may request the department of revenue or its agents to calculate the base taxable value as it would have been on the date of the original determination had the statutory changes been in effect on that date. The governing body may adjust the base taxable value to that value reported by the department of revenue, under the provisions of 7-15-4287.

Section 13. **Effective date.** This act is effective on passage and approval.

Approved May 8, 1979.

CHAPTER NO. 668

AN ACT TO PROVIDE THAT THE PUBLIC AND THE MEDIA MAY NOT BE EXCLUDED FROM YOUTH COURT PROCEEDINGS IN WHICH A YOUTH IS ALLEGED TO BE DELINQUENT OR IN NEED OF SUPERVISION UNLESS THE COURT DETERMINES THAT A CLOSED HEARING IS IN THE YOUTH'S BEST INTEREST; AMENDING SECTION 41-5-521, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-521, MCA, is amended to read:

"41-5-521. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, his parent, guardian, or attorney may demand a jury trial on such contested offenses. In the absence of such demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing shall be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing shall be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in

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cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function shall be to determine whether the youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the judge shall make and record his findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing shall be recorded verbatim by whatever means the court considers appropriate.

(4) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public may not be excluded *except when the court determines a closed hearing to be in the youth's best interest.*

(6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of supervision, the court shall schedule a dispositional hearing under this chapter.

(7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title 25, chapter 7, part 2, and M.R.Civ.P., Rule 47."

Approved May 8, 1979.

CHAPTER NO. 669

AN ACT TO ALLOW COUNTY COMMISSIONERS IN CERTAIN COUNTIES TO ESTABLISH THE OFFICE OF COUNTY ATTORNEY AS A FULL-TIME POSITION; TO INCREASE THE SALARY OF CERTAIN COUNTY ATTORNEYS; AND TO PROVIDE FOR THE RENDITION OF COUNTY LEGAL SERVICES BY PERSONS OTHER THAN THE COUNTY ATTORNEY; AMENDING SECTION 7-4-2503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **County attorney may be full time — resolution — salary.** In any county with a population of less than 30,000, the county commissioners may, upon the consent of the county attorney, on July 1 of any year by resolution establish the office of county attorney as a full-time position subject to the provisions of 7-4-2701 and 7-4-2704. The salary for this position is the salary provided by 7-4-2503 for the office of county attorney in a county with a population in excess of 30,000.

Section 2. **Contract for services of county attorney from another county.** The county commissioners of any county may upon the

consent of the county attorney, by agreement with the commissioners and county attorney of any other county, contract in writing to employ any other county attorney or attorney member of his staff to perform civil or criminal legal services for the county at a reasonable rate. The provisions of this section are subject to the provisions of interlocal cooperative agreements.

Section 3. **Contract for services of any other attorney.** In any county, the county commissioners may, upon consent of the county attorney, employ any other attorney licensed in Montana to perform any legal service in connection with the civil business of the county.

Section 4. Section 7-4-2503, MCA, is amended to read:

"7-4-2503. Salaries of certain county officers. (1) Except as provided in subsection (2), the total salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county attorney, county assessor, county superintendent of schools, and county sheriff; the county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812; and the county auditor in all counties wherein such office is authorized shall be the sum of the salary shown in column A, based on population as of January 1, 1977, when added to the salary shown in column B, based on taxable valuation as of January 1, 1977, as follows:

(a) Population of County	Column A
Below 3,000	$4,494
3,000 to 3,999	$4,729
4,000 to 4,999	$4,833
5,000 to 5,999	$4,938
6,000 to 6,999	$5,058
7,000 to 7,999	$5,394
8,000 to 8,999	$5,487
9,000 to 9,999	$5,617
10,000 to 12,499	$5,708
12,500 to 14,999	$5,826
15,000 to 17,499	$5,943
17,500 to 19,999	$6,048
20,000 to 24,999	$6,165
25,000 to 29,999	$6,270
30,000 to 39,999	$6,387
40,000 to 49,999	$6,544
50,000 to 59,999	$6,779
60,000 to 69,999	$7,014
70,000 to 79,999	$7,275
80,000 to 89,999	$7,432
90,000 to 99,999	$7,676
100,000 and over	$7,902

(b) Taxable Valuation of County	Column B
Below $2,000,000	$4,598
2,000,000 to 2,999,999	$4,729

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3,000,000 to	3,999,999	$4,833
4,000,000 to	4,999,999	$4,938
5,000,000 to	5,999,999	$5,069
6,000,000 to	6,999,999	$5,394
7,000,000 to	7,999,999	$5,487
8,000,000 to	9,999,999	$5,617
10,000,000 to	11,999,999	$5,708
12,000,000 to	13,999,999	$5,826
14,000,000 to	15,999,999	$5,942
16,000,000 to	17,999,999	$6,047
18,000,000 to	19,999,999	$6,165
20,000,000 to	22,499,999	$6,270
22,500,000 to	24,999,999	$6,387
25,000,000 to	29,999,999	$6,544
30,000,000 to	34,999,999	$6,779
35,000,000 to	39,999,999	$7,014
40,000,000 to	44,999,999	$7,275
45,000,000 to	49,999,999	$7,432
50,000,000 to	54,999,999	$7,667
55,000,000 to	59,999,999	$7,902
60,000,000 to	64,999,999	$8,138
65,000,000 to	69,999,999	$8,372
70,000,000 to	74,999,999	$8,607
75,000,000 to	79,999,999	$8,843
80,000,000 to	84,999,999	$9,078
85,000,000 to	89,999,999	$9,313
90,000,000 to	94,999,999	$9,548
95,000,000 to	99,999,999	$9,783
100,000,000 to	109,999,999	$10,019
110,000,000 to	119,999,999	$10,195
120,000,000 to	129,999,999	$10,398
130,000,000 to	139,999,999	$10,606
140,000,000 to	149,999,999	$10,817
150,000,000 and over		$11,035

(2) (a) The county superintendent of schools shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of $400 per year.

(b) The county sheriff shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of $1,200 per year.

(c) Except in counties of population greater than 30,000, the county attorney shall receive, in addition to the salary based upon the totals of column A and B above, the sum of $1,200. In each county with a population in excess of 30,000, the salary of the county attorney shall be $30,000 per year.

(d) In those counties where the office of the county attorney has been established as a full-time position pursuant to [section 1], the salary of the county attorney shall be set by resolution of the county commission but it shall not exceed the salary of the county attorney in a county with a population in excess of 30,000."

Approved May 8, 1979.

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CHAPTER NO. 670

AN ACT TO REVISE AND CLARIFY THE LAWS RELATED TO FOREST FIRE HAZARD REDUCTION; TO INCREASE HAZARD REDUCTION WITHHOLDING RATES AND MAKE THEM MORE ENFORCEABLE; AND AMENDING SECTIONS 76-13-404, 76-13-407, 76-13-409, AND 76-13-410, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-404, MCA, is amended to read:

"76-13-404. Contracts with owners of forest lands. The department may, in such form and containing such conditions as it prescribes, enter into agreements with the owners of any forest lands or any operator engaged in operations on lands within the state whereby slash is created. Under the contract the department may assume all responsibility for the reduction or management of any fire hazard. The department may provide in the agreement the amount to be paid by the owner or operator to the department by reason of its agreement to assume the reduction or management of the fire hazard, but the amount may not exceed *$6* for each 1,000 feet log scale or the equivalent thereof if forest products other than logs are cut."

Section 2. Section 76-13-407, MCA, is amended to read:

"76-13-407. Reduction of slash and debris along right-of-way. (1) A person clearing right-of-way for any railroad, public highway, public trail, private road, trail, ditch, dike, pipeline or wire lines, or any other transmission or transportation utility right-of-way, except temporary roads located within the boundaries of the cutting area and which are used in the actual logging operations, shall reduce the hazard resulting from the clearing or from the cutting of material for the construction of the public or private utility unless exempted by the department. At least 10 days before commencement of the clearing, the person conducting the clearing shall notify the department of commencement of the clearing in the form and manner the department provides.

(2) Hazard reduction, including burning where this method of disposal is used, shall be done as rapidly as cutting or clearing progresses; however, upon application to the department, it may grant a permit extending the time within which the burning must be done in compliance with this chapter relating to burning permits during the closed season.

(3) This section applies to all clearing of rights-of-way across private land and on behalf of the state, county, highway districts, and road districts, whether the work is done by day labor or by contract, and unless unavoidable emergency prevents, provision shall be made by the proper officials conducting, directing, or letting the work for withholding until it is complete a sufficient portion of the payment therefor to assure compliance with this part."

Section 3. Section 76-13-409, MCA, is amended to read:

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"76-13-409. Duty of purchaser to insure compliance. (1) The initial purchaser of forest products which have been cut or are about to be cut from any private lands within the state shall, before making the purchase or contract to purchase, determine that the person engaged or about to engage in the cutting of these forest products has provided for the reduction or management of the fire hazard thus created, as provided in this part.

(2) When the hazard reduction agreement provides that the purchaser of forest products shall withhold moneys to insure faithful compliance with this part, the purchaser shall transmit all moneys which are withheld to the department on or before the 15th day of each month, clearly identifying by number the hazard reduction agreement to which the withheld moneys pertain. The purchaser shall keep accurate records of the purchase and the amounts withheld, which may be inspected by the department at any reasonable time.

(3) Upon the department making the determination that faithful compliance with this part has been achieved, the department shall return to the owner thereof all such withheld money with the exception of *4%* for inspection, *administration, enforcement, and smoke management.*"

Section 4. Section 76-13-410, MCA, is amended to read:

"76-13-410. Failure to comply. (1) If a person fails, refuses, or neglects to properly dispose of slash in accordance with the requirements of *76-13-407 and* 76-13-408 and is engaged or is about to engage, either for himself or for another, in cutting timber or other forest products and thereby creates a fire hazard, he may be enjoined from *further* timber *harvesting operations* until *76-13-407 and* 76-13-408 have been complied with. The department may initiate the proceedings and may *obtain* a temporary *restraining order,* injunction, *or writ of mandate.* The proceedings shall be conducted in the district court of the county where the land is located.

(2) If a person fails to comply with *76-13-407 or* 76-13-408 and has cut any forest products and fails to comply within 30 days after being notified to do so by the department, the department may complete, direct, or authorize the disposal of the slash at the expense of the owner of the timber or other forest products cut or produced from the land upon which the undisposed of fire hazard remains.

(3) The cost and expense of the disposal, plus 20% of the cost and expense of the disposal as a penalty, constitutes a lien upon the forest products so cut or produced from the land. If payment of the sum demanded is not made to the department within 10 days of its written demand, the department shall bring legal action on behalf of the state to recover the debt."

Section 5. **Failure to submit withholding — remedy.** (1) If a purchaser does not submit withheld money on or before the 15th day of each month when required to do so under 76-13-407, he must be notified by registered or certified mail that he is in noncompliance and be given 15 days to submit all money then due. If he fails to submit all money due within the required time, the department may initiate proceedings to

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enjoin further processing of all wood products until all money due is paid in full or satisfactory arrangements for payments are made.

(2) If payment is not made within the 15-day period after notification as provided in subsection (1), a penalty of 5% of the amount due must be assessed. The department may abate the penalty if the purchaser establishes that the failure to submit the amount due as required was due to reasonable cause and was not due to neglect on his part. The department, in addition to the penalty, may impose interest at the rate of 10% a year on any balance remaining unpaid.

Approved May 8, 1979.

CHAPTER NO. 671

AN ACT TO REVISE THE FEE FOR HOUSING FEDERAL AND STATE PRISONERS IN COUNTY JAILS; AMENDING SECTIONS 7-32-2206 AND 7-32-2209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-2206, MCA, is amended to read:

"7-32-2206. Confinement of federal prisoners. (1) The sheriff must receive and keep in the county jail any prisoner committed thereto by process or order issued under the authority of the United States until he is discharged according to law, as if he had been committed under process issued under the authority of this state.

(2) Provision and agreement for the use of said jails and the support and subsistence of such federal prisoners shall first be made by the United States, through or by the proper officer or officers, with the board of county commissioners of the county wherein such prisoners are to be confined. Such agreement shall be in writing and contain a provision that the United States shall, upon claim presented for the county by its county clerk and recorder, pay into the county treasury of the county the sum of *$10* per day for each and every prisoner held in the county jail upon order or commitment of the United States government or any department or officer thereof.

(3) A sheriff to whose custody a prisoner is committed as provided in this section is answerable for his safekeeping in the courts of the United States, according to the laws thereof."

Section 2. Section 7-32-2209, MCA, is amended to read:

"7-32-2209. Expenses of persons committed to jail by highway patrol bureau. In the event a person is committed to jail by the highway patrol bureau, department of justice, the state of Montana shall, upon claim presented for the county by the clerk and recorder, pay into the county treasury of the county the sum of *$10* per day for each and every prisoner held in the county jail upon order or commitment of the

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highway patrol bureau or any department or officer thereof. For the purposes of this section, a day shall be defined as a 24-hour period or portion thereof, beginning with the time of incarceration. Such claims upon the highway patrol bureau, department of justice, shall be paid to the various counties out of funds appropriated for that purpose."

Approved May 8, 1979.

CHAPTER NO. 672

AN ACT AUTHORIZING AND CONSENTING TO THE ACQUISITION, CONSTRUCTION, EQUIPPING, AND FINANCING BY THE BOARD OF REGENTS OF HIGHER EDUCATION OF IMPROVEMENTS TO THE STUDENT UNION BUILDING AND CERTAIN PHYSICAL EDUCATION, ATHLETIC, AND RECREATIONAL FACILITIES AT MONTANA STATE UNIVERSITY AND TO THE PHYSICAL EDUCATION, ATHLETIC, AND RECREATIONAL FACILITIES AT EASTERN MONTANA COLLEGE; AUTHORIZING THE ISSUANCE AND SALE OF LONG-RANGE BUILDING PROGRAM BONDS BY THE BOARD OF EXAMINERS; AND APPROPRIATING THE PROCEEDS OF SUCH BONDS FOR THIS PURPOSE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Construction project at Montana state university and eastern Montana college.** (1) Under the provisions of 20-25-302(1) and 18-2-102, the legislature authorizes and consents to a capital construction program at Montana state university, Bozeman, Montana, and eastern Montana college at Billings, Montana, consisting of the acquisition, construction, and equipping of improvements to:

(a) the student union building at Montana state university;

(b) the physical education, athletic, and recreational facilities at Montana state university; and

(c) the physical education, athletic, and recreational facilities at eastern Montana college.

(2) The legislature further consents to the financing of these projects by the board of regents of higher education from gifts, grants, fees and earnings, and from the issuance of bonds by the board of regents in accordance with [sections 2 and 3] and 20-25-402.

Section 2. **Bonds for construction project — limits.** Upon request of the board of regents, the board of examiners is authorized to issue and sell long-range building program bonds upon the conditions and in the manner stated in Title 17, chapter 5, part 4:

(1) in a principal amount not to exceed $4,000,000 for the purpose of financing the costs of the student union building at Montana state university; and

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(2) in a principal amount not to exceed $2,500,000 for the purpose of financing the costs of the physical education, athletic, and recreational facilities at Montana state university; and

(3) in a principal amount not to exceed $1,500,000 for the purpose of financing the cost of the physical education, athletic, and recreational facilities at eastern Montana college. In addition to the bonding authorization, $800,000 of federal or private funds is authorized.

Section 3. **Sale and issuance of bonds — requirements.** The sale and issuance of bonds pursuant to [section 2] shall be subject to an undertaking by the board of regents to pay the state treasurer for deposit in the sinking fund account established pursuant to 17-5-405 amounts sufficient to pay as due the principal of and interest on the bonds. The undertaking by the board of regents may be in the form of a revenue bond or bonds issued by the board of regents to the board of examiners or it may be in the form of an agreement between the board of regents and board of examiners. The payments under any such bonds or agreement shall be from such revenues, fees, and income as are lawfully available to the board of regents to pay the costs of facilities to be financed by the long-range building program bonds hereby authorized or to pay debt service on obligations of the board of regents incurred with respect to such facilities and costs. All agreements or bond arrangements entered into between the board of regents and the department of administration will specifically require the board to maintain debt service payments and the reserve requirement to the long-range building sinking fund. If enrollment reductions should endanger these payments, the regents shall insure continued payments through budget adjustments which include fee increases. With the approval of the board of examiners, any undertaking and the payments thereunder may be subordinated to other obligations of the board of regents upon such terms as the board of examiners considers appropriate. The undertaking of the board of regents shall be solely for the benefit of and enforceable by the state and may not be enforceable by the holders of the long-range building program bonds. The bonds may be issued in one or more series.

Section 4. **Deposit and expenditure of bond proceeds.** The proceeds of the bonds authorized by [sections 1 and 2] shall be deposited in the clearance fund account created by 17-5-401(2). No construction or related bids shall be let until the bond proceeds are deposited in the clearance fund. The amount of such proceeds is appropriated from the clearance fund account to the board of regents for the purpose for which the bonds are authorized.

Section 5. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 8, 1979.

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CHAPTER NO. 673

AN ACT TO EXEMPT THE TRANSFER OF PROPERTY OF A MEMBER OF THE ARMED FORCES WHO DIES FROM WOUNDS RECEIVED IN A COMBAT ZONE FROM MONTANA'S INHERITANCE AND ESTATE TAXES; PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Exemption — transfer of the estate of member of armed forces dying from combat wounds.** (1) The taxes imposed in 72-16-301 and 72-16-904 do not apply to the transfer of property owned by a resident of the United States dying while in active service as a member of the armed services of the United States, if such decedent:

(a) was killed in action while serving in a combat zone, as determined under section 112(c) of the Internal Revenue Code of 1954, as amended; or

(b) died as a result of wounds, disease, or injury suffered while serving in a combat zone and while in the line of duty, by reason of a hazard to which he was subjected as an incident of such service.

(2) The transfer of property from such a decedent to any person, association, or corporation is exempt from inheritance and estate taxes imposed in Title 72, chapter 16.

Section 2. **Codification.** Section 1 is intended to be codified as an integral part of Title 72, chapter 16, part 3, and the provisions contained in Title 72, chapter 16, part 3, apply to section 1.

Section 3. **Effective date.** This act is effective on passage and approval and applies to the transfer of property owned by decedents who die after December 31, 1977.

Approved May 8, 1979.

CHAPTER NO. 674

AN ACT TO AUTHORIZE THE STATE, LOCAL GOVERNMENT UNITS, AND MONTANA CORPORATIONS TO APPLY FOR THE RIGHT TO OPERATE FOREIGN-TRADE ZONES UNDER THE LAWS OF THE UNITED STATES; PROVIDING JURISDICTIONAL GUIDELINES FOR FOREIGN-TRADE ZONES; AND CLARIFYING TAXATION WITHIN FOREIGN-TRADE ZONES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Authority to establish, operate, and maintain a foreign-trade zone.** (1) The state of Montana, a local government unit, or a private or public corporation organized in Montana for the purpose

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of operating a foreign-trade zone in Montana may apply for the right to and, if the right is granted, establish, operate, and maintain a foreign-trade zone under 19 USC 81a through 19 USC 81u.

(2) The governing body of a local government unit may contract with a private or public corporation to operate and maintain a foreign-trade zone that the local government unit has been granted the right to establish, operate, and maintain.

(3) Any activity authorized by the United States to be conducted within a foreign-trade zone may be conducted within a foreign-trade zone operated by a local government unit or Montana corporation under this section.

Section 2. **Compliance with state licenses and permits — exception.** Goods may be held within a foreign-trade zone exclusive of any license, permit, or regulation of the state or any political subdivision of the state. Such goods may be sold or traded subject to the laws of the United States.

Section 3. **Jurisdiction.** The state of Montana reserves jurisdiction in a foreign-trade zone in all civil and criminal matters except those related to customs, diversity suits with the requisite amount in controversy, or suits involving a federal question.

Section 4. **Corporations operating foreign-trade zones and their goods subject to taxation.** (1) All goods held in a foreign-trade zone are subject to inventory taxation.

(2) Private or public corporations operating foreign-trade zones are subject to all taxes imposed upon them under the provisions of Title 15.

Approved May 8, 1979.

CHAPTER NO. 675

AN ACT TO PROVIDE PROCEDURES FOR ALTERATION OF EXISTING FORMS OF LOCAL GOVERNMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purpose of [this act] is to provide procedures for alteration of existing forms of local government.

Section 2. **Definitions.** As used in [this act], unless the context indicates otherwise, the following definitions apply:

(1) "Authority" means:

(a) a municipal or regional airport authority as provided in Title 67, chapter 11;

(b) a conservancy district as provided in Title 85, chapter 9;

(c) a conservation district as provided in Title 76, chapter 15;

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(d) a drainage district as provided in Title 85, chapter 8;

(e) an irrigation district as provided in Title 85, chapter 7;

(f) a hospital district as provided in Title 7, chapter 34, part 21;

(g) a flood control and water conservation district as provided in Title 76, chapter 5, part 11;

(h) a county water and sewer district as provided in Title 7, chapter 13, part 22; or

(i) an urban transportation district as provided in Title 7, chapter 14, part 2.

(2) "Finance administrator" means the individual responsible for the financial administration of the local government and generally means the county or city treasurer or town clerk unless the alternative form or governing body specifies a different individual.

(3) "Governing body" means the commission or the town meeting legislative body established in the alternative form of a local government under Title 7, chapter 3, parts 1 through 6.

(4) "Local improvement district" means an improvement district in which property is assessed to pay for specific capital improvements benefiting the assessed property.

(5) "Records administrator" means the individual responsible for keeping the public records of the local government and generally means the county, city, or town clerk unless the alternative form or governing body specifies a different individual.

(6) "Subordinate service district" means a special district within a local government in which certain services are provided and in which taxes may be levied to finance the services.

Section 3. **Alteration of existing forms of local government.** An alteration of an existing form of local government may be proposed by a petition of the electors.

Section 4. **Election procedure.** Except as otherwise provided in [this act], each election under [this act] is conducted in the same manner as an election involving ballot issues or of local officials.

Section 5. **Petition for alteration.** (1) A petition for the alteration of an existing form of local government may be presented to the governing body of the local government. The petition must meet the requirements of [sections 8 through 11].

(2) The petition must be signed by at least 15% of the electors of the local government registered at the last general election, and upon receipt of the petition the governing body shall call an election, as provided for in [sections 15 through 17], on the proposed alteration. Whenever county-municipal consolidation is proposed, the petition must be signed by at least 15% of the electors residing within the municipality or municipalities proposed to be consolidated and 15% of the electors residing in the remainder of the county.

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Section 6. **Permissible recommendations.** (1) A petition proposing to alter an existing form of county government may:

(a) recommend amendments to the existing plan of government;

(b) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(c) draft a charter;

(d) recommend municipal-county consolidation or amendments to an existing consolidation; or

(e) in cooperation with a similar petition calling for an election on county merger circulated in an adjoining county, recommend county merger.

(2) A petition proposing to alter an existing form of municipal government may:

(a) recommend amendments to the existing plan of government;

(b) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 7;

(c) draft a charter; or

(d) recommend disincorporation.

Section 7. **Requirements for petition.** A petition proposing an alteration of an existing form of local government must contain:

(1) a certificate containing the "plan of government" of the existing form of local government;

(2) a certificate containing the "plan of government" of the proposed new form of local government or amendments to the existing plan;

(3) a certificate containing the "plan of apportionment" of commissioner districts if districts are contained in the "plan of government"; and

(4) a comparison of the existing plan and proposed plan of local government, including, if desired, a statement of the strengths and weaknesses of the existing and proposed plans of local government, information that supports the adoption of the proposed plan, and information that supports retention of the present plan.

Section 8. **Special requirements if consolidation recommended.** (1) Whenever county-municipal consolidation is recommended, a petition, in addition to the material required in [section 8], must contain a consolidation plan which:

(a) provides for adjustment of existing bonded indebtedness and other obligations in a manner which assures a fair and equitable burden of taxation for debt service;

(b) provides for establishment of subordinate service districts;

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(c) provides for the transfer or other disposition of property and other rights, claims, assets, and franchises of the local governments consolidated under its proposal;

(d) provides the official name of the consolidated local government; and

(e) (i) provides for the transfer, reorganization, abolition, adjustment of boundaries, or absorption of existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and nonconsolidated municipalities; or

(ii) grants the legislative body of the consolidated government the authority to transfer, reorganize, abolish, adjust boundaries, or absorb existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and nonconsolidated municipalities, with or without referendum requirements.

(2) The consolidation plan may include other provisions that are consistent with state law.

(3) Whenever amendments to an existing consolidation plan are recommended, a petition must contain a certificate containing amendments to the consolidation plan.

Section 9. **Special requirements if county merger recommended.** (1) Whenever county merger is recommended, a petition, in addition to the material required by [section 8], must contain a consolidation plan which:

(a) provides for adjustment of existing bonded indebtedness and other obligations in a manner which assures a fair and equitable burden of taxation for debt service;

(b) provides for establishment of subordinate service districts;

(c) provides for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments consolidated under the alternative plan;

(d) provides the official name of the consolidated local government; and

(e) (i) provides for the transfer, reorganization, abolition, adjustment of boundaries, or absorption of existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and incorporated municipalities; or

(ii) grants the legislative body of the consolidated government the authority to transfer, reorganize, abolish, adjust boundaries, or absorb existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and incorporated municipalities, with or without referendum requirements.

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(2) The consolidation plan may include other provisions that are consistent with state law.

Section 10. **Special requirements if municipal disincorporation recommended.** Whenever municipal disincorporation is recommended, a petition, in addition to the material required by [section 8], must contain:

(1) a certificate of disincorporation instead of a plan of government; and

(2) a recommended plan of disincorporation.

Section 11. **Filing of petitions.** (1) Two copies of a petition shall be filed with the department of community affairs.

(2) One copy of a petition shall be filed with the local government records administrator.

(3) The filings required by this section shall be done within 45 days of submission of the petition.

Section 12. **Availability of petitions.** (1) Sufficient copies of a petition proposing alterations to an existing form of local government must be made available to the public for inspection at convenient locations and at reasonable hours to provide all interested persons an opportunity to review the recommendations and documents. The copies must be available no later than 30 days prior to an election on the recommendations if such an election is to be held. The local government may distribute copies of a petition to the electors or residents of the local government.

(2) The cost of preparing the copies needed to meet the requirements of this section shall be borne by the affected local government.

Section 13. **Publication of summary and comparison.** (1) A summary of the recommendations contained in a petition proposing alteration of an existing form of local government must be published at least twice in a newspaper of general circulation in the local government. Whenever an election on the recommendations is to be held, publication must be made during the 2 weeks preceding the election.

(2) The summary must contain a description of the recommendations, a comparison of the existing and proposed forms of government, and a list of locations where the full proposal may be seen or obtained.

(3) The cost of publication required by this section shall be borne by the affected local government.

Section 14. **Election on alternative form.** (1) The governing body shall call a special election on the question of an alternative form of government to be held within 120 days of the date of filing with the records administrator under [section 12]. The special election may be held in conjuction with any other election. The records administrator shall prepare and print notices of the special election.

(2) The cost of the election shall be paid for by the local government.

(3) (a) The affirmative vote of a simple majority of those voting on the question is required for adoption.

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(b) In any election involving the question of consolidation, each question shall be submitted to the electors in the county and requires an affirmative vote of a simple majority of the votes cast in the county on the question for adoption. There is no requirement for separate majorities in local governments voting on consolidation.

(c) In any election involving the question of county merger, the questions shall be submitted to the electors in the counties affected and requires a majority of the votes cast on the questions in each affected county for adoption.

(d) If the electors disapprove the proposed new form of local government, amendments, or consolidation plan, the local government retains its existing form.

Section 15. **General ballot requirements.** (1) The question of adopting an alteration of an existing form of government proposed by petition shall be submitted to the electors in substantially the following form:

Vote for one:

☐ FOR adoption of the (self-government charter, amendment to an existing charter, or plan of government) proposed for (insert name of local government) proposed by petition of the people.

☐ FOR the existing form of government.

(2) The whole number of ballots shall be divided into two equal sets. No more than one set may be used in printing the ballot for use in any one precinct and all ballots furnished for use in one precinct shall be identical. The existing plan of government shall be printed as the first item and the proposed plan as the second item on half of the ballots and the proposed form as the first item and the existing form as the second item on the other half of the ballots. If the local government consists of only one precinct, the existing plan shall be listed first on the ballot.

Section 16. **Treatment of suboptions for alternative forms.** (1) No petition recommendation may involve more than three separate suboptions, and no suboption may contain more than two alternatives. If a suboption is submitted to the voters, only the ballot alternatives within that suboption receiving the highest number of affirmative votes are considered approved and included in the alternative form of government.

(2) A proposed plan shall be submitted to the voters as a single question, except that the suboptions within the alternative plan of local government authorized in Title 7, chapter 3, parts 1 through 7, and the suboptions authorized in a charter may be submitted to the electors as separate questions. The question of adopting a suboption shall be submitted to the electors in substantially the following form:

Vote for one:

A legal officer (who may be called the "county attorney"):

☐ Shall be elected for a term of 4 years.

☐ Shall be appointed for a term of 4 years by the chairman of the local governing body.

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Section 17. **Effect of adoption of new form of government.** The adoption of a new plan of government does not affect the validity of any bond, debt, contract, obligation, or cause of action accrued or established under the prior form of government.

Section 18. **Filing of approved plan.** (1) A copy of the existing or proposed plan of government ratified by the voters and any apportionment plan or consolidation or merger plan shall be certified by the chairman of the governing body and filed with the department of community affairs, the county records administrator, and the municipal records administrator if it is a municipal plan.

(2) The approved plan filed with the department of community affairs is the official plan and is a public record open to inspection by the public and judicially noticeable by all courts.

Section 19. **Judicial review.** Judicial review to determine the validity of the procedures whereby any charter or alternative plan of government is adopted may be initiated by petition in district court of 10 or more registered voters of the local government brought within 60 days after the election at which the charter or plan of government, revision, or amendment is approved. If no petition is filed within that period, compliance with all the procedures required by [this act] and the validity of the manner in which the charter or plan of government was approved is conclusively presumed. It is presumed that proper procedure was followed and all procedural requirements were met. The adoption of a charter or plan of government may not be considered invalid because of any procedural error or omission unless it is shown that the error or omission materially and substantially affected its adoption.

Section 20. **Three-year moratorium.** Unless the constitution requires otherwise, the electors of any unit of local government which has voted upon the question of changing the form of local government, charter, or consolidation plan or upon the question of amending the alternative form, charter, or consolidation plan may not vote on the question of changing or amending the form of local government for 3 years.

Section 21. **Effective date of alternative plan or amendment.** (1) An alternative plan of local government approved by the electors takes effect when the new officers take office, except as otherwise provided in any charter or consolidation plan. A consolidation or merger plan adopted by the electors takes effect in the same manner.

(2) Provisions creating offices and establishing qualifications for office under any apportionment plan become effective immediately for the purpose of electing officials.

(3) An amendment to an existing plan of government becomes effective at the beginning of the local government's fiscal year commencing after the election results are officially declared.

Section 22. **General transition provisions.** (1) The governing body shall prepare an advisory plan for orderly transition to a new plan of local government. The transition plan may propose necessary ordinances, plans

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for consolidation of services and functions, and a plan for reorganizing boards, departments, and agencies.

(2) The governing body of a local government may enact and enforce ordinances to bring about an orderly transition to the new plan of government, including transfer of powers, records, documents, properties, assets, funds, liabilities, or personnel. These ordinances are to be consistent with the approved plan and necessary or convenient to place it into full effect. Whenever a question arises concerning transition which is not provided for, the governing body may provide for the transition by ordinance, rule, or resolution not inconsistent with law.

Section 23. **Transition provisions affecting personnel.** (1) The members of the governing body holding office on the date the new plan of government is adopted by the electors of the local government continue in office and in the performance of their duties until the governing body authorized by the plan has been elected and qualified, whereupon the prior governing body is abolished.

(2) All other employees holding offices or positions, whether elective or appointive, under the government of the county or municipality continue in the performance of the duties of their respective offices and positions until provisions are made for the performance or discontinuance of the duties or the discontinuance of the offices or positions.

(3) A charter or a petition or resolution proposing an alteration to an existing form of local government may provide that existing elected officers shall continue in office until the end of the term for which they were elected or may provide that existing elected officers shall be retained as local government employees until the end of the term for which they were elected and their salaries may not be reduced.

Section 24. **Treatment of existing ordinances and resolutions.** (1) All ordinances and resolutions in effect at the time the new form of government becomes effective continue in effect until repealed or amended in the manner provided by law.

(2) Within 2 years after ratification of a consolidation plan, the governing body of the consolidated local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county and municipalities at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation remains in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments may not be repealed.

Section 25. **Election of new officials.** (1) Within 20 days after an election at which the new plan of government is approved by the electors, the governing body of the local government shall meet and order a special primary and general election for the purpose of electing the officials required by the new form of government. The elections for officials may be held in conjunction with any other election.

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(2) The order shall specify a date for the primary election not more than 120 days or less than 20 days after the election approving the new form and a date for the general election 60 days after the primary.

Section 26. **Organization of new governing body.** (1) The first meeting of a new governing body for a new plan of government shall be held at 10 a.m., 60 days after the election of the new officers. At that time, newly elected members shall take the oath of office prior to assuming the duties of office.

(2) If the terms of the commissioners are to be overlapping, they shall draw lots to establish their respective terms of office.

Section 27. **Codification.** It is intended that sections 1 through 27 be codified as an integral part of Title 7, chapter 3, part 1, and the provisions of Title 7, chapter 3, apply to sections 1 through 27.

Section 28. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 8, 1979.

CHAPTER NO. 676

AN ACT TO GENERALLY REVISE THE LAW RELATING TO MAJOR FACILITIES AND SITING; AMENDING SECTIONS 75-20-103, 75-20-104, 75-20-203, 75-20-211, 75-20-213 THROUGH 75-20-216, 75-20-217 THROUGH 75-20-222, 75-20-301, 75-20-302, 75-20-304, 75-20-401, 75-20-402, 75-20-406, 75-20-408, 75-20-501, AND 75-20-503, MCA; AND REPEALING SECTIONS 75-20-1101 THROUGH 75-20-1105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-103, MCA, is amended to read:

"75-20-103. Chapter supersedes other laws or rules. This chapter supersedes other laws or regulations *except as provided in 75-20-401.* If any provision of this chapter is in conflict with any other law of this state or any rule promulgated thereunder, this chapter shall govern and control and the other law or rule shall be deemed superseded for the purpose of this chapter. *Amendments to this chapter shall have the same effect.*"

Section 2. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the certificate was issued.

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(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility.

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection *(10)*, including upgrading to a design capacity covered by subsection *(10)*(b), except that the term does not include normal maintenance or repair of an existing facility.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Facility" means:

(a) each plant, unit, or other facility and associated facilities, except for oil and gas refineries, designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of $250,000;

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(ii) producing 25 million cubic feet *or more* of gas *derived from coal* per day or any addition thereto having an estimated cost in excess of $250,000;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of $250,000;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of $250,000; or

(v) utilizing, refining, or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $250,000;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(c) each pipeline and associated facilities designed for or capable of transporting gas, water, or liquid hydrocarbon products from or to a facility located within or without this state of the size indicated in subsection *(10)*(a) of this section;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy;

(e) any underground in situ gasification of coal.

(11) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 3. Section 75-20-203, MCA, is amended to read:

"75-20-203. Certificate transferable. A certificate may be transferred, subject to the approval of the *board*, to a person who agrees to comply with the terms, conditions, and modifications contained therein."

Section 4. Section 75-20-211, MCA, is amended to read:

"75-20-211. Application — filing and contents — proof of service and notice. (1) (a) *An applicant shall file with the department and department of health a joint application for a certificate under this chapter and for the permits required by state air and water quality laws in such form as the board requires under applicable rules, containing the following information*:

(i) a description of the location and of the facility to be built thereon;

(ii) a summary of any studies which have been made of the environmental impact of the facility;

(iii) a statement explaining the need for the facility;

(iv) a description of reasonable alternate locations for the proposed facility, a *general* description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility;

(v) baseline data for the primary and reasonable alternate locations;

(vi) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

(vii) such other information as the applicant considers relevant or as the board *and board of health* by rule or the department *and department of health* by order *require.*

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) above shall be filed with the department, if ordered, and shall be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination which are physically and directly attached to each other and are operationally a single operating entity.

(3) An application shall be accompanied by proof of service of a copy of the application on the *county commissioner, city or county planning boards, and federal agencies* charged with the duty of protecting the environment or of planning land use in the area in which any portion of the *proposed* facility *may* be located, both as primarily and as alternatively proposed *and on the following state government agencies:*

(a) environmental quality council;

(b) department of public service regulation;

(c) department of fish and game;

(d) department of state lands;

(e) department of community affairs;

(f) department of highways;

(g) department of revenue.

(4) The copy of the application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(5) An application shall also be accompanied by proof that public notice thereof was given to persons residing in the *area or alternative areas in which any portion of the proposed facility may be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application.*

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(6) In addition, the department may, after filing, require the applicant to serve notice of the application or copies thereof, or both, upon such other persons, and file proof thereof, as the department may deem appropriate."

Section 5. Section 75-20-213, MCA, is amended to read:

"75-20-213. Supplemental material — amendments. (1) An application for an amendment of an application or a certificate shall be in such form and contain such information as the board by rule or the department by order prescribes. Notice of such an application shall be given as set forth in (3), (4), and (5) of 75-20-211.

(2) An application may be amended by an applicant any time prior to the department's recommendation. If the proposed amendment is such that it prevents the department, the department of health, or the agencies listed in 75-20-216(5) from carrying out their duties and responsibilities under this chapter, the department may require such additional filing fees as the department determines necessary, or the department may require a new application and filing fee.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide the detail with respect to an item described in the original application, without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required shall be conclusive."

Section 6. Section 75-20-214, MCA, is amended to read:

"75-20-214. Notice of intent to file. A potential applicant for a certificate may file a notice of intent to file an application for a certificate for a facility defined in *75-20-104(10)* at least 12 months prior to the actual filing of an application. The notice of intent shall specify the type and size of facility to be applied for, its preferred location, a description of reasonable alternative locations, and such information as the board by rule or department by order requires. An applicant complying with this section is entitled to a 5% reduction of the filing fee required under 75-20-215."

Section 7. Section 75-20-215, MCA, is amended to read:

"75-20-215. Filing fee — accountability — refund — use. (1) *(a)* A filing fee shall be deposited in the earmarked revenue fund for the use of the department in administering this chapter. The applicant shall pay to the department a filing fee *as provided in this section based upon the department's estimated costs of processing the application under this chapter, but which shall not exceed the following scale based upon the estimated cost of the facility*:

(i) 2% of any estimated cost up to $1 million; plus

(ii) 1% of any estimated cost over $1 million and up to $20 million; plus

(iii) 0.5% of any estimated cost over $20 million and up to $100 million; plus

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(iv) 0.25% of any amount of estimated cost over $100 million and up to $300 million; plus

(v) .125% of any amount of estimated cost over $300 million.

(b) The department may allow in its discretion a credit against the fee payable under this section for the development of information or providing of services required hereunder or required for preparation of an environmental impact statement under the Montana or national environmental policy acts. The applicant may submit the information to the department together with an accounting of the expenses incurred in preparing the information; the department shall evaluate the applicability, validity, and usefulness of the data and determine the amount which may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter.

(2) (a) The department may contract with an applicant for the development of information, provision of services and payment of fees required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. Payments made to the department under such a contract shall be credited against the fee payable hereunder. Notwithstanding the provisions of this section, the revenue derived from the filing fee must be sufficient to enable the department, the department of health, the board, the board of health, and the agencies listed in 75-20-216(5) to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) above upon 30 days' notice to the applicant. The department and applicant may enter into a contract which exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that no one installment may exceed 20% of the total filing fee provided for in subsection (1).

(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.

(4) If an application consists of a combination of two or more facilities, the filing fee shall be based on the total estimated cost of the combined facilities.

(5) The applicant is entitled to an accounting of moneys expended and to a refund *with interest at the rate of 6% a year* of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter. *A refund shall be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.*

(6) The revenues derived from filing fees shall be used by the department in compiling the information required for rendering a decision on a

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certificate and for carrying out its *and the board's* other responsibilities under this chapter."

Section 8. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies. *(1) After receipt of an application, the department and department of health shall within 90 days notify the applicant in writing that:*

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and list the deficiencies therein; and upon correction of these deficiencies and resubmission by the applicant, the department and department of health shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-215, *and this section,* the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all *applicable* criteria listed in 75-20-301 and 75-20-503 *and the department of health shall commence a study to enable it or the board of health to issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department and department of health shall use, to the extent they consider applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.*

(3) The department of health shall within 1 year following the date of acceptance of an application, and the board of health, if applicable, within an additional 6 months, issue any decision, opinion, order, certification, or permit required by state or federal air and water quality laws and this chapter. The department of health and the board of health shall determine compliance with air and water quality standards and implementation plans for the primary and reasonable alternate locations in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters of air and water quality impacts under the federal and state air and water quality statutes that the department of health and board of health administer, and any of the criteria specified in 75-20-503(3) and (4) that are a part of the determinations made under federal and state air and water quality statutes. Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive, the board retains authority to make the determination required under 75-20-301(2)(c). The decision, opinion, order, certification, or permit of the department of health or the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit shall be served upon the department and the board and shall be utilized as part of their final site selection process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules adopted by the board of health, the department of health shall provide

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an opportunity for public review and comment. A decision by the department of health or board of health is subject to appellate review pursuant to the air and water quality statutes administered by the department of health and board of health.

(4) Within *22 months* following *acceptance* of an application for a facility as defined in (a) and (d) of *75-20-104(10)* and for a facility as defined in (b) and (c) of *75-20-104(10)* which is more than 30 miles in length and within 1 year for a facility as defined in (b) and (c) of *75-20-104(10)* which is 30 miles or less in length, the department shall make a report to the board which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and *an* environmental impact statement *or analysis prepared pursuant to the Montana Environmental Policy Act, if any.* If the application is for a combination of two or more facilities, the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) The departments of highways, community affairs, fish and game, *state lands, revenue,* and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

Section 9. Section 75-20-217, MCA, is amended to read:

"75-20-217. Voiding an application. An application may be voided by the department for:

(1) any material and knowingly false statement in the application or in accompanying statements or studies required of the applicant;

(2) failure to file an application in substantially the form and content required by this chapter and the rules adopted thereunder; or

(3) failure to deposit the filing fee as *provided in* 75-20-215."

Section 10. Section 75-20-218, MCA, is amended to read:

"75-20-218. Hearing date — location — department to act as staff — hearings to be held jointly. *(1)* Upon receipt of the department's report submitted under 75-20-216, the board shall set a date for a hearing to begin not more than 120 days after the receipt. Except for those hearings involving applications submitted for facilities as defined in (b) and (c) of *75-20-104(10)*, certification hearings shall be conducted by the board in the county seat of Lewis and Clark County or the county in which the facility or the greater portion thereof is to be located.

(2) Except as provided in 75-20-221(2), the department shall act as the staff for the board throughout the decisionmaking process and the board may request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

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(3) At the request of the applicant, the duly authorized state air and water quality agencies shall hold any required permit hearings required under laws administered by those agencies in conjunction with the board certification hearing. In such a conjunctive hearing the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other laws administered by the duly authorized state air and water quality agencies."

Section 11. Section 75-20-219, MCA, is amended to read:

"75-20-219. Amendments to a certificate. *(1) Within 30 days after notice of an amendment to a certificate is given as set forth in 75-20-213(1) including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility other than as provided in the alternates set forth in the original application. If the department determines that the proposed change would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After hearing, the board shall grant, deny, or modify the amendment with such conditions as it deems appropriate.*

(2) In those cases where the department determines that the proposed change in the facility would not result in any material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the board shall automatically grant the amendment either as applied for or upon such terms or conditions as the board considers appropriate unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given.

(3) If a hearing is required, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.

(4) If an amendment is required to a certificate which would affect, amend, alter or modify a decision, opinion, order, certification, or permit issued by the department of health or board of health, such amendment must be processed under the applicable statutes administered by the department of health or board of health."

Section 12. Section 75-20-220, MCA, is amended to read:

"75-20-220. Hearing examiner — restrictions — duties. *(1)* If the board appoints a hearing examiner to conduct any certification proceedings under this chapter, the hearing examiner may not be a member of the board, an employee of the department, *or a member or employee of the department of health or board of health. A hearing examiner, if any, shall be appointed by the board within 20 days after the department's report has been filed with the board. If a hearing is held before the board of health, the board and the board of health shall mutually*

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agree on the appointment of a hearing examiner to preside at both hearings.

(2) A prehearing conference shall be held following notice within 60 days after the department's report has been filed with the board.

(3) The prehearing conference shall be organized and supervised by the hearing examiner.

(4) The prehearing conference shall be directed toward a determination of the issues presented by the application, the department's report, and an identification of the witnesses and documentary exhibits to be presented by the active parties who intend to participate in the hearing.

(5) The hearing examiner shall require the active parties to submit, in writing, and serve upon the other active parties, all direct testimony which they propose and any studies, investigations, reports, or other exhibits that any active party wishes the board to consider. These written exhibits and any documents that the board itself wishes to use or rely on shall be submitted and served in like manner, at least 20 days prior to the date set for the hearing. For good cause shown, the hearing examiner may allow the introduction of new evidence at any time.

(6) The hearing examiner shall allow discovery which shall be completed before the commencement of the hearing, upon good cause shown and under such other conditions as the hearing examiner shall prescribe.

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

(8) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in which the hearing shall proceed, setting forth those section 75-20-301 criteria as to which no issue of fact or law has been raised which are to be conclusively presumed and are not subject to further proof except for good cause shown, and any other special rules to expedite the hearing which the hearing examiner shall adopt with the approval of the board.

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within 60 days of that date, prepare and submit to the board and in the case of a conjunctive hearing, within 90 days to the board and the board of health proposed findings of fact, conclusions of law, and a recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this chapter shall insure that the time of the proceeding, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed 9 calendar months unless extended by the board for good cause.

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(11) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections (2) through (8) of this section to expedite the hearing for a facility when the department has recommended approval of a facility and no objections have been filed."

Section 13. Section 75-20-221, MCA, is amended to read:

"75-20-221. Parties to proceedings — waiver. (1) The parties to a certification proceeding *or to a proceeding involving the issuance of a decision, opinion, order, certification, or permit by the board of health under this chapter may* include *as active parties*:

(a) the applicant;

(b) each *political entity* and government agency, *including the department of health,* entitled to receive service of a copy of the application under 75-20-211(3);

(c) any person entitled to receive service of a copy of the application under 75-20-211(5);

(d) any nonprofit organization formed in whole or in part to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent commercial and industrial groups; or to promote the orderly development of the areas in which the facility is to be located;

(e) any other interested person *who establishes an interest in the proceeding.*

(2) The department shall be an active party in any certification proceeding in which the department recommends denial of all or a portion of a facility.

(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in (b), (c), (d), or (e) of subsection (1).

(4) Any party waives *the* right to be a party if *the party* does not participate *in* the hearing before the board *or the board of health.*"

Section 14. Section 75-20-222, MCA, is amended to read:

"75-20-222. Record of hearing — procedure — rules of evidence — burden of proof. (1) Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, which any party wishes the board to consider or which the board itself expects to utilize or rely upon shall be made a part of the record.

(2) A record shall be made of the hearing and of all testimony taken.

(3) In a certification proceeding held under this chapter, the applicant has the burden of showing by clear and convincing evidence that the application should be granted and that the criteria of 75-20-301 are met.

(4) All proceedings under this chapter are governed by the procedures set forth in this chapter, the procedural rules adopted by the board, and

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the Montana Rules of Evidence unless one or more rules of evidence are waived by the hearing examiner upon a showing of good cause by one or more of the parties to the hearing. No other rules of procedure or evidence shall apply except that the contested case procedures of the Montana Administrative Procedure Act shall apply if not in conflict with the procedures set forth in this chapter or the procedural rules adopted by the board."

Section 15. Section 75-20-301, MCA, is amended to read:

"75-20-301. Decision of board — findings necessary for certification. (1) Within *60* days after *submission of the recommended decision by the hearing examiner,* the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the facility as the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it shall find and determine:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) each of the criteria listed in 75-20-503;

(e) in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct shall be located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

(iii) that the facility will serve the interests of utility system economy and reliability;

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience, and necessity; and

(h) *that the department of health or board of health have issued a decision, opinion, order, certification, or permit as required by 75-20-216(3).*

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(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) of this section, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b) of this section;

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities."

Section 16. Section 75-20-302, MCA, is amended to read:

"75-20-302. Conditions imposed. If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the persons residing *in the area* affected by the modification have been given reasonable notice of the modification."

Section 17. Section 75-20-304, MCA, is amended to read:

"75-20-304. Waiver of provisions of certification proceedings. *(1)* The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, *75-20-501,* and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, *75-20-501,* and this part.

(2) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a utility or person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare."

Section 18. Section 75-20-401, MCA, is amended to read:

"75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate — exceptions. (1) Notwithstanding any other law, no state or regional agency or municipality or other local government may require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this

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chapter, except that the state air and water quality agency or agencies shall retain authority which they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards.

(2) This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of a facility."

Section 19. Section 75-20-402, MCA, is amended to read:

"75-20-402. Monitoring. The board, the department, *the department of health, and the board of health* shall monitor the operations of all certificated facilities for assuring continuing compliance with this chapter and certificates issued hereunder and for discovering and preventing noncompliance with this chapter and the certificates. *The applicant shall pay all expenses related to the monitoring plan established in subsection (3)(a)(v) of 75-20-303 to the extent federal funds available for the facility, as determined by the department of health, have not been provided for such purposes.*"

Section 20. Section 75-20-406, MCA, is amended to read:

"75-20-406. Judicial review of board decision. (1) Any *active* party as defined in 75-20-221 aggrieved by the final decision of the board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction.

(2) The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act."

Section 21. Section 75-20-408, MCA, is amended to read:

"75-20-408. Penalties for violation of chapter — civil action by attorney general. (1) (a) Whoever commences to construct or operate a facility without first obtaining a certificate required under 75-20-201 or a waiver thereof under *75-20-304(2)*; having first obtained a certificate, constructs, operates, or maintains a facility other than in compliance with the certificate; violates any other provision of this chapter or any rule or order adopted thereunder; knowingly submits false information in any report, *10-year plan* or application required by this chapter or rule or order adopted thereunder; or causes any of the aforementioned acts to occur shall be liable to a civil penalty of not more than $10,000 for each violation.

(b) Each day of a continuing violation shall constitute a separate offense.

(c) The penalty shall be recoverable in a civil suit brought by the attorney general on behalf of the state in the first district court of Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than $10,000 for each violation or imprisoned for not more

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than 1 year, or both. Each day of a continuing violation shall constitute a separate offense.

(3) In addition to any penalty provided in subsections (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it may refer the matter to the attorney general who may bring a civil action on behalf of the state in the first district court of Montana for injunctive or other appropriate relief against the violation and to enforce this chapter or a certificate issued hereunder. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

(4) The department shall also enforce this chapter and bring legal actions to accomplish the enforcement through its own legal counsel.

(5) All fines and penalties collected shall be deposited in the earmarked revenue fund for the use of the department in administering this chapter."

Section 22. Section 75-20-501, MCA, is amended to read:

"75-20-501. Annual long-range plan submitted — contents — available to public. (1) Each utility and each person contemplating the construction of a facility within this state in the ensuing 10 years shall furnish annually to the department for its review a long-range plan for the construction and operation of facilities.

(2) The plan shall be submitted on April 1 of each year and shall include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the utility or person whose construction is projected to commence during the ensuing 10 years, as well as those facilities to be removed from service during the planning period;

(b) in the case of utility facilities, a description of efforts by the utility or person to coordinate the plan with other utilities or persons so as to provide a coordinated regional plan for meeting the energy needs of the region;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility or person and explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the board by rule or the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this chapter.

(3) The plan shall be made available to the public by the department. The utility or person shall give public notice throughout the state of its

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plan by filing the plan with the environmental quality council, the department of health and environmental sciences, the department of highways, the department of public service regulation, the department of state lands, and the department of community affairs. Citizen environmental protection and resource planning groups and other interested persons may obtain a plan by written request and payment therefor to the department.

(4) A rural electric cooperative may furnish the department with a copy of the long-range plan and 2-year work plan required to be completed under federal rural electrification requirements in lieu of the long-range plan required in subsection (1).

(5) No person may file an application for a facility unless the facility had been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department."

Section 23. Section 75-20-503, MCA, is amended to read:

"**75-20-503. Environmental factors evaluated.** In evaluating long-range plans, conducting 5-year site reviews, and evaluating applications for certificates, the board and department shall give consideration to the following list of environmental factors, *where applicable,* and may by rule add to the categories of this section:

(1) energy needs:

(a) growth in demand and projections of need;

(b) availability and desirability of alternative sources of energy;

(c) availability and desirability of alternative sources of energy in lieu of the proposed facility;

(d) promotional activities of the utility which may have given rise to the need for this facility;

(e) socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality;

(f) conservation activities which could reduce the need for more energy;

(g) research activities of the utility of new technology available to it which might minimize environmental impact;

(2) land use impacts:

(a) area of land required and ultimate use;

(b) consistency with areawide state and regional land use plans;

(c) consistency with existing and projected nearby land use;

(d) alternative uses of the site;

(e) impact on population already in the area, population attracted by construction or operation of the facility itself;

(f) impact of availability of energy from this facility on growth patterns and population dispersal;

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(g) geologic suitability of the site or route;

(h) seismologic characteristics;

(i) construction practices;

(j) extent of erosion, scouring, wasting of land, both at site and as a result of fossil fuel demands of the facility;

(k) corridor design and construction precautions for transmission lines or aqueducts;

(l) scenic impacts;

(m) effects on natural systems, wildlife, plant life;

(n) impacts on important historic architectural, archeological, and cultural areas and features;

(o) extent of recreation opportunities and related compatible uses;

(p) public recreation plan for the project;

(q) public facilities and accommodation;

(r) opportunities for joint use with energy-intensive industries or other activities to utilize the waste heat from facilities;

(3) water resources impacts:

(a) hydrologic studies of adequacy of water supply and impact of facility on streamflow, lakes, and reservoirs;

(b) hydrologic studies of impact of facilities on groundwater;

(c) cooling system evaluation, including consideration of alternatives;

(d) inventory of effluents, including physical, chemical, biological, and radiological characteristics;

(e) hydrologic studies of effects of effluents on receiving waters, including mixing characteristics of receiving waters, changed evaporation due to temperature differentials, and effect of discharge on bottom sediments;

(f) relationship to water quality standards;

(g) effects of changes in quantity and quality on water use by others, including both withdrawal and in situ uses;

(h) relationship to projected uses;

(i) relationship to water rights;

(j) effects on plant and animal life, including algae, macroinvertebrates, and fish population;

(k) effects on unique or otherwise significant ecosystems, e.g., wetlands;

(l) monitoring programs;

(4) air quality impacts:

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(a) meteorology—wind direction and velocity, ambient temperature ranges, precipitation values, inversion occurrence, other effects on dispersion;

(b) topography—factors affecting dispersion;

(c) standards in effect and projected for emissions;

(d) design capability to meet standards;

(e) emissions and controls:

(i) stack design;

(ii) particulates;

(iii) sulfur oxides;

(iv) oxides of nitrogen; and

(v) heavy metals, trace elements, radioactive materials, and other toxic substances;

(f) relationship to present and projected air quality of the area;

(g) monitoring program;

(5) solid wastes *impacts*:

(a) solid waste inventory;

(b) disposal program;

(c) relationship of disposal practices to environmental quality criteria;

(d) capacity of disposal sites to accept projected waste loadings;

(6) radiation impacts:

(a) land use controls over development and population;

(b) wastes and associated disposal program for solid, liquid, radioactive, and gaseous wastes;

(c) analyses and studies of the adequacy of engineering safeguards and operating procedures;

(d) monitoring—adequacy of devices and sampling techniques;

(7) noise impacts:

(a) construction period levels;

(b) operational levels;

(c) relationship of present and projected noise levels to existing and potential stricter noise standards;

(d) monitoring—adequacy of devices and methods."

Section 24. **Order not stayed by appeal — stay or suspension by court — limitations.** Notwithstanding any contrary provision in the

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law, the pendency of an appeal from a board order does not automatically stay or suspend the operation of the order. During the pendency of the appeal, the court may upon motion by one of the parties stay or suspend, in whole or in part, the operation of the board's orders on terms the court considers just. The court's action must be in accordance with the practice of courts exercising equity jurisdiction, subject to the following limitations:

(1) No stay may be granted without notice to the parties and an opportunity to be heard by the court.

(2) No board order may be stayed or suspended without finding that irreparable damage would otherwise result to the party seeking the stay or suspension, and any other stay or suspension of a board order must specify the nature of the damage.

Section 25. **Surety bond — other security.** If an order of the board is stayed or suspended, the court may require a bond with good and sufficient surety conditioned that the party petitioning for review answer for all damages caused by the delay in enforcing the order of the board; except that the cost of the bond is not chargeable to the applicant as part of the fee. If the party petitioning for review prevails upon final resolution of an appeal, he does not forfeit bond nor is he responsible for damages caused by delay.

Section 26. **Waiver of baseline data requirement if existing contract.** The department may in its discretion waive the requirement that baseline data for the primary and reasonable alternate locations be submitted with an application under 75-20-211(1)(a)(v) in those cases in which the applicant has, prior to July 1, 1979, entered into a contract with the department to compile baseline information.

Section 27. **Codification.** It is the intent of the legislature that sections 24 and 25 become an integral part of Title 75, chapter 20, MCA, and that the provisions of that chapter apply to sections 24 and 25.

Section 28. **Repealer.** Sections 75-20-1101 through 75-20-1105, MCA, are repealed.

Approved May 8, 1979.

CHAPTER NO. 677

AN ACT TO PROVIDE A BATTERED SPOUSES AND DOMESTIC VIOLENCE GRANT PROGRAM ADMINISTERED BY THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES; PROVIDING A SOURCE OF FUNDING; PROVIDING AN APPROPRIATION; AND AMENDING SECTION 40-1-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Battered spouses and domestic violence grant program.** There is a grant program established within the department of social and rehabilitation services for the allocation of grant money to local battered spouses and domestic violence programs.

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Section 2. **Funding.** (1) Revenue from the marriage license fee is the primary source of funding for the battered spouses and domestic violence program. Sixteen dollars of the marriage license fee is to be retained by the county in which the fee is collected to defray the county costs of administration and $9 of the marriage license fee is to be deposited in the general fund.

(2) Twenty percent of the operational costs of a battered spouses and domestic violence program must come from the local community served by the program. The local contribution may include in-kind contributions.

Section 3. **Authorized grantees — criteria for grants.** (1) The department of social and rehabilitation services must award battered spouses and domestic violence grants only to local domestic abuse programs that are locally controlled. Grants may be awarded to governmental or nongovernmental agencies or persons.

(2) Battered spouses and domestic violence grants are to be awarded on the following basis:

(a) demonstrated need;

(b) project merit;

(c) administrative design; and

(d) efficiency of administration.

Section 4. **Authorized services of battered spouses and domestic violence programs.** Local battered spouses and domestic violence programs may provide services that include but are not limited to the following:

(1) counseling for victims or their spouses;

(2) shelters or safe homes for victims;

(3) advocacy programs that assist victims in obtaining services and information; and

(4) educational programs relating to battered spouses and domestic violence designed for both the community at large and specialized groups such as hospital personnel and law enforcement officials.

Section 5. **Administrative duties of department.** The department of social and rehabilitation services:

(1) shall adopt rules necessary to carry out the purposes of [this act];

(2) may spend no more than 5% of the appropriated funds for administrative costs of the program;

(3) shall accept federal funds that may be available for use in carrying out the provisions of [this act];

(4) may use state funds as a match for federal funds if required; and

(5) may conduct research and compile statistics relating to battered spouses and domestic violence.

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Section 6. Section 40-1-202, MCA, is amended to read:

"40-1-202. License issuance. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the clerk of the district court and paid the marriage license fee of *$25*, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective or will have attained the age of 16 years and has obtained judicial approval as provided in 40-1-213;

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state."

Section 7. **Appropriation.** There is appropriated from the general fund to the department of social and rehabilitation services for the battered spouses and domestic violence grant program the following amounts:

For the fiscal year ending June 30, 1980	$ 72,000
For the fiscal year ending June 30, 1981	$ 72,000

Approved May 8, 1979.

CHAPTER NO. 678

AN ACT TO ESTABLISH STATE EMPLOYEE COMPENSATION AND PROVIDE PAY SCHEDULES FOR FISCAL YEARS 1980 AND 1981; APPROPRIATING FUNDS THEREFOR; AMENDING SECTIONS 2-18-101, 2-18-106, 2-18-301, 2-18-303, 2-18-304, 2-18-305, 2-18-311, 2-18-312, 2-18-701, AND 2-18-703, MCA; AND REPEALING SECTION 2-18-307, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-101, MCA, is amended to read:

"2-18-101. Definitions. As used in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Compensation" means the annual *or hourly* wage or salary *and includes* the state contribution *to group benefits* under provisions of 2-18-703.

(3) "Department" means the department of administration.

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(4) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 from the statewide classification system.

(5) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in 2-18-103(10).

(6) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(7) "Program" means a combination of planned efforts to provide a service."

Section 2. Section 2-18-106, MCA, is amended to read:

"2-18-106. No limitation on legislative authority. Parts 1, 2, *and 3* do not limit the authority of the legislature relative to appropriations for salary and wages. The budget director shall adjust his determinations in accordance with legislative appropriations."

Section 3. Section 2-18-301, MCA, is amended to read:

"2-18-301. Purpose and intent of part — rules. *(1) The purpose of this part is to provide the compensation necessary to attract and retain competent and qualified employees in order to perform the services the state is required to provide to its citizens.*

(2) It is the intent of the legislature that, for the biennium ending June 30, 1981, the:

(a) pay schedules provided for in 2-18-311, 2-18-312, [section 9], [section 10], and [section 11] supersede any other plan or systems established through collective bargaining after the adjournment of the 46th legislature;

(b) pay levels provided for in 2-18-311, 2-18-312, [section 9], [section 10], and [section 11] may not be increased through collective bargaining after adjournment of the 46th legislature; and

(c) total funds required to implement the pay schedules provided for in 2-18-311, 2-18-312, [section 9], [section 10], and [section 11] for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the 46th legislature.

(3) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(4) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part."

Section 4. Section 2-18-303, MCA, is amended to read:

"2-18-303. Procedures for utilizing pay schedules. *(1) The pay schedules provided in 2-18-311 and 2-18-312 shall be implemented as follows:*

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(a) The pay schedule provided in 2-18-311 indicates the annual compensation for the fiscal year ending June 30, 1980, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(b) The pay schedule provided in 2-18-312 indicates the annual compensation for the fiscal year ending June 30, 1981, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(c) Each new employee shall advance from step 1 to step 2 of a grade after successfully completing 6 months of probationary service. The anniversary date of an employee shall be established at the end of the probationary period in accordance with rules promulgated by the department.

(d) (i) The compensation of each employee on the first day of the first pay period in fiscal year 1980 shall be that amount which corresponds to the grade and step occupied on the last day of the preceding fiscal year of 1979.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1981 shall be that amount which corresponds to the grade and step occupied on the last day of the fiscal year 1980.

(iii) In compliance with rules adopted to implement [this act], each employee is eligible on his anniversary date to advance one step in the pay matrix each fiscal year. However, if the employee's anniversary date falls between (inclusive) July 1 and the first day of the first pay period of fiscal year 1980 or 1981, as the case may be, he will advance one step on the first day of that pay period.

(2) The pay schedules provided in 2-18-311 and 2-18-312 and the provisions of subsection (1) of this section do not apply to those institutional teachers, liquor store occupations, or blue-collar occupations compensated under the pay schedules provided in [sections 9, 10, or 11 of this act].

(3) The pay schedules provided in [sections 9, 10, or 11 of this act] shall be implemented as follows:

(a) (i) The pay schedules provided in [section 9 of this act] indicate the annual compensation for the contracted school term for teachers employed by institutions under the authority of the department of institutions for fiscal years 1980 and 1981.

(ii) The compensation of each teacher on the first day of the first pay period in July 1980 shall be that amount which corresponds to his level of academic achievement and the next highest grade from that occupied on June 30, 1979.

(iii) The compensation of each teacher on the first day of the first pay period in July 1981 shall be that amount which corresponds to his level of achievement and the next highest grade from that occupied on June 30, 1980.

(b) (i) The pay schedules provided in [section 10 of this act] indicate the maximum hourly compensation for fiscal years ending June 30, 1980,

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and June 30, 1981, for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1980 or 1981, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(c) (i) The pay schedules provided in [section 11 of this act] indicate the maximum hourly compensation for fiscal years ending June 30, 1980, and June 30, 1981, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1980 or 1981, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) No member of a bargaining unit may receive the amounts indicated in the respective pay schedules provided in 2-18-311, 2-18-312, or [sections 9, 10, or 11 of this act] until the bargaining unit of which he is a member ratifies a completely integrated collective bargaining agreement covering the biennium ending June 30, 1981.

(ii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, 1979, retroactivity to that date may be negotiated.

(iii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, 1979, members of the bargaining unit involved will continue to receive the compensation they were receiving as of June 30, 1979.

(b) Methods of administration not inconsistent with the purpose of [this act] and necessary to properly implement the pay schedules provided in [sections 9, 10, or 11 of this act] may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee shall not be reduced by the implementation of the pay schedules provided for in 2-18-311, 2-18-312, or [sections 9, 10, or 11 of this act].

(6) The department may authorize a separate pay schedule for medical doctors if the rates provided in 2-18-311 and 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

(7) The department may develop a program which will enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. Insofar as the program may apply to employees within a collective bargaining unit, it shall be a negotiable subject under 39-31-305."

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Section 5. Section 2-18-304, MCA, is amended to read:

"2-18-304. Longevity allowance. In addition to the compensation *provided for* in 2-18-311, 2-18-312, *[section 9 of this act], [section 10 of this act], or [section 11 of this act],* each employee who has completed 5 years of uninterrupted state service shall receive the larger of $10 a month or 10% of the difference between the base compensation for his grade and step *(where applicable)* and the base compensation for the *next highest grade and* corresponding step *(where applicable) multiplied* by the number of completed, contiguous 5-year periods of uninterrupted *state* service. Service to the state *is* not interrupted by authorized leaves of absence."

Section 6. Section 2-18-305, MCA, is amended to read:

"2-18-305. Allocation between wages and group benefits. (1) The dollar amounts shown in the respective *pay schedules provided* in 2-18-311, 2-18-312, *[section 9 of this act], [section 10 of this act], or [section 11 of this act], as the case may be,* represent the maximum amount allocated by the state for wages and *group* benefits, exclusive of longevity as defined in 2-18-304. Except as provided in subsection (2) of this section, that amount specifically allocated for *group* benefits shall be determined by 2-18-703. An employee who elects not to be covered by a state *employee group benefit* plan will receive as wages the amount shown in the appropriate *pay schedule* less the state contribution for *group benefits* as determined by 2-18-703.

(2) Employees may, through collective bargaining, determine the allocation of the amounts shown in the *pay schedules provided in* 2-18-311, 2-18-312, *[section 9 of this act], [section 10 of this act], or [section 11 of this act], as the case may be,* between wages and *group* benefits, except that in no case may the *group benefits* allocation be less than the amounts provided in 2-18-703."

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Section 7. Section 2-18-311, MCA, is amended to read:

"2-18-311. Pay schedule for fiscal year 1980.

Grade	STEP 01	STEP 02	STEP 03	STEP 04	STEP 05	STEP 06	STEP 07	STEP 08	STEP 09	STEP 10	STEP 11	STEP 12	STEP 13
1	5,892	6,186	6,310	6,436	6,565	6,696	6,830	6,967	7,106	7,248	7,393	7,541	7,692
2	6,313	6,629	6,762	6,897	7,035	7,176	7,320	7,466	7,615	7,767	7,922	8,080	8,242
3	6,774	7,112	7,254	7,399	7,547	7,698	7,852	8,009	8,169	8,332	8,499	8,669	8,842
4	7,274	7,638	7,791	7,947	8,106	8,268	8,433	8,602	8,774	8,949	9,128	9,311	9,497
5	7,828	8,219	8,383	8,551	8,722	8,896	9,074	9,255	9,440	9,629	9,822	10,018	10,218
6	8,433	8,855	9,032	9,213	9,397	9,585	9,777	9,973	10,172	10,375	10,583	10,795	11,011
7	9,104	9,559	9,750	9,945	10,144	10,347	10,554	10,765	10,980	11,200	11,424	11,652	11,885
8	9,829	10,320	10,526	10,737	10,952	11,171	11,394	11,622	11,854	12,091	12,333	12,580	12,832
9	10,632	11,164	11,387	11,615	11,847	12,084	12,326	12,573	12,824	13,080	13,342	13,609	13,881
10	11,513	12,089	12,331	12,578	12,830	13,087	13,349	13,616	13,888	14,166	14,449	14,738	15,033
11	12,474	13,098	13,360	13,627	13,900	14,178	14,462	14,751	15,046	15,347	15,654	15,967	16,286
12	13,541	14,218	14,502	14,792	15,088	15,390	15,698	16,012	16,332	16,659	16,992	17,332	17,679
13	14,699	15,434	15,743	16,058	16,379	16,707	17,041	17,382	17,730	18,085	18,447	18,816	19,192
14	16,043	16,845	17,181	17,525	17,876	18,234	18,599	18,970	19,350	19,737	20,132	20,535	20,946
15	17,445	18,317	18,684	19,058	19,439	19,828	20,225	20,629	21,042	21,463	21,892	22,330	22,776
16	18,993	19,942	20,341	20,748	21,163	21,586	22,019	22,459	22,908	23,366	23,834	24,310	24,796
17	20,674	21,708	22,142	22,585	23,037	23,497	23,967	24,447	24,936	25,435	25,943	26,462	26,991
18	22,525	23,652	24,125	24,607	25,100	25,602	26,115	26,638	27,170	27,714	28,269	28,834	29,411
19	24,564	25,792	26,308	26,835	27,371	27,919	28,478	29,048	29,628	30,221	30,825	31,441	31,441
20	26,787	28,127	28,690	29,264	29,849	30,445	31,055	31,676	32,309	32,955	33,614	33,614	33,614
21	29,235	30,697	31,311	31,937	32,576	33,227	33,892	34,569	35,260	35,966	35,966	35,966	35,966
22	31,920	33,516	34,186	34,869	35,567	36,278	37,004	37,744	38,499	38,499	38,499	38,499	38,499
23	34,857	36,600	37,332	38,078	38,840	39,617	40,409	41,217	41,217	41,217	41,217	41,217	41,217
24	38,086	39,990	40,790	41,606	42,438	43,287	44,153	44,153	44,153	44,153	44,153	44,153	44,153
25	41,631	43,713	44,588	45,479	46,389	47,316	47,316	47,316	47,316	47,316	47,316	47,316	47,316

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Section 8. Section 2-18-312, MCA, is amended to read:

"2-18-312. Pay schedule for fiscal year 1981.

Grade	STEP 01	STEP 02	STEP 03	STEP 04	STEP 05	STEP 06	STEP 07	STEP 08	STEP 09	STEP 10	STEP 11	STEP 12	STEP 13
1	6,412	6,732	6,867	7,004	7,144	7,287	7,433	7,582	7,734	7,889	8,047	8,208	8,372
2	6,845	7,188	7,332	7,479	7,629	7,782	7,938	8,097	8,259	8,424	8,592	8,764	8,939
3	7,320	7,686	7,840	7,997	8,157	8,320	8,486	8,656	8,829	9,006	9,186	9,370	9,557
4	7,835	8,227	8,392	8,560	8,731	8,906	9,084	9,266	9,451	9,640	9,833	10,030	10,231
5	8,405	8,825	9,002	9,182	9,366	9,553	9,744	9,939	10,138	10,341	10,548	10,759	10,974
6	9,029	9,480	9,670	9,863	10,060	10,261	10,466	10,675	10,889	11,107	11,329	11,556	11,787
7	9,720	10,206	10,410	10,618	10,830	11,047	11,268	11,493	11,723	11,957	12,196	12,440	12,689
8	10,466	10,989	11,209	11,433	11,662	11,895	12,133	12,376	12,624	12,876	13,134	13,397	13,665
9	11,294	11,859	12,096	12,338	12,585	12,837	13,094	13,356	13,623	13,895	14,173	14,456	14,745
10	12,201	12,811	13,067	13,328	13,595	13,867	14,144	14,427	14,716	15,010	15,310	15,616	15,928
11	13,191	13,851	14,128	14,411	14,699	14,993	15,293	15,599	15,911	16,229	16,554	16,885	17,223
12	14,290	15,004	15,304	15,610	15,922	16,240	16,565	16,896	17,234	17,579	17,931	18,290	18,656
13	15,483	16,257	16,582	16,914	17,252	17,597	17,949	18,308	18,674	19,047	19,428	19,817	20,213
14	16,952	17,800	18,156	18,519	18,890	19,268	19,654	20,046	20,447	20,857	21,274	21,699	22,133
15	18,404	19,324	19,711	20,105	20,507	20,917	21,335	21,761	22,197	22,641	23,094	23,555	24,026
16	20,006	21,007	21,427	21,855	22,293	22,738	23,194	23,657	24,131	24,614	25,106	25,608	26,120
17	21,746	22,833	23,290	23,755	24,230	24,715	25,209	25,713	26,227	26,751	27,286	27,832	28,388
18	23,663	24,846	25,343	25,850	26,367	26,894	27,433	27,981	28,541	29,111	29,693	30,287	30,893
19	25,773	27,062	27,603	28,156	28,719	29,294	29,880	30,478	31,088	31,710	32,344	32,991	32,991
20	28,074	29,478	30,068	30,669	31,282	31,907	32,545	33,196	33,859	34,536	35,227	35,227	35,227
21	30,608	32,139	32,782	33,437	34,106	34,787	35,483	36,193	36,918	37,656	37,656	37,656	37,656
22	33,387	35,057	35,758	36,473	37,202	37,947	38,705	39,479	40,269	40,269	40,269	40,269	40,269
23	36,428	38,250	39,014	39,795	40,591	41,403	42,231	43,075	43,075	43,075	43,075	43,075	43,075
24	39,770	41,759	42,595	43,446	44,315	45,202	46,105	46,105	46,105	46,105	46,105	46,105	46,105
25	43,440	45,613	46,525	47,455	48,404	49,373	49,373	49,373	49,373	49,373	49,373	49,373	49,373

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Section 9. **Pay schedules for institutional teachers.** (1) Teacher pay schedule for fiscal year 1980:

Experience (Grade)	BA (Step 1)	BA+1qtr. (Step 2)	BA+2qtr. (Step 3)	5th Year (Step 4)	MA (Step 5)	MA+1qtr. (Step 6)
0	10,250	10,577	10,915	11,079	11,243	11,582
1	10,635	11,001	11,368	11,456	11,735	12,102
2	11,021	11,427	11,822	12,025	12,227	12,624
3	11,407	11,851	12,275	12,498	12,719	13,145
4	11,793	12,275	12,729	12,971	13,211	13,665
5	12,179	12,700	13,183	13,444	13,703	14,187
6	12,564	13,124	13,637	13,915	14,195	14,708
7	12,950	13,550	14,089	14,388	14,687	15,229
8	13,336	13,974	14,543	14,861	15,181	15,750
9	13,724	14,399	14,997	15,335	15,673	16,271

(2) Teacher pay schedule for fiscal year 1981:

Experience (Grade)	BA (Step 1)	BA+1qtr. (Step 2)	BA+2qtr. (Step 3)	5th Year (Step 4)	MA (Step 5)	MA+1qtr. (Step 6)
0	11,070	11,420	11,783	11,959	12,135	12,498
1	11,483	11,875	12,269	12,363	12,662	13,056
2	11,897	12,332	12,756	12,973	13,190	13,616
3	12,311	12,787	13,241	13,481	13,718	14,175
4	12,724	13,241	13,728	13,988	14,245	14,732
5	13,138	13,697	14,215	14,495	14,773	15,292
6	13,551	14,152	14,702	15,000	15,301	15,851
7	13,965	14,609	15,187	15,508	15,828	16,410
8	14,379	15,064	15,674	16,015	16,358	16,968
9	14,795	15,519	16,161	16,523	16,886	17,527
10	15,208	15,974	16,705	17,031	17,413	18,086

Section 10. **Pay schedules for liquor store occupations.** (1) Liquor store pay schedule for fiscal year 1980:

Grade	$/Hour
L1	4.533
L2	4.893
L3	5.263
L4	5.468
L5	5.683
L6	6.133
L7	6.623
L8	7.173

(2) Liquor store pay schedule for fiscal year 1981:

Grade	$/Hour
L1	4.893
L2	5.253
L3	5.623
L4	5.828

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L5	6.043
L6	6.493
L7	6.983
L8	7.533

Section 11. **Pay schedules for blue-collar occupations.** (1) Blue-collar pay schedule for fiscal year 1980:

Grade	$/Hour
B1	5.036
B2	5.364
B3	5.692
B4	6.020
B5	6.348
B6	6.676
B7	7.004
B8	7.332
B9	7.660
B10	7.988
B11	8.316
B12	8.644
B00**	8.972

(2) Blue-collar pay schedule for fiscal year 1981:

Grade	$/Hour
B1	5.363
B2	5.691
B3	6.019
B4	6.347
B5	6.675
B6	7.003
B7	7.331
B8	7.659
B9	7.987
B10	8.315
B11	8.643
B12	8.971
B00**	9.299

Up to $.031 of the hourly increase granted above for Fiscal Year 1981 shall not be granted to an employee to the extent that the employee would receive a rate, commonly called a red-circled rate, exceeding the above listed rates due to the fact that such employee, at the time the blue collar plan was originally implemented, was paid at a rate greater than the standard blue collar rate for his classification.

(3) In recognition that the blue-collar employee classes in the university system have been paid at rates higher than employees in the blue-collar classes in the executive branch, it is the intent of the legislature during the next biennium that the board of regents seek wage settlements which reduce the current wage disparities or provide wages equal to those of employees in the executive branch.

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Section 12. Section 2-18-701, MCA, is amended to read:

"2-18-701. Definitions. In this part, as it applies to a person employed in the executive, *judicial,* or legislative branches of state government, "employee" means:

(1) a permanent full-time employee defined in 2-18-601;

(2) a part-time permanent employee, as defined in 2-18-601, who is scheduled to work a regular schedule of 20 hours or more a week;

(3) a seasonal employee, as defined in 2-18-601, who is scheduled to work 6 months or more a year;

(4) elected officials;

(5) officers and employees of the legislative branch;

(6) judges and employees of the judicial branch; and

(7) academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education."

Section 13. Section 2-18-703, MCA, is amended to read:

"2-18-703. Contributions. *(1) Each agency as defined in 2-18-601* shall contribute the amount specified in this section towards the *group benefits cost.*

(2) For employees defined in 2-18-701 other than members of collective bargaining units, and for members of the legislature, the employer contribution for *group benefits* shall be *$50* per *month* for the fiscal year ending June 30, *1980,* and *$60* per *month* for each fiscal year thereafter. *Permanent part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution as wages.*

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but *may* not be less than $10 per month.

(4) Unused employer contributions for any state employee shall be transferred to an account established for this purpose by the department and upon such transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member."

Section 14. **Appropriation.** There is appropriated to the Office of Budget and Program Planning $4,509,410 for the fiscal year ending June 30, 1980, and $9,490,590 for the fiscal year ending June 30, 1981, from the general fund to carry out the provisions of this act as it pertains to executive branch agencies not including units of the university system, vocational-technical centers, and community colleges. The Office of Budget and Program Planning is authorized to increase the expenditure authority of executive branch agencies, not including units of the university system, vocational-technical centers, and community colleges, by $5,981,022 for the

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fiscal year ending June 30, 1980, and $12,918,269 for the fiscal year ending June 30, 1981, from funds other than the general fund which accrue under provision of law to the respective agencies to carry out the provisions of this act.

Section 15. **Reversion of funds.** Appropriated funds not spent at the end of the fiscal year shall revert to the fund from which appropriated.

Section 16. **Codification.** The code commissioner shall codify sections 9, 10, and 11 of this act in Title 2, chapter 18, part 3, and preferably shall codify them as 2-18-313, 2-18-314, and 2-18-315, respectively.

Section 17. **Repealer.** Section 2-18-307, MCA, is repealed.

Approved May 8, 1979.

CHAPTER NO. 679

AN ACT TO INCREASE THE MEMBERSHIP OF THE BOARD OF OIL AND GAS CONSERVATION BY ADDING TWO LANDOWNERS NOT ACTIVELY ASSOCIATED WITH THE OIL AND GAS INDUSTRY; AMENDING SECTION 2-15-3303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3303, MCA, is amended to read:

"2-15-3303. Board of oil and gas conservation — composition — allocation — quasi-judicial. (1) There is a board of oil and gas conservation.

(2) The board consists of *seven* members, *three* of whom shall be from the oil and gas industry and have had at least 3 years' experience in the production of oil and gas *and two of whom shall be landowners residing in oil or gas producing counties of the state but not actively associated with the oil and gas industry, but one of the two landowners shall be one who owns the mineral rights with the surface and the other shall be one who does not own the mineral rights.*

(3) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124."

Approved May 8, 1979.

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CHAPTER NO. 680

AN ACT TO REAFFIRM THE INTENT OF THE LEGISLATURE REGARDING THE STATUS OF TAXES OR LICENSE FEES PAID TO THE STATE UNDER PROTEST; AMENDING SECTION 15-1-402, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, section 15-1-402, MCA, has been amended by the Montana legislature several times since the original enactment in 1895; and

WHEREAS, it has been the intent of the Montana legislature to provide for payment of taxes, licenses, and other demands for public revenue under protest; and

WHEREAS, it has been the intent of the Montana legislature that protested payments of taxes, licenses, or other demands for public revenue paid to the state shall not be placed in a special protest fund by the department of revenue.

THEREFORE, it is the purpose of this act to clarify that legislative intent and to clarify the existing law to reflect the original intent of the legislature. No change in the law is contemplated by this act.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of taxes under protest — action to recover. (1) In all cases of levy of taxes, licenses, or other demands for public revenue which are deemed unlawful by the party whose property is thus taxed or from whom such tax or license is demanded or enforced, such party may, before such tax or license becomes delinquent, pay under written protest such portions of such tax or license deemed unlawful to the officers designated and authorized to collect the same, specifying the grounds of protest. Thereupon the party so paying or his legal representatives may bring an action in any court of competent jurisdiction against the officers to whom said license or tax was paid or against the county or municipality in whose behalf the same was collected and the department of revenue, which shall be served with summons and copy of the complaint, to recover such portions of such tax or license paid under protest. Any action instituted to recover any such portions of license or tax paid under protest shall be commenced and summons served within 60 days after the date of payment of the same. When any such license or tax is payable in installments, the first installment portion of such tax or license as may be deemed unlawful may be paid under written protest and suit commenced and summons served to recover the same within the time herein prescribed, and if any subsequent installment of such license or tax shall become due or payable before the final determination of the suit commenced to recover the first installment portion paid under protest, then such subsequent installment portion deemed unlawful may also be paid under written protest and no suit or action need be commenced to recover the same, but the determination of the suit or action commenced

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to recover the first installment portion paid under protest shall determine the right of the party paying such subsequent installment to have the same or any part thereof refunded to him. All such portions of licenses and taxes when so paid under protest shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as protest fund and shall be invested in interest-bearing deposits in local banks or savings and loan associations and retained in such protest fund until the final determination of any suit or action to recover the same. Nothing contained herein prohibits the investment of the moneys of this fund in the state unified investment program. *The provision creating the special protest fund does not apply to any payments made under protest directly to the state.*

(2) If no action is commenced within the time herein specified or if such action be commenced and finally determined in favor of the county or municipality or treasurer thereof, the amount of such protested portions of the license or tax shall be taken from such protest fund and deposited to the credit of the fund or funds to which the same property belongs, but if such action is finally determined adversely to such county or municipality or the treasurer thereof, then the treasurer shall, upon receiving a certified copy of the final judgment in said action, refund to the person in whose favor such judgment is rendered the amount of such protested portions of the license or tax, with costs of suit and interest at the rate currently paid on short-term interest-bearing time deposits in banks in the county or 5% a year, whichever is greater, from the date of payment under protest. If such action was commenced for the purpose of recovering the first installment portions of any such license or tax and any subsequent installment thereof has been paid under protest as herein provided, then the county treasurer shall, at the time of refunding the amount of such first installment required by such judgment, also refund such portion of any subsequent installment as the person holding such judgment is entitled to recover, together with interest thereon at the rate of 6% a year from the date of payment under protest."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved May 8, 1979.

CHAPTER NO. 681

AN ACT TO AMEND SECTION 15-30-203, MCA, TO MAKE OFFICERS AND EMPLOYEES OF CORPORATIONS LIABLE FOR PAYMENT OF TAX WITHHELD BY A CORPORATION FROM EMPLOYEES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-203, MCA, is amended to read:

"15-30-203. Employer liable for withholding. *(1)* Every employer shall be liable for the amounts hereinbefore required to be

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deducted and withheld, and such amounts *plus interest due thereon* shall be considered as a tax, and with respect thereto the employer shall be considered a taxpayer.

(2) The officer or employee of a corporation whose duty it is to collect, truthfully account for, and pay over to the state amounts withheld from the corporation's employees and who willfully fails to pay over the withholdings is liable to the state for amounts so withheld and the amount of penalty and interest due thereon.

(3) If the employer fails to deduct and withhold the amounts specified in 15-30-202 and thereafter the tax against which such deducted and withheld amounts would have been credited is paid, the amounts so required to be deducted and withheld shall not be collected from the employer."

Section 2. **Effective date.** This act is effective on its passage and approval and applies with respect to amounts deducted and withheld for the quarters beginning after December 31, 1978.

Approved May 8, 1979.

CHAPTER NO. 682

AN ACT TO TRANSFER RESPONSIBILITY FOR THE CUSTODY OF POSTSECONDARY VOCATIONAL-TECHNICAL CENTER MONEY FROM THE COUNTY TREASURER TO THE STATE TREASURER; PROVIDING THAT A SCHOOL DISTRICT BOARD OF TRUSTEES MAY AUTHORIZE THE EXPENDITURE OF FUNDS FROM THE STATE TREASURY FOR POSTSECONDARY VOCATIONAL-TECHNICAL CENTER PROGRAMS; AMENDING SECTIONS 20-3-324, 20-7-322, 20-7-325, 20-7-333, AND 20-9-212, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-324, MCA, is amended to read:

"20-3-324. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall have the power and it shall be their duty to perform the following duties or acts:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board may deem necessary, accepting or rejecting such recommendation as the trustees shall in their sole discretion determine, in accordance with the provisions of the school personnel part of this title;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel deemed necessary to carry out the various services of the district;

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(3) administer the attendance and tuition provisions and otherwise govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or an emergency budget of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, foundation program, permissive levy, additional levy, cash reserve, and state impact aid amount for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous federal programs fund, building fund, housing and dormitory fund, traffic education fund, and interlocal cooperative agreement fund in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education, and special education parts of this title;

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(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make such reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when deemed advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to his child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs;

(22) procure and display outside daily in suitable weather at each school of the district an American flag which shall be not less than 4 feet by 6 feet; and

(23) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Section 2. Section 20-7-322, MCA, is amended to read:

"20-7-322. State treasurer custodian of vocational education moneys. *(1)* The treasurer of the state of Montana is hereby designated as the custodian of all federal and state moneys designated, appropriated, or apportioned for vocational education. All moneys received from any federal or state source for the establishment, operation, or furtherance of vocational education in the state shall be deposited with the state treasurer. At the direction of the board of public education, he shall disburse all moneys appropriated or received for vocational education.

(2) The state treasurer is the treasurer for all postsecondary vocational-technical centers, and all money received by postsecondary vocational-technical centers from any source shall be deposited in the state treasury pursuant to 17-6-105, unless the source of the money specifies deposit somewhere other than in the state treasury."

Section 3. Section 20-7-325, MCA, is amended to read:

"20-7-325. Postsecondary vocational-technical center funding. (1) Whenever an approved postsecondary vocational-technical center under the provisions of 20-7-311 is operated within a district, the trustees of such district shall *request the establishment of the appropriate accounts in the state treasury. These accounts shall be established in the appropriate state treasury funds as determined by the department of administration.* All moneys prescribed and received under the provisions of 20-7-324 shall be credited to *these accounts.* The expenditure of the moneys deposited in the *state treasury shall be made in accordance with procedures established by the department of administration. Such*

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expenditures shall be made under the budget and for the programs approved by the board of public education under the provisions of 20-7-323 and the financial administration provisions of this title.

(2) The approval of the postsecondary vocational-technical center budget and subsequent revision or amendment of such budget by the board of public education shall constitute the final budget approval.

(3) Whenever the county tax prescribed in 20-7-324(1)(b) is to be used in support of the postsecondary vocational-technical center, the county commissioners are authorized to levy such tax on the county in accordance with the provisions of 20-9-142."

Section 4. Section 20-7-333, MCA, is amended to read:

"20-7-333. Pupil fees and disposition of collected fees. (1) Fees for the use of equipment and material used in instruction may be charged by the trustees or other governing board of the postsecondary vocational-technical center. The board of public education shall prescribe the basis and limitations for the charging of such fees.

(2) Fees collected by the postsecondary vocational-technical center shall be deposited with the *state* treasurer in the fund designated by the superintendent of public instruction for the receipt of such fees. The expenditure of the fees shall not be subject to budget limitations and shall be in addition to the program budgets approved by the board of public education."

Section 5. Section 20-9-212, MCA, is amended to read:

"20-9-212. Duties of county treasurer. The county treasurer of each county shall:

(1) receive and hold all school moneys subject to apportionment and keep a separate accounting of their apportionment to the several districts which are entitled to a portion of such moneys according to the apportionments ordered by the county superintendent. A separate accounting shall be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary foundation programs;

(b) the basic special tax for high schools in support of the high school foundation programs;

(c) the county tax in support of the county's high school transportation obligation;

(d) the county tax in support of the high school obligations to the retirement systems of the state of Montana;

(e) any additional county tax required by law to provide for deficiency financing of the elementary foundation programs;

(f) any additional county tax required by law to provide for deficiency financing of the high school foundation programs; *and*

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(g) any other county tax for schools which may be authorized by law and levied by the county commissioners;

(2) whenever requested, notify the county superintendent and the superintendent of public instruction of the amount of county school moneys on deposit in each of the funds enumerated in subsection (1) of this section and the amount of any other school moneys subject to apportionment and apportion such county and other school moneys to the districts in accordance with the apportionment ordered by the county superintendent;

(3) keep a separate accounting of the expenditures for each budgeted fund included on the final budget of each district;

(4) keep a separate accounting of the receipts, expenditures, and cash balances for each budgeted fund included on the final budget of each district and for each nonbudgeted fund established by each district;

(5) except as otherwise limited by law, pay all warrants properly drawn on the county or district school moneys and properly endorsed by their holders;

(6) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law or by the district if no fund is designated by law. Interest and penalties on delinquent school taxes shall be credited to the same fund and district for which the original taxes were levied.

(7) send all revenues received for a joint district, part of which is situated in his county, to the county treasurer designated as the custodian of such revenues, no later than December 15 of each year and every 3 months thereafter until the end of the school fiscal year;

(8) register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there are insufficient moneys available in the sum of moneys in all funds of the district to make payment of such warrant. Redemption of registered warrants shall be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) invest the moneys of any district as directed by the trustees of the district;

(10) give to the trustees of each district, at least quarterly, an itemized report for each fund maintained by the district showing the paid warrants, outstanding warrants, registered warrants, amount and types of revenue received, and the cash balance; *and*

(11) remit promptly to the state treasurer receipts for the county tax for a postsecondary vocational-technical center when levied by the board of county commissioners."

Section 6. **Effective date.** This act is effective on July 1, 1980.

Approved May 8, 1979.

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CHAPTER NO. 683

AN ACT TO INCREASE, FOR AN 8-YEAR TERM, THE NUMBER OF ASSOCIATE JUSTICES ON THE SUPREME COURT BY ELECTION; TO CLARIFY THAT A MAJORITY OF ALL THE JUSTICES MUST CONCUR IN ANY DECISION OF THE COURT; AMENDING SECTIONS 3-2-101, 3-2-302, AND 13-14-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-2-101, MCA, is amended to read:

"3-2-101. Number, election, and term of office. The supreme court consists of a chief justice and *six* associate justices who are elected by the qualified electors of the state at large at the general state elections next preceding the expiration of the terms of office of their predecessors, respectively, and hold their offices for the term of 8 years from and after the first Monday of January next succeeding their election."

Section 2. **New justices — how selected.** The associate justices created by [this act] shall be filled initially at the 1980 general election, and the individuals elected shall take office on the first Monday of January, 1981.

Section 3. Section 13-14-101, MCA, is amended to read:

"13-14-101. Judicial offices as separate and independent offices for election purposes. (1) Each vacancy for associate justice of the supreme court is a separate and independent office for election purposes. The chief justice of the supreme court shall assign an individual number to the *six* associate justices and certify these numbers to the office of the secretary of state not less than 180 days before a primary nominating election.

(2) Each judicial office in a district which has more than one district judge is a separate and independent office for election purposes.

(3) Different terms of office for the same position shall be considered separate offices."

Section 4. Section 3-2-302, MCA, is amended to read:

"3-2-302. Quorum. A majority of the justices is necessary to form a quorum *of the court. Any* decision *must be concurred in by a majority of the justices of the court,* but one or more of the justices may adjourn the court from day to day or to a day certain."

Section 5. **Effective period.** This act is effective until the first Monday of January, 1989, at which time the number of associate justices authorized by this act shall revert to four. The code commissioner is directed to make appropriate changes in the Montana Code Annotated to reflect the intent of this section.

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Section 6. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 9, 1979.

CHAPTER NO. 684

AN ACT TO REESTABLISH THE BOARD OF PUBLIC ACCOUNTANTS AND TO GENERALLY REVISE THE AUTHORITY OF THE BOARD WITH REGARD TO CERTIFICATION AND LICENSING; AMENDING SECTIONS 2-8-103, 2-15-1641, 37-50-102, 37-50-201 THROUGH 37-50-203, 37-50-301, 37-50-302, 37-50-305, 37-50-308, 37-50-309, 37-50-314, 37-50-315, 37-50-321, 37-50-331 THROUGH 37-50-335, MCA; AND REPEALING SECTIONS 37-50-306 AND 37-50-307, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Board reestablished.** The board of public accountants created by 2-15-1641 is reestablished for a period of 6 years pursuant to 2-18-122.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of architects, department of professional and occupational licensing, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) state electrical board, department of professional and occupational licensing, created by 2-15-1654;

(e) board of professional engineers and land surveyors, department of professional and occupational licensing, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the investment commissioner, state auditor's office, created by 2-15-1901;

(h) board of landscape architects, department of professional and occupational licensing, created by 2-15-1652;

(i) board of county printing, department of community affairs, created by 2-15-1102;

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(j) board of plumbers, department of professional and occupational licensing, created by 2-15-1655;

(k) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(l) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(m) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(n) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

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(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(t) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(u) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish and game, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631;

(j) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(k) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632."

Section 3. Section 2-15-1641, MCA, is amended to read:

"2-15-1641. Board of public accountants. (1) There is a board of public accountants.

(2) The board consists of five members appointed by the governor. The members are:

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(a) three certified public accountants certified under *Title 37, chapter 50,* who *are* certified and actively engaged in the practice of public accounting *and who have held a valid certificate* for at least 5 years before their appointment. The Montana society of certified public accountants shall submit to the governor *annually* a list of names of two candidates from which the appointments of these members may be made. However, the governor is not restricted to the names on this list. These members may not be residents of the same county.

(b) *one licensed* public *accountant* licensed under *Title 37, chapter 50,* who *is* actively engaged in the practice of public accounting *and who has held a valid license* for at least 5 years before *his* appointment. *When an appointment in this category is necessary, the* Montana society of public accountants shall submit to the governor a list of names of two candidates from which the appointment may be made. However, the governor is not restricted to the names on this list. *If there is no licensed public accountant known by the governor to be qualified and willing to serve in this position, the governor may appoint a certified public accountant meeting the qualifications provided in (2)(a).*

(c) one member of the general public who is not engaged in the practice of public accounting.

(3) Each appointment is subject to confirmation by the senate and shall be submitted for consideration at the next regular session following appointment.

(4) Each member shall serve for a term of *3* years. A member who has served two successive complete terms is not eligible for reappointment until after the lapse of 1 year. The governor may, after a hearing, remove a member for neglect of duty or other just cause.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 37-50-102, MCA, is amended to read:

"37-50-102. Exemptions. Nothing contained in this chapter shall prohibit any person not a certified public accountant or licensed public accountant from serving as an employee of or an assistant to a certified public accountant or a licensed public accountant holding a license to practice under 37-50-314 or a partnership *or corporation* composed of certified public accountants or licensed public accountants registered under this chapter or a foreign accountant registered under 37-50-313 provided that such employee or assistant shall not issue any accounting or financial statement over his name."

Section 5. Section 37-50-201, MCA, is amended to read:

"37-50-201. Organization — general rulemaking power — quorum — seal — records. (1) The board shall elect annually a chairman, secretary, and treasurer from its members.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter.

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(3) A quorum for the transaction of business consists of three members of the board.

(4) The board shall have a seal which shall be judicially noticed.

(5) The department shall keep records of the board's proceeding. In a proceeding in court, civil or criminal, arising out of or founded on this chapter, copies of these records certified as correct under the seal of the board are admissible in evidence as tending to prove the content of these records."

Section 6. Section 37-50-202, MCA, is amended to read:

"37-50-202. Compensation of members — expenses. Each member of the board *while* actually engaged in the duties of his office *is entitled to:*

(1) a mileage allowance as provided in 2-18-503;

(2) expenses as provided in 2-18-501 and 2-18-502; and

(3) a salary equal to one-fourth the daily rate of a grade 8, step 1, classified state employee, for every 6 hours or fraction thereof spent away from home on board business."

Section 7. Section 37-50-203, MCA, is amended to read:

"37-50-203. Rules of the board — solicitation of advisory comments. *(1) The board may adopt such rules consistent with the purposes of this chapter as it considers necessary.*

(2) The board *shall adopt:*

(a) rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accountancy *including competency in specific fields of public accountancy;*

(b) rules of procedure governing the conduct of matters before the board;

(c) rules governing education requirements for issuance of the certificate of a certified public accountant and the license for licensed public accountant;

(d) rules prescribing requirements for continuing education to be met by certified public accountants and licensed public accountants, in order to maintain their professional knowledge and competence, as a condition to continuing in the practice of public accountancy. In issuing rules and individual orders regarding continuing education, the board, in its discretion:

(i) may, among other things, use or rely upon guidelines and pronouncements of recognized educational and professional associations;

(ii) may prescribe the content, duration, and organization of courses; and

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(iii) shall take into account the accessibility to applicants of such continuing education as it may require and any impediments to interstate practice of public accountancy that may result from differences in such requirements in other states;

(e) rules governing partnerships and corporations practicing public accounting, including but not limited to rules concerning their style, name, title, and affiliation with any other organization and establishing reasonable standards with respect to professional liability insurance and unimpaired capital and prescribing joint and several liability for torts relating to professional services for shareholders of any such corporation failing to comply with such standards; and

(f) rules setting forth the terms, not exceeding 2 years, and areas of experience required for certification as a certified public accountant and licensing as a licensed public accountant.

(3) At least 60 days prior to the adoption of a rule or amendment, the department shall mail copies of the proposed rule or amendment to each holder of a *certificate or* license issued under 37-50-314, with a notice advising him of the proposed effective date of the rule or amendment and requesting that he submit his comments on it at least 15 days prior to the effective date. These comments are advisory only. The department's certificate of mailing to licensed accountants is conclusive proof thereof."

Section 8. Section 37-50-301, MCA, is amended to read:

"37-50-301. Illegal use of title. (1) No person may assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant unless such person has received a certificate as a certified public accountant *in some state and is certified under 37-50-302, 37-50-310, or 37-50-311* and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335. However, a foreign accountant who has registered under the provisions of 37-50-313 may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

(2) No partnership or corporation shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of certified public accountants unless it is registered under 37-50-331 or 37-50-332, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(3) No person may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a public accountant unless such person is *licensed* as a licensed public accountant under *this chapter*, holds a current license

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issued under 37-50-314, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335 or unless such person has received a certificate as a certified public accountant *in some state*, holds a current license issued under 37-50-314, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(4) No partnership or corporation may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of public accountants unless it is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(5) No person, corporation, or partnership may assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant", "licensed public accountant", "public accountant" or any of the abbreviations "CA", "EA", "LA", or "RA" or similar abbreviations likely to be confused with "CPA". However, a foreign accountant may use the title under which he is generally known in this country, followed by the name of the country from which he received his certificate, license, or degree.

(6) No person may sign or affix his name or any trade or assumed name used by him in his profession or business with any wording indicating that he has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless he holds a current license issued under 37-50-314 and all of his offices in this state for the practice of public accounting are maintained and registered under 37-50-335. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office which he holds in that organization, nor do the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties as such.

(7) No person may sign or affix a partnership or corporation name with any wording indicating that it is a partnership or corporation composed of persons having expert knowledge in accounting or auditing to any accounting or financial statement or to any report on or certificate to any accounting or financial statement unless the partnership or corporation is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334 and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

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(8) No person may assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation "and company" or "and co." or a similar designation if, in any such case, there is in fact no bona fide partnership or corporation registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334. However, it is lawful for a sole proprietor to continue the use of the deceased's name in connection with his business for a reasonable period of time after the death of a former partner."

Section 9. Section 37-50-302, MCA, is amended to read:

"37-50-302. Certified public accountants — certification — qualifications and requirements. Certification as a certified public accountant is available to any person who:

(1) is of good moral character;

(2) has successfully passed the certified public accountants' examination; and

(3) meets the requirements of education *set forth in this chapter and in board rules.*"

Section 10. Section 37-50-305, MCA, is amended to read:

"37-50-305. Education requirements. *A candidate for certification as a certified public accountant or licensing as a licensed public accountant must have graduated* from a college or university accredited to offer a baccalaureate degree*:*

(1) with a concentration in accounting; or

(2) with a concentration other than accounting if supplemented by related courses in other areas of business administration and the board determines that an equivalent education has been achieved."

Section 11. Section 37-50-308, MCA, is amended to read:

"37-50-308. Examination. Except as provided in 37-1-101(4), the department shall hold and grade a written examination in accounting, auditing, and related subjects as the board determines appropriate. The grade determination of the department is final in each case. The department *may* use the examination and grading services of the American institute of certified accountants. The examination shall be held at least annually and at such other times as applications warrant. The board may determine the time and place of examination and may adopt rules necessary for the orderly conduct of the examination."

Section 12. Section 37-50-309, MCA, is amended to read:

"37-50-309. Credit for examinations taken in other states. The board may by rule provide for granting credit to a candidate for his satisfactory completion of a written examination in any one or more of the subjects of examination given by the licensing authority in another state. These rules shall include requirements the board determines appropriate

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in order that an examination approved as a basis for credit is, in the judgment of the board, at least as thorough as that included in the examination given in this state at the time the credit *originally was granted by the other state for passing the examination.*"

Section 13. Section 37-50-314, MCA, is amended to read:

"**37-50-314. Annual certification or licensure.** (1) Annual *certificates and* licenses to engage in the practice of public accounting in this state shall be issued by the department to certified public *accountants* and to licensed *public accountants.* There is an annual *certificate or* license *renewal* fee in an amount to be determined by the board. Annual *certificates and* licenses expire on December 31 of each year and may be renewed for a period of 1 year by *certified public accountants* and licensed public accountants in good standing on payment of *the* annual renewal fee.

(2) A person who fails to renew his license or certificate shall promptly surrender it to the board upon request.

(3) After the expiration of the 3-year period immediately following the effective date of a board rule establishing continuing education requirements, each application for renewal by a person who has held his certificate or license for 3 years or more must be accompanied or supported by evidence satisfactory to the board of fulfillment of such requirements during the 3-year period immediately preceding the application.

(4) The board may in its discretion waive the requirement stated in subsection (3) if the applicant agrees to follow a particular program or schedule of continuing education agreeable to the board.

(5) The board may relax or suspend continuing education requirements for an applicant who certifies that he does not intend to engage in the practice of public accountancy and for an applicant who cannot fulfill the requirement due to individual hardship.

(6) Subject to subsections (4) and (5), the board may revoke, suspend, or refuse to renew the certificate or license of an applicant who fails to furnish evidence of having met the continuing education requirements established by the board."

Section 14. Section 37-50-315, MCA, is amended to read:

"**37-50-315. Deposit of moneys collected.** Fees and other moneys collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board."

Section 15. Section 37-50-321, MCA, is amended to read:

"**37-50-321. Revocation, suspension, or refusal to renew certificate or license.** After notice and hearing as provided in 37-50-341, the board may revoke or may suspend any certificate issued under 37-50-302 or any *license* granted under *[section 21]* or may revoke, suspend, or refuse to renew any license issued under 37-50-314 or may censure the holder of any such license for any one or any combination of the following causes:

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(1) fraud or deceit in obtaining a certificate as certified public accountant or in obtaining a license to practice public accounting under this chapter;

(2) dishonesty, fraud, or gross negligence in the practice of public accounting;

(3) violation of any of the provisions of 37-50-301;

(4) violation of a rule of professional conduct promulgated by the board under the authority granted by this chapter;

(5) conviction of a felony under the laws of any state or of the United States;

(6) conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(7) cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state for any cause other than failure to pay an annual registration fee in such other state;

(8) suspension or revocation of the right to practice before any state or federal agency."

Section 16. Section 37-50-331, MCA, is amended to read:

"37-50-331. Partnership composed of certified public accountants — registration. (1) A partnership *that is or plans to become* engaged in this state in the practice of public accounting *shall* register with the department as a partnership of certified public accountants provided it meets the following requirements:

(a) Each partner *or manager* personally engaged in this state in the practice of public accounting must be a certified public accountant of *some* state in good standing and must *be certified under this chapter.*

(b) Each partner must be a certified public accountant of some state in good standing.

(2) Application for registration must be made on the affidavit of a general partner of the partnership who is a certified public accountant of this state in good standing. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "certified public accountants" or the abbreviation "CPAs" in connection with its partnership name. Notification shall be given the department within 1 month after the admission to or withdrawal of a partner from a partnership so registered."

Section 17. Section 37-50-332, MCA, is amended to read:

"37-50-332. Corporation composed of certified public accountants — registration. (1) A professional service corporation organized for the practice of public accounting *must* register with the board as a corporation of certified public accountants provided it meets the following requirements:

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(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the rules of the board, but the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(b) Each shareholder of the corporation must be a certified public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person may have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be certified public accountants of some state in good standing.

(c) Each shareholder, *officer, or manager* of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant of *some* state in good standing and must *be certified under this chapter.*

(2) Application for such registration must be made upon the affidavit of a shareholder who holds a permit to practice in this state as a certified public accountant. The board shall determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "certified public accountant" or the abbreviation "CPA" in connection with its corporation name. Notification shall be given the board within 1 month after the admission or withdrawal of a shareholder of a corporation so registered."

Section 18. Section 37-50-333, MCA, is amended to read:

"37-50-333. Partnership composed of public accountants — registration. (1) A partnership engaged in this state in the practice of public accounting *must* register with the department as a partnership of *licensed* public accountants provided it meets the following requirements:

(a) At least one general partner must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a license issued under 37-50-314 which is in effect.

(b) Each partner personally engaged in this state in the practice of public accounting must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a license issued under 37-50-314 which is in effect.

(c) Each local manager in charge of an office or a firm in this state must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a license issued under 37-50-314 which is in effect.

(2) Application for registration must be made on the affidavit of a general partner of the partnership who holds a license to practice in this state as a certified public accountant or as a licensed public accountant. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "public accountants" in connection with its partnership name. Notification shall be given the department within 1 month after the admission to or withdrawal of a partner from a partnership so registered."

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Section 19. Section 37-50-334, MCA, is amended to read:

"37-50-334. Corporation composed of public accountants — registration. (1) A professional service corporation organized for the practice of public accounting *must* register with the board as a corporation of public accountants provided it meets the following requirements:

(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the rules of the board, but the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(b) At least one shareholder thereof must be a certified public accountant or public accountant of this state in good standing and must hold a license issued under 37-50-314 which is in effect.

(c) Each shareholder of the corporation must be a certified public accountant or *a licensed* public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person may have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be certified public accountants or public accountants of some state in good standing.

(d) Each shareholder of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant or *a licensed* public accountant of this state in good standing and must hold a license issued under 37-50-314 which is in effect.

(e) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase any shares offered for sale by or not under the ownership or effective control of a qualified shareholder and binding any shareholder not a qualified shareholder to sell such shares to the corporation or the qualified shareholders. The agreement must be noticed on each certificate of corporate stock.

(2) Application for such registration must be made upon the affidavit of a shareholder who holds a *certificate or license* to practice in this state as a certified public accountant or *licensed* public accountant. The board shall determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "public accountant" or the abbreviation "PA" in connection with its corporation name. Notification shall be given the board within 1 month after the admission or withdrawal of a shareholder of a corporation so registered."

Section 20. Section 37-50-335, MCA, is amended to read:

"37-50-335. Registration of offices. Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant or a partnership or corporation of certified public accountants or by a licensed public accountant or a partnership or corporation of licensed public accountants or by one registered under 37-50-313 shall be registered annually with the department. A fee may not be charged for this registration. *In addition, each individual engaged in*

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this state in the practice of public accounting must be certified or licensed annually under 37-50-314."

Section 21. **Duties of the department.** The department shall:

(1) assist the board in transactions of its business and keep a record of the board's official action; and

(2) assess to the board the reasonable costs of the department incurred in assisting the board.

Section 22. **Existing orders and rules effective until revoked or modified.** All orders and rules relating to the practice of accounting made by the board of public accountants prior to July 1, 1979, remain in effect until revoked or modified in accordance with law.

Section 23. **Continuation of funds.** All unexpended balances of appropriations, allocations, or other funds of the board of public accountants shall continue to be used by the board of public accountants, as reestablished in this act, for the purpose of regulating the practice of accounting.

Section 24. **Transition.** The terms of office of persons currently members of the Board of Public Accountants are not affected by this act. The governor shall make the appointment necessary to comply with the change in board composition contained in section 3 of this act upon the first available vacancy suitable for that purpose.

Section 25. **Codification.** Sections 21 and 22 are intended to be codified as an integral part of Title 37, chapter 50. The provisions of Title 37, chapter 50, apply to sections 21 and 22, and sections 21 and 22 apply to Title 37, chapter 50. All references in the MCA to Title 37, chapter 50, include sections 21 and 22.

Section 26. **Repealer.** Sections 37-50-306 and 37-50-307, MCA, are repealed.

Section 27. **Effective date of certain sections.** Sections 1 and 2 are effective on passage and approval.

Approved May 9, 1979.

CHAPTER NO. 685

AN ACT TO REVISE THE UNEMPLOYMENT COMPENSATION LAWS RELATING TO THE TAXABLE WAGE BASE, EMPLOYER CONTRIBUTIONS, AND EMPLOYER CLASSIFICATION AND EXPERIENCE RATING; AMENDING SECTIONS 39-51-401, 39-51-1103, 39-51-1108, AND 39-51-1301, MCA; REPEALING SECTIONS 39-51-1106, 39-51-1107, 39-51-1201 THROUGH 39-51-1203, AND 39-51-1205, MCA; REPEALING SECTION 39-51-1204, MCA, RETROACTIVELY; AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [Title 39, chapter 51, part 11], the following definitions apply:

(1) "Computation date" means June 30 preceding the calendar year for which a covered employer's contribution rate is effective.

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(2) "Cutoff date" means September 30 immediately following the computation date.

(3) "Deficit employer" means a covered employer who has established a record of accumulated benefits charged to his account in excess of his accumulated contributions paid as of the cutoff date and has a minus experience factor.

(4) "Division" means the employment security division of the department of labor and industry.

(5) "Eligible employer" means a covered employer who has:

(a) paid contributions during each of the 3 fiscal years immediately preceding the computation date;

(b) with respect to such 3 fiscal years, filed all contribution reports prescribed by the division;

(c) paid all contributions due with respect to the 3 fiscal years before the cutoff date of the rate year;

(d) established a record of accumulated contributions in excess of benefits charged to his account; and

(e) achieved a plus experience factor.

(6) "Fiscal year" means the four consecutive calendar quarters ending on June 30.

(7) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

(8) "Unrated employer" means a covered employer who has not paid contributions in each of the 3 fiscal years immediately preceding the computation date or an employer who has established a record of accumulated contributions in excess of benefits charged to his account but has not filed all required payroll reports or paid contributions by the cutoff date for any of the quarters in the 3 fiscal years immediately preceding the computation date.

Section 2. **Extension of cutoff date.** The division may extend the cutoff date in meritorious cases.

Section 3. **Treatment of minor irregularities in determination of eligible employer status.** For the purpose of determining if a covered employer is an eligible employer, delinquencies of a minor nature may be disregarded if it is shown to the satisfaction of the division that the covered employer acted in good faith and that forfeiture of a reduced contribution rate because of such minor delinquency would be inequitable.

Section 4. **Rates of contributions.** All covered employers, except governmental entities and those qualified and electing to make payments in lieu of contributions, shall pay contributions at rates assigned annually by the division.

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Section 5. **Procedure for election to make payments in lieu of contributions.** (1) Any nonprofit organization defined in 39-51-1103 or governmental entity electing to become liable for payments in lieu of contributions must file a written notice of its election with the division not later than 30 days immediately following the date of the determination of subjectivity to [Title 39, chapter 51]. This election shall be for a period of not less than 2 years.

(2) Any nonprofit organization defined in 39-51-1103 or governmental entity which has been paying contributions for at least 2 taxable years may change to payments in lieu of contributions by filing a written notice to that effect with the division within 30 days before the beginning of the taxable year for which the change is effective.

Section 6. **Computation of payments in lieu of contributions.** (1) Qualified employers electing to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus one-half of the amount of extended benefits paid to individuals based on wages paid by the employing unit. After December 31, 1978, governmental entities shall pay the full amount of extended benefits.

(2) If benefits paid an individual are based on wages paid by both the employer and one or more other employers, the amount payable by any one employer to the fund bears the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all his base period employers.

(3) If the base period wages of an individual include wages from more than one such employer, the amount to be paid into the fund with respect to the benefits paid to the individual shall be prorated among the liable employers in proportion to the wages paid to the individual by each such employer during the base period.

(4) The amount of payment required from employers shall be ascertained by the division monthly and becomes due and payable by the employer quarterly as directed in [Title 39, chapter 51]. Penalty and interest for delinquency shall be assessed such employers as specified in 39-51-1301.

(5) A nonprofit organization which elects to make payments in lieu of contributions into the unemployment compensation fund is not liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services, as defined in 39-51-204(3)(c), to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of Public Law 94-566.

Section 7. **Termination of election to make payments in lieu of contributions.** (1) Any nonprofit organization or governmental entity may terminate its election to make payments in lieu of contributions after 2 years from the effective date of such election by filing a written notice with the division not later than 30 days prior to the beginning of the taxable year for which the termination is effective.

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(2) If a nonprofit organization or governmental entity is delinquent in making payments in lieu of contributions, the division may terminate the election to make payments in lieu of contributions as of the beginning of the next taxable year, and the termination is effective for that and the next taxable year.

Section 8. Section 39-51-1108, MCA, is amended to read:

"39-51-1108. Amount of wages per employee subject to contribution. *(1)* Payment of contributions shall apply only to wages paid up to and including $4,200 by an employer to an employee with respect to employment during the calendar years 1972, 1973, 1974, and the first calendar quarter of year 1975.

(2) For the second calendar quarter of the calendar year 1975 *through the fourth calendar quarter of 1977,* the taxable wage base for each year *is $4,800.*

(3) Effective January 1, 1978, *and thereafter the taxable wage base for each year is $6,000.*

(4) For the first calendar quarter of 1979 and thereafter, the taxable wage base for each year is the greater of:

(a) 75% of the average annual wage as determined under 39-51-2201(2) (rounded to the nearest $100 not to exceed an increase of $200 over the taxable wage base of the preceding year) during the calendar year immediately preceding the most recently completed calendar year; or

(b) the amount of taxable wage base specified in the Federal Unemployment Tax Act.

(c) notwithstanding (4) the taxable wage base for 1979 shall be $7,400."

Section 9. **Experience rating for governmental entities.** (1) Governmental entities newly covered under [Title 39, chapter 51] after December 31, 1974, shall make payments for the period prior to July 1, 1977, equal to 0.4% of total wages paid employees for services in employment during the calendar quarter and for the period after July 1, 1977, shall make payments at the median rate.

(2) The rates of governmental entities who have accumulated experience rating credits shall be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods which are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates so fixed using the median that the rates will, when applied to the total

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annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(3) New governmental entities electing to pay contributions shall be assigned the median rate for the year in which they become subject.

(4) At no time may the minimum rate be less than 0.1% or the maximum rate be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(5) In the event benefit charges exceed contributions paid in the last 2 completed fiscal years, governmental entities' rates will be adjusted by increasing all rates to the next higher schedule.

(6) The computed rate is effective July 1 of each year.

Section 10. **Classification of employers for experience rating purposes.** (1) The division shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year shall be determined on the basis of his record as of July 1 of the preceding calendar year.

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below for the calendar year 1980 and for each calendar year thereafter:

(a) Each employer is given an "experience factor" which is contributions paid minus benefits charged on each employer's account since July 1, 1976, divided by his average annual taxable payroll rounded to the next lower dollar amount for the 3 fiscal years immediately preceding the computation date. The computation of the "experience factor" shall be to six decimal places.

(b) Schedules shall be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There shall be listed on such schedules for each employer in addition to the experience factor:

(i) the amount of his taxable payroll for the fiscal year ending on the computation date; and

(ii) the cumulative total consisting of the sum of the employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding him on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in [section 14] shall be segregated into groups that will yield approximately the average tax rate according to the tax schedule assigned for that particular taxable year. Each group shall be identified by the rate class number listed in the table which represents the percentage limits of each group. Each employer on the schedules is assigned that contribution rate opposite his rate class for the tax schedule in effect for the taxable year.

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(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which the halves of his taxable payroll are so required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater part of his taxable payroll is so required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers are included in and assigned the contribution rate specified for such class, notwithstanding the provisions of [section 10].

(5) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules which he would have occupied had his taxable payroll amount or experience factor as changed been used in determining his position in the first instance, but such change does not affect the position or rate classification of any other employer listed on the schedules and does not affect the rate determination for previous years.

Section 11. **Benefit payments chargeable to employer experience rating accounts.** Benefits paid prior to June 30, with respect to benefit years commencing with July 1, 1976, and thereafter shall, as of June 30 of each year preceding the calendar year for which a covered employer's contribution rate is effective, be charged to the account of the covered employer, except cost reimbursement and governmental employers, who paid the largest individual amount of base period wages as shown on the determination used as the basis for the payment of such benefits. After June 30, 1979, no charge shall be made to the account of such covered employer with respect to benefits paid under the following situations:

(1) if paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer or who had been discharged for misconduct in connection with such services;

(2) if paid in accordance with the extended benefit program triggered by either national or state indicators.

Section 12. **Maintenance of experience rating records.** An experience rating record shall be maintained for each covered employer. The record is credited with all contributions which the covered employer has paid for covered employment prior to the cutoff date. The record is also charged with the amount of benefits paid which are chargeable to the covered employer's account. Nothing in this section grants any covered employer or individual in his service a priority with respect to any claim or right because of amounts paid by the covered employer into the employment security fund.

Section 13. **Experience rating record voided when account inactive.** Whenever an employer whose coverage has been terminated because he has ceased to do business or because he has not covered

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employment for a period of 3 years, becomes a covered employer, he is considered a new employer and he is not to be credited with his previous experience for the purpose of computing any future "experience factor".

Section 14. **Schedule of rates assigned based on trust fund reserve.** (1) The rate schedule for each calendar year is assigned based upon the ratio of the trust fund balance as of December 31 prior to the rate year to total wages in covered employment for the 12-month period prior to the computation date, except that a recomputation based on the April 1 trust fund balance will be made each year and, if the recomputed ratio results in an increase of .4% or more, all employer rates will increase .2% beginning July 1 for the remainder of the year.

(2) The ratio at the top of each tax schedule in the tax table shown in [section 14] represents the minimum fund level required for a specific tax schedule to be in effect.

(3) Employer rates are assigned in accord with the rates provided in each schedule for eligible, unrated, and deficit employers, based upon their experience as defined in this section, except that for calendar year 1979, the tax rate Schedule X shall be applied as provided for in 39-51-1202.

Section 15. **Rate schedules.**

SCHEDULES OF CONTRIBUTION RATES — Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	(.0150)	(.0145)	(.0140)	(.0130)
Average Tax Rate	1.3	1.5	1.7	1.9
Rate Class	Contribution Rates For Eligible Employers			
1	0.2%	0.3%	0.5%	0.7%
2	0.4	0.6	0.8	1.0
3	0.7	0.9	1.1	1.3
4	1.0	1.2	1.4	1.6
5	1.3	1.5	1.7	1.9
6	1.6	1.8	2.0	2.2
7	1.9	2.1	2.3	2.5
Contribution Rates For Unrated Employers:	2.1%	2.3%	2.5%	2.7%
Rate Class	Contribution Rates For Deficit Employers			
1	2.2%	2.4%	2.6%	2.8%
2	2.4	2.6	2.8	3.0
3	2.6	2.8	3.0	3.2
4	2.8	3.0	3.2	3.4
5	3.0	3.2	3.4	3.6
6	3.2	3.4	3.6	3.8

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SCHEDULES OF CONTRIBUTION RATES — Part II

Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X
	(.0120)	(.0110)	(.0095)	(.0075)	(.0050)	(.....)
2.1	2.3	2.5	2.7	2.9	3.1

Contribution Rates For Eligible Employers

0.9%	1.1%	1.3%	1.5%	1.7%	1.9%
1.2	1.4	1.6	1.8	2.0	2.2
1.5	1.7	1.9	2.1	2.3	2.5
1.8	2.0	2.2	2.4	2.6	2.8
2.1	2.3	2.5	2.7	2.9	3.1
2.4	2.6	2.8	3.0	3.2	3.4
2.7	2.9	3.1	3.3	3.5	3.7

Contribution Rates For Unrated Employers:

2.9%	3.1%	3.3%	3.5%	3.7%	3.9%

Contribution Rates For Deficit Employers

3.0%	3.2%	3.4%	3.6%	3.8%	4.0%
3.2	3.4	3.6	3.8	4.0	4.2
3.4	3.6	3.8	4.0	4.2	4.4
3.6	3.8	4.0	4.2	4.4	4.4
3.8	4.0	4.2	4.4	4.4	4.4
4.0	4.2	4.4	4.4	4.4	4.4

Section 16. **Procedures for the substitution, merger, or acquisition of an employer account by a successor employing unit.** (1) Subject to the provisions of subsection (3), whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires all or substantially all of the business of an employer who at the time of acquisition was a covered employer and whenever in respect to whom the division finds that the business of the predecessor is continued solely by the successor:

(a) the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor shall, upon the joint application of the predecessor and the successor within 90 days after such acquisition and approval by the division, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of such date.

(2) Whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires part of the business of an employer who at the time of acquisition was a covered employer and whenever such portion of the business is continued by the successor:

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(a) so much of the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bears to the payroll of the predecessor in the last four completed calendar quarters immediately preceding the date of transfer, shall, upon the joint application of the predecessor and the successor within 90 days after such acquisition and approval by the division, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of such date.

(3) (a) The 90-day period may be extended at the discretion of the division.

(b) Whenever a predecessor covered employer has a deficit experience rating account as of the last computation date, the transfer provided for in subsections (1) and (2) is mandatory except when it is shown by substantial evidence that the management or ownership or both the management and ownership are not substantially the same for the successor as for the predecessor, in which case the successor shall begin with the rate of a new employer. Whenever such mandatory transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notice, the transfer shall be based on estimates of the applicable payrolls.

(4) (a) If the successor was a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, his rate of contribution, effective the first day of the calendar year immediately following the date of acquisition, is based on the combined experience of the predecessor and successor.

(b) If the successor was not a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, his rate is the rate applicable to the predecessor with respect to the period immediately preceding the date of acquisition, but if there were more than one predecessor, the successor's rate shall be a newly computed rate based on the combined experience of the predecessors, becoming effective immediately after the date of acquisition and remaining in effect for the balance of the rate year.

Section 17. Section 39-51-401, MCA, is amended to read:

"39-51-401. Unemployment compensation account — establishment and control. There is hereby established separate and apart from all public money or funds of this state an account in the agency fund known as the unemployment compensation account, which shall be administered by the division exclusively for the purposes of this chapter. Any reference to the unemployment compensation fund in this code shall be taken to mean the unemployment compensation account in the agency fund. All money in the account shall be mingled and undivided. This account shall consist of:

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(1) all contributions collected under this chapter, inclusive of voluntary contributions as provided in [87-109(c)(4), R.C.M. 1947], and payments made in lieu of contributions as provided in *[sections 5 through 7]*;

(2) interest earned upon any money in the account;

(3) any property or securities acquired through the use of money belonging to the account;

(4) all earnings of such property or securities; and

(5) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended."

Section 18. Section 39-51-1103, MCA, is amended to read:

"39-51-1103. Contributions by employers required — payments in lieu thereof authorized for certain employers. (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter with respect to wages, as defined in 39-51-201(19), paid for employment, as defined in this chapter, occurring during such calendar year.

(2) Such contributions shall become due and be paid by each employer to the division for the fund in accordance with such regulations as the division may prescribe and shall not be deducted in whole or in part from the wages of individuals in his employ.

(3) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(4) Nonprofit organizations defined in section 501(c)(3) of the federal Internal Revenue Code and which are exempt from tax under section 501(a) of such code may elect to make payments in lieu of contributions.

(5) The state and its political subdivisions, effective January 1, 1977, may elect to make payments in lieu of contributions or pay under a special contributions plan established for governmental entities only."

Section 19. Section 39-51-1301, MCA, is amended to read:

"39-51-1301. Penalty and interest on past-due contributions. (1) Contribution reports not made and filed on the date on which they are due, as provided by subsections (1) and (2) of 39-51-1103, shall be subject to a penalty assessment of $10. Contributions unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and *[section 6]*, shall be subject to a penalty assessment of $10 or 10% of the contribution due, whichever is greater, and shall bear interest at the rate of 1% per month or fraction thereof.

(2) Interest and penalty collected pursuant to this section shall be paid into the unemployment compensation administration fund.

(3) When failure to pay contributions in time and before delinquency was not caused by willful intent of the employer and for good cause shown,

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the division may abate the penalty for late filing or late payment or both. Interest shall not be subject to abatement."

Section 20. **Codification.** It is intended that sections 1 through 7 and 9 through 16 of this act be codified as an integral part of Title 39, chapter 51, part 21, and the provisions of Title 39, chapter 51, apply to sections 1 through 7 and 9 through 16 of this act.

Section 21. **Repealer.** Sections 39-51-1106, 39-51-1107, 39-51-1201 through 39-51-1203, and 39-51-1205, MCA, are repealed. Section 39-51-1204, MCA, is repealed retroactive to January 1, 1979.

Section 22. **Effective date and retroactive application.** Section 39-51-1108, MCA, is effective upon passage and approval and shall be considered to apply as of January 1, 1979.

Approved May 9, 1979.

CHAPTER NO. 686

AN ACT TO REQUIRE THAT ALL OPERATING PROPERTY OWNED BY CENTRALLY ASSESSED COMPANIES BE ASSESSED BY THE DEPARTMENT OF REVENUE AND TO APPLY A SINGLE PROPERTY TAX RATE TO THAT PROPERTY; PROVIDING THAT THIS ACT APPLIES TO TAXABLE YEARS AFTER DECEMBER 31, 1979; AMENDING SECTIONS 15-6-108, 15-6-111, 15-6-115, 15-8-111, 15-8-407, 15-23-101, 15-23-105, 15-23-202, 15-23-403, MCA; REPEALING SECTION 15-23-302, MCA; AND PROVIDING FOR COORDINATION WITH HOUSE BILL 213.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-108, MCA, is amended to read:

"15-6-108. Class seven property — description — taxable percentage. (1) Class seven property includes:

(a) all other property not included in classes one through six and classes eight through twenty;

(b) large trucks and commercial trailers valued in the department of revenue's truck and commercial trailer schedule.

(2) Class seven property is taxed at 16% of its market value."

Section 2. Section 15-6-115, MCA, is amended to read:

"15-6-115. Class fourteen property — description — taxable percentage. (1) Class fourteen property includes:

(a) all property, except that included in class eighteen, used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns of 800 persons or less. The

average circuit miles for each station on the telephone communications system must be more than 1 ¼ miles to qualify for this classification.

(b) tools, implements, and machinery used to repair and maintain machinery not used for manufacturing and mining purposes; *and*

(c) livestock, poultry, and unprocessed products of both.

(2) Class fourteen property is taxed at 8% of its market value."

Section 3. Section 15-8-407, MCA, is amended to read:

"15-8-407. Railroads and other franchises. (1) The franchise, roadway, roadbed, rails, rolling stock, *and all other operating property* of all railroads operated in more than one county *or more than one* state must be assessed by the department of revenue as hereinafter provided.

(2) Other franchises, if granted by the authorities of a county or city, must be assessed in the county or city within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business."

Section 4. Section 15-23-101, MCA, is amended to read:

"15-23-101. Properties centrally assessed. The department of revenue shall centrally assess each year:

(1) the franchise, roadway, roadbeds, rails, rolling stock, and all other *operating* property of railroads *operating* in more than one county in the state or more than one state;

(2) property owned by a corporation or other person *operating* a single and continuous property operated in more than one county or more than one state, including telegraph, telephone, microwave, electric power or transmission lines, natural gas or oil pipelines, canals, ditches, flumes, or like properties;

(3) all property of scheduled airlines;

(4) the net proceeds of mines and of oil and gas wells; and

(5) the gross proceeds of coal mines."

Section 5. Section 15-23-105, MCA, is amended to read:

"15-23-105. Apportionment among counties. The department shall apportion the value of property assessed under *15-23-101,* 15-23-202 or 15-23-403 among the counties in which such property is located. Apportionment shall be on a mileage basis or *on the basis of the original installed cost of the centrally assessed property located in the respective counties. If* the property is of such a character that its value cannot reasonably be apportioned on the basis of mileage *or on the basis of the original installed cost of the centrally assessed property located in the respective counties,* the department may adopt such other method or basis of apportionment as may be just or proper."

Section 6. Section 15-23-202, MCA, is amended to read:

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"15-23-202. Assessment — how made. The department must assess the franchise, roadway, roadbed, rails, rolling stock, *and all other operating properties* of all railroads operated in more than one county *or more than one state.* All rolling stock must be assessed in the name of the person owning, leasing, or using the same. Assessment must be made to the person owning or leasing or using the same and must be made upon the entire railroad within the state. The depots, stations, shops, and buildings erected upon the space covered by the right-of-way and all other property owned or leased by such person, except as above provided, shall be assessed by the department."

Section 7. Section 15-23-403, MCA, is amended to read:

"15-23-403. Determination of value — notice. (1) The department of revenue shall determine the full and true valuation of all property of all airlines operating in this state or used by every scheduled airline company in air commerce. This valuation may be ascertained by:

(a) determining the full and true valuation of all property owned and operated by every scheduled airline company; *and*

(b) allocating to the state of Montana from this total valuation a valuation which represents this state's proper share of the valuation of the property, through the application of ratios which are indicated in subsections (8), (9), (10), and (11) of 15-23-402 against the total valuation.

(2) After making such assessment, the department shall give written notice thereof to the person or persons to whom the assessment is made."

Section 8. Section 15-6-111, MCA, is amended to read:

"15-6-111. Class ten property — description — taxable percentage. (1) Class ten property includes:

(a) aerial, surface, and portable ski lifts and ski tows, including the towers, cables, ropes, sheave assemblies, conveying devices, power units, and all accessories;

(b) manufacturing and mining machinery, fixtures, and supplies, except those included in class eighteen;

(c) centrally assessed electric power companies' allocations;

(d) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(e) camper trailers and truck campers valued in the "N.A.D.A. Recreational Vehicle Appraisal Guide".

(2) Class ten property is taxed at 12% of market value."

Section 9. **Class twenty-one property — description — taxable percentage.** (1) Class twenty-one property includes centrally assessed companies' allocations except:

(a) class ten for electric power and natural gas companies' property pipelines;

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(b) class fourteen for rural telephones; and

(c) class eighteen for cooperatives.

(2) Class twenty-one property is taxed at 15% of its market value.

Section 10. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as provided in subsection (5) of this section and in 15-7-111 through 15-7-114.

(2) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in class one and classes seven through eighteen. For purposes of taxation, assessed value is the same as appraised value.

(4) The taxable value for all property in class one, classes seven through eighteen, *class twenty, and class twenty-one* is the percentage of market value established for each class of property in 15-6-102, 15-6-108 through 15-6-119, *15-6-121, and [section 9].*

(5) The assessed value of properties in 15-6-103 through 15-6-107 and 15-6-120 is as follows:

(a) Property in 15-6-106, under class five, is assessed at 100% of book value by the method established in 15-6-106 and the sections cited therein.

(b) Properties in 15-6-103, under class two, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(c) Properties in 15-6-104, 15-6-105, and 15-6-120, under classes three, four, and nineteen are assessed at 100% of the annual gross proceeds.

(d) Properties in 15-6-107, under class six, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(6) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(7) The taxable value of all property in classes two through six is the percentage of assessed value established in 15-6-103 through 15-6-107 for each class of property."

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Section 11. **Repealer.** Section 15-23-302, MCA, is repealed.

Section 12. **Applicability.** This act applies to taxable years after December 31, 1979.

Section 13. **Coordination with House Bill 213.** If House Bill 213, introduced in the 46th legislature, is signed by the governor:

(1) sections 8 and 9 of this act are replaced with the following section:

"Section 8. **Class [eleven] property — description — taxable percentage.** (1) Class [eleven] property includes:

(a) centrally assessed electric power companies' allocations;

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electric power and natural gas companies' property;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five; and

(iii) property owned by organizations providing telephone communications to rural areas and classified in class seven.

(2) Class [eleven] property is taxed as follows:

(a) Property described in subsection (1)(a) and (b) is taxed at 12% of market value.

(b) Property described in subsection (1)(c) is taxed at 15% of market value."

(2) the following additional section of statute is amended as follows:

Section 11. Section 15-6-101, MCA, is amended to read:

"15-6-101. Property subject to taxation — classification. (1) All property in this state is subject to taxation, except as provided otherwise.

(2) For the purpose of taxation, the taxable property in the state shall be classified in accordance with 15-6-102 through 15-6-121 *and [section 8]*."

(3) Section 10 of House Bill 643, third reading copy, is amended as follows:

Section 10. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as provided in subsection (5) of this section and in 15-7-111 through 15-7-114.

(2) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

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(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in class one and classes seven through eighteen. For purposes of taxation, assessed value is the same as appraised value.

(4) The taxable value for all property in class one, classes seven through eighteen, *class twenty, and class twenty-one* is the percentage of market value established for each class of property in 15-6-102, and 15-6-108 through 15-6-119, *15-6-121, and [section 8].*

(5) The assessed value of properties in 15-6-103 through 15-6-107 and 15-6-120 is as follows:

(a) Property in 15-6-106, under class five, is assessed at 100% of book value by the method established in 15-6-106 and the sections cited therein.

(b) Properties in 15-6-103, under class two, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(c) Properties in 15-6-104, 15-6-105, and 15-6-120, under classes three, four, and nineteen are assessed at 100% of the annual gross proceeds.

(d) Properties in 15-6-107, under class six, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(6) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(7) The taxable value of all property in classes two through six is the percentage of assessed value established in 15-6-103 through 15-6-107 for each class of property.

Approved May 9, 1979.

CHAPTER NO. 687

AN ACT TO AMEND THE LAW RELATING TO SEXUAL ASSAULT BY PROVIDING THAT CONSENT IS INEFFECTIVE IN CERTAIN CIRCUMSTANCES; AMENDING SECTION 45-5-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly subjects another not his spouse to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, he shall be imprisoned in the state prison for any term not to exceed 20 years.

(4) An act "in the course of committing sexual assault" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if the victim is less than 14 years old and the offender is 3 or more years older than the victim."

Approved May 9, 1979.

CHAPTER NO. 688

AN ACT TO REVISE THE UNEMPLOYMENT COMPENSATION LAWS RELATING TO THE MINIMUM WEEKLY BENEFIT AMOUNT, THE DURATION OF BENEFITS, AND DISQUALIFICATION OF BENEFITS; AMENDING SECTIONS 39-51-2105, 39-51-2201, 39-51-2204, 39-51-2302, 39-51-2303, AND 39-51-2304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-2105, MCA, is amended to read:

"**39-51-2105. Qualifying wages.** (1) To qualify as an insured worker an individual must have been paid wages for insured work in the quarters of his base period an amount totaling not less than 1 ½ times his base period high quarter wages.

(2) On and after July 1, 1980, to qualify for benefits, an individual must have had at least 20 weeks of work with an average of $50 per week in subject employment in the base period. To qualify for benefits, the total base period wages must be $1,000 or more.

(3) With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this subsection, the term "previously uncovered services" means services:

(a) which were not employment as defined in 39-51-204(1)(a) and (1)(b) at any time during the 1-year period ending December 31, 1975; and

(b) which:

(i) are agricultural labor, as defined in 39-51-203(8), or domestic service, as defined in 39-51-203(9); or

(ii) are services performed by an employee of this state or a political subdivision thereof, as provided in 39-51-203(5), or by an employee of a

nonprofit educational institution which is not an institution of higher education, as provided in 39-51-203(6), except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services."

Section 2. Section 39-51-2201, MCA, is amended to read:

"39-51-2201. Weekly benefit amount — determination of average weekly wage. (1) Any individual whose benefit year begins on or after July 1, 1971, shall receive as his weekly benefit amount an amount equal to one twenty-sixth of his total wages for insured work paid during the calendar quarter of his base period in which his wages were highest. Such weekly benefit amount, if not a multiple of $1, shall be rounded to the nearest multiple of $1.

(2) On and after July 1, 1980, an eligible individual's weekly benefit amount shall be the total base period wages divided by the number of weeks of covered employment times 50%. However, such amount shall not be less than the minimum, or more than the maximum weekly benefit amount.

(3) On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before such date for the preceding calendar year shall be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on such contribution reports. The amount thus obtained shall be divided by 52 and the average weekly wage, rounded to the nearest cent, thus determined. *Sixty* percent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year. Such maximum weekly benefit amount if not a multiple of $1, shall be computed to the nearest multiple of $1.

(4) The minimum weekly benefit amount shall be *15% of the average weekly wage.*

(5) The division shall prepare and publish annually a benefit schedule in accordance with the provisions of this subsection."

Section 3. Section 39-51-2204, MCA, is amended to read:

"39-51-2204. Duration of benefits. Any otherwise eligible individual shall be entitled during his benefit year to benefits for the total number of weeks appearing in the following table on the line which includes his ratio of total base period earnings to highest quarter base period earnings:

Ratio of Total Base Period Earnings to High Quarter		Weeks' Duration of Benefits
At Least	*Less Than*	
0	*1.25*	*8*
1.25	*1.50*	*10*
1.50	*1.75*	*12*
1.75	*2.00*	*14*

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2.00	*2.25*	*16*
2.25	*2.50*	*18*
2.50	*2.75*	*20*
2.75	*3.00*	*22*
3.00	*3.25*	*24*
3.25	—	*26"*

Section 4. Section 39-51-2302, MCA, is amended to read:

"39-51-2302. Disqualification for leaving work without good cause. (1) *An* individual shall be disqualified for benefits if he has left work without good cause.

(2) He may not be disqualified if the division finds that he left his employment because of personal illness or injury not associated with misconduct or left his employment upon the advice of a licensed and practicing physician and, after recovering from his illness or injury when recovery is certified by a licensed and practicing physician, he returned to his employer and offered his service and his regular or comparable suitable work was not available, if so found by the division, provided he is otherwise eligible.

(3) To requalify for benefits, an individual must perform services other than self-employment for which remuneration is received equal to or in excess of six times his weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless he has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of his enrollment."

Section 5. Section 39-51-2303, MCA, is amended to read:

"39-51-2303. Disqualification for discharge due to misconduct. *An* individual shall be disqualified for benefits if he has been discharged:

(1) for misconduct connected with his work or affecting his employment until *an individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of eight times his weekly benefit amount subsequent to the week in which the act causing the disqualification occurred.*

(2) for gross misconduct connected with his work or committed on the employer's premises, as determined by the division, for a period of 12 months."

Section 6. Section 39-51-2304, MCA, is amended to read:

"39-51-2304. Disqualification for failure to apply for or to accept suitable work. (1) Effective April 1, 1977, an individual shall be disqualified for benefits if he failed without good cause either to apply for available and suitable work when so directed by the employment office or the division or to accept suitable work offered to him which he is physically able and mentally qualified to perform or to return to his customary self-employment, if any, when so directed by the division. Such disqualification shall continue for the week in which such failure occurred and until

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he has performed services, other than self-employment, for which remuneration is received equal to or in excess of his weekly benefit amount in 6 separate weeks subsequent to the date the act causing the disqualification occurred, with 6 weeks' reduction in benefit duration, as determined by the division, provided he has not left this work under disqualifying circumstances.

(2) In determining whether or not any work is suitable for an individual, the division shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(3) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) if position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) During the first 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers wages equal to the prevailing wage for that area in the individual's customary occupation. After 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers 75% of the prevailing wage."

Approved May 9, 1979.

CHAPTER NO. 689

AN ACT TO PERMIT THE REALLOCATION AND APPROPRIATION OF WATER RESERVED FOR PURPOSES OF MAINTAINING MINIMUM FLOW, LEVEL, OR QUALITY OF WATER; LIMITING MINIMUM FLOW RESERVATIONS; AMENDING SECTION 85-2-316, MCA; PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-316, MCA, is amended to read:

"**85-2-316. Reservation of waters.** (1) The state or any political subdivision or agency thereof or the United States or any agency thereof may apply to the board to reserve waters for existing or future beneficial

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uses or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Upon receiving an application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided in 85-2-309, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant.

(3) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

(a) the purpose of the reservation;

(b) the need for the reservation;

(c) the amount of water necessary for the purpose of the reservation;

(d) that the reservation is in the public interest.

(4) If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(5) The board shall limit any reservations after [the effective date of this act] for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of the 50% of the average annual flow of record on gauged streams. Ungauged streams can be allocated at the discretion of the board.

(6) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may, with the approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.

(7) Any person desiring to use water reserved to a conservation district for agricultural purposes shall make application for such use with the district, and the district upon approval of the application must inform the department of the approved use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the processing of such applications for the conservation districts.

(8) A reservation under this section shall date from the date the order reserving the water is adopted by the board and shall not adversely affect any rights in existence at that time.

(9) The board shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation

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are being met. Where the objectives of the reservation are not being met, the board may extend, revoke, or modify the reservation.

(10) The board may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate such reservation or portion thereof to an applicant who is a qualified reservant under this section. Reallocation of reserved water may be made by the board following notice and hearing wherein the board finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water shall not adversely affect the priority date of the reservation, and the reservation shall retain its priority date despite reallocation to a different entity for a different use. The board may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(11) Nothing in this section vests the board with the authority to alter a water right that is not a reservation."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved May 9, 1979.

CHAPTER NO. 690

AN ACT RELATING TO THE SCHOOL FOUNDATION PROGRAM; PROVIDING FOR CHANGES IN FINANCIAL SCHEDULES FOR THE MAXIMUM GENERAL FUND BUDGETS FOR ELEMENTARY AND HIGH SCHOOLS; AMENDING SECTIONS 20-9-316 THROUGH 20-9-319, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-316, MCA, is amended to read:

"20-9-316. Elementary school maximum budget schedule for 1979-80. (1) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be *$12,002* if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be *$12,002* plus *$501.60* per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be *$16,516* plus *$501.60* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(4) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be *$26,665* plus *$314.10* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

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(5) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of *$1,165* shall be decreased at the rate of *$1.13* for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of *$1,097* shall be decreased at the rate of *$1.03* for each additional pupil until the ANB shall have reached 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum shall not exceed *$890.60* for each pupil.

(6) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule."

Section 2. Section 20-9-317, MCA, is amended to read:

"20-9-317. High school maximum budget schedule for 1979-80. (1) For each high school having an ANB of 24 or fewer pupils, the maximum shall be *$68,373.*

(2) For a secondary school having an ANB of more than 24 pupils, the maximum *$2,849* shall be decreased at the rate of *$15.54* for each additional pupil until the ANB shall have reached a total of 40 such pupils.

(3) For a school having an ANB of more than 40 pupils, the maximum of *$2,600* shall be decreased at the rate of *$15.54* for each additional pupil until the ANB shall have reached 100 pupils.

(4) For a school having an ANB of more than 100 pupils, a maximum of *$1,668* shall be decreased at the rate of *$2.60* for each additional pupil until the ANB shall have reached 200 pupils.

(5) For a school having an ANB of more than 200 pupils, the maximum of *$1,408* shall be decreased by *$1.43* for each additional pupil until the ANB shall have reached 300 pupils.

(6) For a school having an ANB of more than 300 pupils, the maximum of *$1,265* shall be decreased at the rate of *26* cents until the ANB shall have reached 600 pupils.

(7) For a school having an ANB over 600 pupils, the maximum shall not exceed *$1,186* per pupil.

(8) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town, shall be treated as one school for the purpose of this schedule."

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Section 3. Section 20-9-318, MCA, is amended to read:

"20-9-318. Elementary school maximum budget schedule for 1980-81 and succeeding years. (1) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be *$13,202* if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be *$13,202* plus *$551.70* per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be *$18,168* plus *$551.70* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(4) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be *$29,006* plus *$345.50* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(5) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of *$1,282* shall be decreased at the rate of *$1.25* for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of *$1,207* shall be decreased at the rate of *$1.12* for each additional pupil until the ANB shall have reached 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum shall not exceed *$979.60* for each pupil.

(6) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule."

Section 4. Section 20-9-319, MCA, is amended to read:

"20-9-319. High school maximum budget schedule for 1980-81 and succeeding years. (1) For each high school having an ANB of 24 or fewer pupils, the maximum shall be *$75,210.*

(2) For a secondary school having an ANB of more than 24 pupils, the maximum *$3,134* shall be decreased at the rate of *$17.09* for each additional pupil until the ANB shall have reached a total of 40 such pupils.

(3) For a school having an ANB of more than 40 pupils, the maximum of *$2,860* shall be decreased at the rate of *$17.09* for each additional pupil until the ANB shall have reached 100 pupils.

(4) For a school having an ANB of more than 100 pupils, a maximum of *$1,835* shall be decreased at the rate of *$2.86* for each additional pupil until the ANB shall have reached 200 pupils.

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(5) For a school having an ANB of more than 200 pupils, the maximum of *$1,549* shall be decreased by *$1.57* for each additional pupil until the ANB shall have reached 300 pupils.

(6) For a school having an ANB of more than 300 pupils, the maximum of *$1,392* shall be decreased at the rate of *28* cents until the ANB shall have reached 600 pupils.

(7) For a school having an ANB over 600 pupils, the maximum shall not exceed *$1,305* per pupil.

(8) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town, shall be treated as one school for the purpose of this schedule."

Section 5. **Effective date.** This act is effective on passage and approval.

Approved May 9, 1979.

CHAPTER NO. 691

AN ACT TO AUTHORIZE THE BOARD OF REGENTS TO ESTABLISH AND CONTRACT FOR THE OPERATION OF A GUARANTEED STUDENT LOAN PROGRAM; CREATING A STUDENT LOAN ADVISORY COUNCIL; ESTABLISHING A GUARANTEED STUDENT LOAN ACCOUNT WITHIN THE STATE TREASURY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, direct federal administration of the guaranteed student loan program has resulted in administrative confusion, high default rates, and rapidly decreasing participation by private lenders; and

WHEREAS, the congress of the United States has moved positively to diminish student abuse of the program and encourage state participation through creation of state student loan guarantee agencies; and

WHEREAS, thirty-nine states currently operate student loan guarantee agencies; and

WHEREAS, establishing a Montana guaranteed student loan program, at no cost to the general fund, would increase available student loans for needy students, especially for middle-income students and families.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Guaranteed student loan advisory council — terms, compensation.** (1) There is a student loan advisory council appointed by the board of regents.

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(2) The council consists of seven members. Each member shall be appointed for a term of 3 years.

(3) Appointments to the council must conform to the following requirements:

(a) One member must be a representative of a private eligible educational institution, as defined in [section 3].

(b) Two members must be representatives of a public eligible educational institution, as defined in [section 3]. One must be a representative of higher education, and one must be a representative for the postsecondary vocational-technical centers.

(c) Two members must be representatives of approved lenders.

(d) One member must be a full-time student registered at an eligible educational institution, as defined in [section 3].

(e) One member must be a representative of the office of the commissioner of higher education.

(4) A chairman must be selected by the council from its membership at the first meeting of each fiscal year.

(5) Each member of the council is entitled to compensation and reimbursement for travel expenses as provided in 2-15-122(5).

Section 2. **Transition period — appointment of council members.** (1) For the purpose of providing staggered terms, the initial terms of council members shall be as follows:

(a) three members appointed for a 1-year term;

(b) two members appointed for 2-year terms; and

(c) two members appointed for 3-year terms.

(2) Thereafter, all members of the council shall be appointed for 3-year terms.

Section 3. **Definitions.** As used in [sections 3 through 9], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of regents of higher education.

(2) "Council" means the guaranteed student loan advisory council established in [section 1].

(3) "Eligible educational institution" means any institution approved by the United States commissioner of education as eligible to participate in the guaranteed student loan program pursuant to Title IV of the Higher Education Act of 1965, as amended.

(4) "Guaranteed student loan program" means the program established by the board pursuant to [sections 3 through 9].

(5) "Nonprofit corporation" means the private nonprofit corporation designated by the board to administer student loans.

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Section 4. **Authorization to establish guaranteed student loan program.** (1) The board may establish and contract for the operation of a guaranteed student loan program for the purpose of making available to students improved opportunities for education by guaranteeing loans in accordance with applicable federal law to persons attending or accepted for enrollment at an eligible educational institution.

(2) The board is designated as the state representative for receiving federal or public or private money that is now or will be made available under any act of the congress of the United States or otherwise for purposes of the guaranteed student loan program.

Section 5. **Duties of the board.** In discharging its duties in relation to the guaranteed student loan program, the board shall:

(1) act as guarantor on loans of money, upon such terms and conditions as the board may prescribe, to assist persons attending or accepted for enrollment at an eligible educational institution to meet their educational expenses;

(2) approve financial or credit institutions, insurance companies, or other lenders as eligible lenders upon their meeting the standards established by the board for making guaranteed student loans;

(3) incur and discharge debts, including defaulted loan obligations that have been guaranteed by the board;

(4) make and execute agreements, contracts, and other instruments with any public or private person or agency, including the United States commissioner of education, for the administration of the guaranteed student loan program;

(5) contract with a nonprofit corporation for the operation of the guaranteed student loan program to provide loan approval processing, essential and special loan servicing, preclaims assistance, claim processing and collections, and other services that would promote lender participation and loan availability to students;

(6) perform any other duties necessary for the administration of the guaranteed student loan program.

Section 6. **Student loan advisory council — duties.** The council shall:

(1) advise the board on policies, rules, and procedures necessary for accomplishing the provisions of [sections 3 through 9];

(2) make recommendations to the board concerning the designation of a nonprofit corporation;

(3) monitor the nonprofit corporation to assure that both the students and lenders are adequately served; and

(4) advise on the adequacy and proper execution of any contracts entered into between the board and the nonprofit corporation.

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Section 7. **Guaranteed student loan account.** (1) There is a guaranteed student loan revolving account within the university student loan fund provided for in 17-2-102(11).

(2) The board shall credit to the account established in subsection (1) all money designated for the guaranteed student loan program by the United States or by any other public or private source. All expenses incurred by the board in connection with the guaranteed student loan program, including principal and interest payments required because of loan defaults, must be charged against the account.

(3) Money in the account not needed to meet current obligations of the board in the exercise of its responsibilities as guarantor, as provided for in [sections 3 through 9], must be invested in accordance with the provisions of Title 17, chapter 6. Interest proceeds must be credited to the account.

(4) Money on deposit in the guaranteed student loan account shall not revert to the general fund at the close of any fiscal year.

Section 8. **No state obligation.** The legislature is not obligated to appropriate any money to pay for guaranteed student loan defaults. For the purpose of the guaranteed student loan program, neither the board nor the nonprofit corporation may obligate the credit of the state.

Section 9. **Dissolution — disposition of money.** (1) The guaranteed student loan program may not be dissolved until all contractual obligations have been satisfied and all loans guaranteed have been paid by the borrower, or if in default, by the board.

(2) Upon dissolution of the program or the cessation of the program's activities, all property and money of the board relating to the guaranteed student loan program not refundable to the federal government as provided by law vest in the state and shall be credited to the general fund.

Section 10. **Effective date.** This act is effective on passage and approval.

Approved May 9, 1979.

CHAPTER NO. 692

AN ACT TO PROVIDE A COUNTY MILL LEVY FOR DISTRICT COURT COSTS; ALLOWING THE DEPARTMENT OF ADMINISTRATION TO MAKE EMERGENCY ASSISTANCE GRANTS TO DISTRICT COURTS AND PROVIDING APPLICATION AND ADMINISTRATIVE PROCEDURES FOR THESE GRANTS; PROVIDING FOR A PERIOD OF APPLICABILITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **County levy for district court expenses — budget.** (1) The governing body of each county may each year levy and collect a tax on the taxable property of the county for all district court costs, except

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those listed in 3-5-211, 3-5-213, and 3-5-215. The tax may not exceed 6 mills in the first- and second-class counties, 5 mills in third- and fourth-class counties, and 4 mills in fifth-, sixth-, and seventh-class counties. These expenses include but are not limited to salary and benefits for court clerks, court reporters, youth probation officers, and other employees of the district court.

(2) As soon as the preliminary budget provided for in 7-6-2315 has been agreed upon by the governing body, a copy shall be transmitted to the district court. At any time before the final adoption of the budget, the district court may make recommendations for changes in any part of the budget relating to the court considered necessary for the court to discharge its obligations under the law.

(3) No part of the district court fund may be used for any other purpose or for the construction or improvement of any county building.

Section 2. **State grants to district courts — procedure.** (1) The department of administration may make grants to the governing body of a county for the district courts for emergency assistance, as provided in this section. The grants are to be made from funds appropriated to the department for that purpose.

(2) The governing body of a county may apply to the department of administration for a grant when the following conditions occur, by filing a written report stating:

(a) that the court will not be able to meet its statutory obligations with the funds authorized under the county budget;

(b) that all lawful sources of income to the district court fund have been exhausted;

(c) that all expenditures from the district court fund have been lawfully made;

(d) that no transfers from the district court fund have been or will be made to any other fund;

(e) that no expenditures have been made from the district court fund that are not specifically authorized by [section 1]; and

(f) any other information required by the department of administration.

(3) Within 10 days of receipt of the application, the department of administration shall give notice to the district court and the county governing body of its intention to allow the grant.

(4) Within 10 days of receiving notice from the department of administration that a grant will be made, the district court shall adopt an emergency budget and transmit it to the county governing body.

(5) After receiving notice of the county governing body's approval of the emergency budget, the department of administration shall cause a warrant to be issued to the treasurer of the county in which the district

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court is located for the total amount stated in the approved emergency budget.

(6) The grant received by the county shall be placed in an emergency fund account to be kept separate from the district court fund.

(7) After depleting the district court fund, the county treasurer may make disbursements from the emergency fund account. At the close of its fiscal year, the county treasurer shall return to the department of administration any amounts remaining in the emergency fund account.

Section 3. **Sunset provision.** This act and the authority granted therein shall terminate June 30, 1983.

Approved May 11, 1979.

CHAPTER NO. 693

AN ACT TO GENERALLY REVISE THE PROPERTY TAX CLASSIFICATION SYSTEM; AMENDING SECTIONS 15-1-101, 15-6-101, 15-7-202, 15-8-111, 15-23-501, 15-23-505, 15-24-102, 15-24-301, 15-24-1102, 15-24-1103, 15-24-1308, 15-24-1311, AND 20-9-407, MCA; AND REPEALING SECTIONS 15-6-102 THROUGH 15-6-121 AND 15-7-121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Class one property — description — taxable percentage.** (1) Class one property includes:

(a) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals; and

(b) the annual net proceeds of all mines and mining claims except coal and metal mines.

(2) Class one property is taxed as follows:

(a) Property described in subsection (1)(a) is taxed at 100% of its market value, as determined by the department of revenue.

(b) Property described in subsection (1)(b) is taxed at 100% of its annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

Section 2. **Class two property — description — taxable percentage.** (1) Class two property includes:

(a) the annual gross proceeds of metal mines;

(b) the annual gross proceeds of underground coal mines; and

(c) the annual gross proceeds of coal mines using the strip-mining method.

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(2) Class two property is taxed as follows:

(a) Property described in subsection (1)(a) is taxed at 3% of its annual gross proceeds, as defined in 15-23-801.

(b) Property described in subsection (1)(b) is taxed at 33 ⅓% of its annual gross proceeds.

(c) Property described in subsection (1)(c) is taxed at 45% of its annual gross proceeds.

Section 3. **Class three property — description — taxable percentage.** (1) Class three property includes agricultural land as defined in 15-7-202.

(2) Class three property is taxed at 30% of its productive capacity.

Section 4. **Class four property — description — taxable percentage.** (1) Class four property includes:

(a) all land except that specifically included in another class;

(b) all improvements except those specifically included in another class;

(c) all trailers and mobile homes used as permanent dwellings except:

(i) those held by a distributor or dealer of trailers or mobile homes as his stock in trade; and

(ii) those specifically included in another class;

(d) the first $35,000 or less of the market value of any improvement on real property or a trailer or mobile home used as a permanent dwelling and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 10 months a year as the primary residential dwelling of:

(i) a widow or widower 62 years of age or older who qualifies under the income limitations of (iii) of this subsection;

(ii) a widow or widower of any age with dependent children who qualifies under the income limitations of (iii) of this subsection; or

(iii) a recipient or recipients of retirement or disability benefits whose total income from all sources is not more than $7,000 for a single person or $8,000 for a married couple.

(2) Class four property is taxed as follows:

(a) Property described in subsections (1)(a) through (1)(c) is taxed at 8.55% of its market value.

(b) Property described in subsection (1)(d) is taxed at one-half the taxable percentage established in subsection (2)(a), or 4.275%.

Section 5. **Class five property — description — taxable percentage.** (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in subsection (1)(c) of [section 7];

(b) air and water pollution control equipment as defined in this section;

(c) truck campers, motor homes, and camping and travel trailers, including fifth-wheel trailers, owned by and actually used primarily by a person 60 years of age or older who:

(i) is retired from full employment; and

(ii) whose total income from all sources is not more than $7,000 for a single person or $8,000 for a married couple;

(d) new industrial property as defined in this section.

(2) "Air and water pollution equipment" means facilities, machinery, or equipment used to reduce or control water or atmospheric pollution or contamination by removing, reducing, altering, disposing, or storing pollutants, contaminants, wastes, or heat. The department of health and environmental sciences shall determine if such utilization is being made.

(3) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials; or

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget.

(5) New industrial property does not include:

(a) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions;

(b) a plant that will create adverse impact on existing state, county, or municipal services; or

(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

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(6) Class five property is taxed at 3% of its market value.

Section 6. **Class six property — description — taxable percentage.** (1) Class six property includes:

(a) business inventories as defined in this section;

(b) all unprocessed agricultural products on the farm or in storage except:

(i) all perishable fruits and vegetables in farm storage and owned by the producer; and

(ii) livestock and poultry and the unprocessed products of both.

(2) "Business inventories" includes goods intended for sale or lease in the ordinary course of business and raw materials and work in progress with respect to such goods. Business inventories do not include goods leased or rented or mobile homes held by a dealer or distributor as part of his stock in trade. The market value of business inventories, for property tax purposes, is the cost to the person subject to the inventory tax.

(3) Class six property is taxed at 4% of its market value.

Section 7. **Class seven property — description — taxable percentage.** (1) Class seven property includes:

(a) livestock, poultry, and unprocessed products of both;

(b) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns of 800 persons or less;

(c) all property owned by cooperative rural electrical and cooperative rural telephone associations that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of a city or town;

(d) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by centrally assessed public utilities; and tools used in the repair and maintenance of this property; and

(e) tools, implements, and machinery used to repair and maintain machinery not used for manufacturing and mining purposes.

(2) To qualify for this classification, the average circuit miles for each station on the telephone communication system described in subsection (1)(b) must be more than 1 ¼ miles.

(3) Class seven property is taxed at 8% of its market value.

Section 8. **Class eight property — description — taxable percentage.** (1) Class eight property includes:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools, and supplies except:

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(i) those included in class five; and

(ii) coal and ore haulers;

(c) all manufacturing machinery, fixtures, equipment, tools, and supplies except those included in class five;

(d) motorcycles;

(e) watercraft;

(f) light utility and boat trailers;

(g) aircraft;

(h) snowmobiles and all-terrain vehicles;

(i) harness, saddlery, and other tack equipment; and

(j) all other machinery except that specifically included in another class.

(2) Class eight property is taxed at 11% of its market value.

Section 9. **Class nine property — description — taxable percentage.** (1) Class nine property includes:

(a) automobiles, buses, and trucks weighing 1 ½ tons or less;

(b) stock, camping, and travel trailers;

(c) truck campers and toppers weighing more than 300 pounds, except those included in class five;

(d) motor homes except those included in class five;

(e) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(f) x-ray and medical and dental equipment; and

(g) citizens' band radios and mobile telephones.

(2) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(3) Class nine property is taxed at 13% of its market value.

Section 10. **Class ten property — description — taxable percentage.** (1) Class ten property includes:

(a) radio and television broadcasting and transmitting equipment;

(b) cable television systems;

(c) centrally assessed utility allocations after deductions of locally assessed properties, except as provided in:

(i) class five for cooperative rural electrical and cooperative rural telephone associations; and

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(ii) class seven for rural telephone and electrical organizations;

(d) coal and ore haulers;

(e) trucks weighing more than 1 ½ tons, including those prorated under 15-24-102;

(f) trailers, except those included in classes five, eight, or nine, including those prorated under 15-24-102;

(g) theater projectors and sound equipment; and

(h) all other property not included in the preceding nine classes.

(2) Class ten property is taxed at 16% of its market value.

Section 11. **Certain disabled veterans' residences exempt.** (1) A residence, including the lot on which it is built, owned and occupied by a disabled veteran is exempt from property taxation under the following conditions. The owner must:

(a) have been honorably discharged from active service in any branch of the armed services;

(b) be rated 100% disabled due to a service-connected disability by the United States veterans administration or its successor; and

(c) have an annual income from all sources of not more than $7,000 for a single person and $8,000 for a married couple.

(2) If a veteran whose property has been eligible for this exemption dies, the property shall continue to be exempt so long as the surviving spouse:

(a) remains unmarried;

(b) is the owner and occupant of the house; and

(c) has a total annual income from all sources of not more than $7,000.

Section 12. **Application for class five and certain class four classifications.** (1) A person applying for classification of property described in subsection (1)(c) of [section 5] or subsection (1)(d) of [section 4] shall make an affidavit to the department of revenue, on a form provided by the department without cost, stating:

(a) his income;

(b) his retirement benefits;

(c) his marital status;

(d) the fact that he maintains the land and improvements as his primary residential dwelling, where applicable; and

(e) such other information as is relevant to the applicant's eligibility.

(2) This application must be made before March 1 of the year after the applicant becomes eligible.

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(3) The affidavit is sufficient if the applicant signs a statement affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for the purposes of 45-7-202, relating to the criminal offense of false swearing.

Section 13. **Application for classification as new industrial property.** (1) Any person, firm, or other group seeking to qualify its property for classification as new industrial property under class five shall make application to the department of revenue on a form provided by the department.

(2) The department of revenue shall promulgate rules for the determination of what constitutes an adverse impact, taking into consideration the number of people to be employed and the size of the community in which the location of the industrial property is contemplated.

(3) If the department makes an initial determination that the industrial property qualifies as new industrial property under class five, it shall publish notice of and hold a public hearing to determine whether the property should retain this classification.

(4) Local taxing authority officials may waive their objections to the property's classification in class five if the owner of the new industrial property agrees to prepay property taxes on the property during the construction period. The maximum amount of prepayment shall be the amount of tax the owner would have paid on the property if it had not been classified under class five.

(5) If a new industrial facility qualifies under class five, its property tax payment may not be reduced for reimbursement of its prepaid taxes as provided in 15-16-201 until the class five qualification expires.

Section 14. Section 15-1-101, MCA, is amended to read:

"15-1-101. Definitions. (1) When terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "assessed value" means the value of property as defined in 15-8-111.

(b) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(c) The term "improvements" includes all buildings, structures, fixtures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. If the mobile home or housetrailer is an improvement located on land not owned by the owner of such improvement, the improvement is assessed as a leasehold improvement to real property and delinquent taxes can be a lien only on the leasehold improvement.

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(d) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches", exceeding 8 feet in width or 32 feet in length, designed to be moved from one place to another by an independent power connected to them.

(e) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(f) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(g) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and 15-23-801; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(h) The term "taxable value" means the percentage of *market or* assessed value as provided for in *[sections 1 through 10 of this act]*.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board."

Section 15. Section 15-6-101, MCA, is amended to read:

"15-6-101. Property subject to taxation — classification. (1) All property in this state is subject to taxation, except as provided otherwise.

(2) For the purpose of taxation, the taxable property in the state shall be classified in accordance with *[sections 1 through 10 of this act]*."

Section 16. Section 15-7-202, MCA, is amended to read:

"15-7-202. Eligibility of land for valuation as agricultural. (1) Land which is actively devoted to agricultural use shall be eligible for valuation, assessment, and taxation as herein provided each year it meets either of the following qualifications:

(a) the area of such land is not less than 5 contiguous acres when measured in accordance with provisions of 15-7-206, and it has been actively devoted to agriculture during the last growing season, and it continues to be actively devoted to agricultural use, which means:

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(i) it is used to produce field crops including but not limited to grains, feed crops, fruits, vegetables; or

(ii) it is used for grazing; or

(iii) it is used for growing timber; or

(iv) it is in a cropland retirement program; or

(b) it agriculturally produces for sale or home consumption the equivalent of 15% or more of the owners' annual gross income regardless of the number of contiguous acres in the ownership.

(2) Land shall not be classified or valued as agricultural if it is subdivided with stated restrictions prohibiting its use for agricultural purposes.

(3) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise shall not be considered a bona fide agricultural operation."

Section 17. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as provided in subsection (5) of this section and in 15-7-111 through 15-7-114.

(2) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in *subsection (1)(a) of [section 1] and [sections 4 through 10].* For purposes of taxation, assessed value is the same as appraised value.

(4) The taxable value for all property in *subsection (1)(a) of [section 1] and* classes *four* through *ten* is the percentage of market value established for each class of property in *subsection (2)(a) of [section 1] and [section 4]* through *[section 10].*

(5) The assessed value of properties in *subsection (1)(b) of [section 1], [section 2], and [section 3]* is as follows:

(a) Properties in *subsection (1)(b) of [section 1],* under class *one,* are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(b) Properties in *[section 2]* under *class two* are assessed at 100% of the annual gross proceeds.

(c) Properties in *[section 3],* under class *three,* are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

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(6) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(7) The taxable value of all property in *subsection (1)(b) of [section 1] and* classes two *and three* is the percentage of assessed value established in *subsection (2)(b) of [section 1] and [sections 2 and 3]* for each class of property."

Section 18. Section 15-23-501, MCA, is amended to read:

"15-23-501. Taxation of mines. All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal, or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed *as all other land is taxed.* All machinery used in mining and all property and surface improvements upon or appurtenant to mines and mining claims which have a value separate and independent of such mines or mining claims and the annual net proceeds of all mines and mining claims shall be taxed as other personal property."

Section 19. Section 15-23-505, MCA, is amended to read:

"15-23-505. Assessment of royalties. Upon receipt of the list or schedule setting forth the names and addresses of any and all persons owning or claiming royalty and the amount paid or yielded as royalty to the royalty owners or claimants during the year for which the return is made, the department of revenue shall proceed to assess and tax the royalties on the same basis as net proceeds of mines are taxed as provided by *[section 1 of this act]*."

Section 20. Section 15-24-102, MCA, is amended to read:

"15-24-102. Valuation of interstate fleets — determination of aggregate tax due. The department of revenue shall assess any interstate motor vehicle fleet making application for proportional registration as follows:

(1) The purchase price depreciated by a schedule as prescribed by the department shall determine the depreciated value.

(2) The depreciated value multiplied by the percent of miles traveled in Montana as prescribed by 61-3-721 shall be the assessed value.

(3) The sum of the assessed value of all vehicles included in the fleet multiplied by *16%* shall be the taxable value for the entire fleet.

(4) To determine the amount of tax due, the taxable value of the entire fleet shall be multiplied by the statewide average county mill levy plus state levies as hereinafter provided."

Section 21. Section 15-24-301, MCA, is amended to read:

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"15-24-301. Personal property brought into the state — assessment — exceptions — custom combine equipment. (1) Property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) any personal property (including livestock) brought, driven, or coming into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) property which comes to rest and becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner and to the same extent, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) Nothing in this section shall be construed to levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer in addition to the tax levied against the inventory of said merchant or dealer on the regular assessment date.

(4) This section shall not apply to motor vehicles brought, driven, or coming into this state by any nonresident, migratory, bona fide agricultural workers temporarily employed in agricultural work in Montana if the motor vehicles are used exclusively for transportation of agricultural workers.

(5) Agricultural harvesting machinery classified under *class* eight, licensed in other states, and operated on the lands of persons other than the owner of the machinery under contracts for hire shall be subject to a fee in lieu of taxation of $35 per machine for a 60-day period. The machines shall be subject to taxation under *class* eight only if they are sold in Montana."

Section 22. Section 15-24-1102, MCA, is amended to read:

"15-24-1102. Federal property held under contract of sale. When the property is held under a contract of sale or other agreement whereby upon payment the legal title is or may be acquired by the person, the real property shall be assessed and taxed as defined in *[sections 1 through 10]* and 15-8-111 without deduction on account of the whole or any part of the purchase price or other sum due on the property remaining unpaid. The lien for the tax may not attach to, impair, or be enforced against any interest of the United States in the real property."

Section 23. Section 15-24-1103, MCA, is amended to read:

"15-24-1103. Federal property held under lease. When the property is held under lease, other interest, or estate therein less than the fee, except under contract of sale, the property shall be assessed and taxed

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as for the value, as defined in *[sections 1 through 10 of this act]* of such leasehold, interest, or estate in the property and the lien for the tax shall attach to and be enforced against only the leasehold, interest, or estate in the property. When the United States authorizes the taxation of the property for the full assessed value of the fee thereof, the property shall be assessed for full assessed value as defined in 15-8-111."

Section 24. Section 15-24-1308, MCA, is amended to read:

"15-24-1308. Land classified as industrial — assessment provisions. (1) The governing body shall identify those lands within its jurisdiction whose highest and best purpose is determined to be industrial. Owners of existing industrial buildings and grounds under construction or undergoing expansion that increases the taxable value of the property 10% shall receive tax benefits or penalties based on their compliance with the land use categories established by the governing body. Improvements classified as "new industrial property" under *[section 5 of this act]* may not qualify for benefits under this section. Industrial land and buildings shall be classified as Class A, B, C, or D for purposes of new construction or expansion of existing facilities.

(2) Tax benefits and penalties for new construction or expansion shall apply to the land and the improvements thereon in accordance with these classifications, determined by the governing body, based on compliance with the following environmental criteria. Construction of or expansion of industrial buildings and grounds:

(a) would not place unreasonable burden on existing public services, such as highways, schools, and police and fire protection;

(b) would have sufficient water available for foreseeable needs;

(c) would meet existing air and water pollution requirements or that through reclamation the natural environment could be returned substantially to its original condition;

(d) would have adequate sewage and solid waste disposal facilities.

(3) Classes A, B, C, and D shall be determined and taxed as follows:

Class A—complies with criteria (2)(a) through (2)(d).

Class B—complies with criteria (2)(c) through (2)(d).

Class C—complies with criteria (2)(b) and (2)(d).

Class D—other than Class A, B, or C.

LAND CLASSIFICATION	INDUSTRIAL CLASSIFICATION			
	CLASS A	CLASS B	CLASS C	CLASS D
Residential	+ 50%	+100%	+150%	+200%
Commercial	- 25%	- 15%	-0-	+ 50%
Industrial	- 50%	- 30%	- 10%	+ 25%

The percentages above reflect the amount in addition (+) to the taxable value or less than (-) the taxable value. These percentages of taxable value

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shall be continuously applied to the land and the buildings for 10 consecutive years following their construction. The construction period may not be taxed for new industrial construction or expansion of an existing industry except as provided in 15-24-1307(3) and (5). Beginning with the 11th year following construction, the percentage of taxable value shall be adjusted in equal increments until taxable value is attained in the 20th year. Thereafter, the property shall be taxed at 100% of taxable value."

Section 25. Section 15-24-1311, MCA, is amended to read:

"15-24-1311. Remodeling of homes, buildings, or structures — assessment provisions. (1) Remodeling of existing buildings or structures shall receive tax benefits during the construction period and for the following 5 years in accordance with the following schedule. These percentages shall be applied to any increase in taxable value caused by the remodeling:

Construction period	0%
First year following construction	20%
Second year following construction	40%
Third year following construction	60%
Fourth year following construction	80%
Fifth year following construction	100%
Following years	100%

(2) If an existing home, building, or structure is not remodeled as defined in this chapter within the 10 years following passage of this act, a 5% increase shall be added to its taxable value each year that the owner fails to remodel to a maximum of 50%. After a home, building, or structure has been remodeled, the provisions of this section shall be considered to be started again with the beginning of a new 10-year period.

(3) The governing body shall waive the provisions of this section unless it can be demonstrated that lack of regular maintenance over a period of time has failed to maintain the value of the property and that depreciation has taken place to lower the value of the property more than 2 ½%."

Section 26. Section 20-9-407, MCA, is amended to read:

"20-9-407. Industrial facility agreement for bond issue in excess of maximum. (1) In a school district within which a new major industrial facility which seeks to qualify for taxation as class *five* property under *[section 5 of this act]* is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class *five* property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the 29% limitation prescribed in this section. Under such an agreement, the school district may, with the approval of the voters, issue bonds which exceed the limitation prescribed in this section by a maximum of 29% of the estimated taxable value of the property of the new major industrial facility subject to taxation when completed. The estimated taxable value of the property of the new major industrial facility subject to taxation shall be computed by the department of revenue when requested to do so by a resolution of the

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board of trustees of the school district. A copy of the department's statement of estimated taxable value shall be printed on each ballot used to vote on a bond issue proposed under this section.

(2) Pursuant to the agreement between the new major industrial facility and the school district and as a precondition to qualifying as class *five* property, the new major industrial facility and its owners shall pay, in addition to the taxes imposed by the school district on property owners generally, so much of the principal and interest on the bonds provided for under this section as represents payment on an indebtedness in excess of the limitation prescribed in this section. After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in this section, the new major industrial facility shall be entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than 20 years. The credit shall as a total amount be equal to the amount which the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

(3) A major industrial facility is a facility subject to the taxing power of the school district, whose construction or operation will increase the population of the district, imposing a significant burden upon the resources of the district and requiring construction of new school facilities. A significant burden is an increase in ANB of at least 20% in a single year."

Section 27. **Repealer.** Sections 15-6-102 through 15-6-121 and 15-7-121, MCA, are repealed.

Approved May 11, 1979.

CHAPTER NO. 694

AN ACT AMENDING SECTION 15-35-108, MCA, TO ALLOCATE A PORTION OF THE PROCEEDS OF THE COAL SEVERANCE TAX FOR CERTAIN LIBRARY SERVICES; APPROPRIATING FUNDS FOR THOSE SERVICES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"15-35-108. Disposal of severance taxes. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 25% of total collections a year. After December 31, 1979, 50% of coal severance tax collections are allocated to this trust fund. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

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(a) to the county in which coal is mined, 2% of the severance tax paid on the coal mined in that county until January 1, 1980, for such purposes as the governing body of the county may determine;

(b) 2 ½% until December 31, 1979, and thereafter 5% to the earmarked revenue fund to the credit of the alternative energy research development and demonstration account;

(c) 26 ½% until July 1, 1979, and thereafter 37 ½% to the earmarked revenue fund to the credit of the local impact and education trust fund account;

(d) for each of the 2 fiscal years following June 30, 1977, 13% to the earmarked revenue fund to the credit of the coal area highway improvement account;

(e) 10% to the earmarked revenue fund for state equalization aid to public schools of the state;

(f) 1% to the earmarked revenue fund to the credit of the county land planning account;

(g) 2 ½% to the sinking fund to the credit of the renewable resource development bond account;

(h) 2 ½% through June 30, 1979, one-half to the earmarked revenue fund for the purpose of acquisition, operation, or maintenance of sites and areas described in 23-1-102 and protection of works of art in the state capitol and other cultural and aesthetic projects, subject to legislative appropriations, and one-half to the earmarked revenue fund to be invested in a trust fund for the purpose of parks acquisition or management. After June 30, 1979, 5% to the trust fund for the purpose of parks acquisition or management. Income from the fund established in this subsection (h) may be appropriated for the acquisition of sites and areas described in 23-1-102 and the operation and maintenance of sites so acquired and protection of works of art in the state capitol and other cultural and aesthetic projects;

(i) 1% to the earmarked revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(j) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 2. **Appropriation.** There is appropriated to the State Library Commission all available funds deposited in the earmarked revenue fund under 15-35-108(2)(i) for the purposes stated therein for the biennium ending June 30, 1981.

Section 3. **Effective and applicability dates.** This act is effective on passage and approval and applies to all coal severance tax collections after June 30, 1979.

Approved May 11, 1979.

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CHAPTER NO. 695

AN ACT TO EXEMPT IRRIGATION, DRAINAGE, AND SPRINKLER IRRIGATION FACILITIES FROM TAXATION; AND REPEALING SECTION 15-7-216, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Irrigation and drainage facilities — when exempt.** (1) All irrigation and drainage facilities, including bonds, rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, and other property of like character shall be taxed as like facilities of the federal and state government; in cases where property taxes apply and where an increase in land value results, such facilities shall be taxed as such land is improved and such land shall be classified for tax purposes as the tax classification law provides.

(2) Sprinkler irrigation systems are exempt from taxation. Such systems include all pipes, hoses, rollers, spray attachments, connectors, pumps, and other items integral to the functioning of a sprinkler irrigation system installed and used on a farm or ranch but exclude underground water distribution lines and other elements of the system sufficiently affixed to land that they become real property.

Section 2. **Repealer.** Section 15-7-216, MCA, is repealed.

Approved May 11, 1979.

CHAPTER NO. 696

AN ACT TO REVISE THE LAWS RELATING TO THE INHERITANCE TAX; EXEMPTING ALL PROPERTY TRANSFERRED TO A SURVIVING SPOUSE; AMENDING SECTIONS 72-16-313 AND 72-16-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-16-313, MCA, is amended to read:

"72-16-313. Exemptions of spouse and other relatives. (1) The clear value of *all* property distributed or passing to decedent's surviving spouse is exempt.

(2) The following amounts are exempt:

(a) property of the clear value of $15,000 transferred to:

(i) each minor lineal issue of the decedent;

(ii) any minor child adopted as such in conformity with law;

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(iii) any minor child to whom such decedent for not less than 10 years prior to such transfer stood in the mutually acknowledged relation of a parent, provided such relationship began at or before the child's 15th birthday and was continuous for 10 years; or

(iv) any minor lineal issue of such adopted or mutually acknowledged child; and

(b) property of the clear value of $7,000 transferred to each of the lineal issue who have attained majority and to each of the other persons who have attained majority described in 72-16-321(1).

(3) Property of the clear value of $1,000 transferred to each of the persons described in 72-16-321(2) is exempt."

Section 2. Section 72-16-321, MCA, is amended to read:

"72-16-321. Primary rates — amount remaining after exemptions not in excess of twenty-five thousand dollars. The exemptions allowed by 72-16-311 through 72-16-316 shall be subtracted from the total value of property or beneficial interests transferred to any person, institution, association, corporation, or political entity by the decedent. A tax is imposed upon the first $25,000 in value of the remaining amount of the total value of property or beneficial interests at the following rates:

(1) at the rate of 2% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is:

(a) the lineal issue or lineal ancestor of the decedent;

(b) any child adopted as such in conformity with law or any child to whom such decedent for not less than 10 years prior to such transfer stood in the mutually acknowledged relation of a parent, provided such relationship began at or before the child's 15th birthday and was continuous for 10 years; or

(c) any lineal issue of such adopted or mutually acknowledged child;

(2) at the rate of 4% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is:

(a) the brother or sister or a descendant of a brother or sister of the decedent;

(b) a wife of a son or the husband of a daughter of the decedent;

(3) at the rate of 6% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is the uncle, aunt, or first cousin of the decedent;

(4) at the rate of 8% of the clear value of the interest in property passing if the entity entitled to any beneficial interest in such property is:

(a) a person in any other degree of collateral consanguinity than is hereinbefore stated;

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(b) a stranger in blood to the decedent; or

(c) a body politic or corporate."

Section 3. **Effective date.** This act is effective on passage and approval and applies to transfers of decedents who died after December 31, 1978.

Approved May 11, 1979.

CHAPTER NO. 697

AN ACT TO ADJUDICATE CLAIMS OF EXISTING WATER RIGHTS IN MONTANA; AMENDING SECTIONS 3-5-111, 85-2-102, 85-2-112, 85-2-113, 85-2-114, 85-2-401, AND 85-2-406, MCA; REPEALING SECTIONS 85-2-201 THROUGH 85-2-210, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose — district court water divisions — water judges — creation.** (1) [This act] amends the Montana Water Use Act to expedite and facilitate the adjudication of existing water rights.

(2) To adjudicate existing water rights water divisions are established as defined in [section 2]. A water division shall be presided over by a water judge.

(3) A water judge shall be designated within 30 days after [the effective date of this act] for each water division by a majority vote of a committee composed of the district judge from each single judge judicial district and the chief district judge from each multiple judge judicial district, wholly or partly within the division. A water judge must be a district judge of a judicial district wholly or partly within the water division. A district judge may not sit as a water judge in more than one division.

(4) No water judge may preside over matters concerning the determination and interpretation of existing water rights beyond the boundaries specified in [section 2] for his division.

(5) A water judge, when presiding over a water division, presides as district judge in and for each judicial district wholly or partly within the water division.

(6) The jurisdiction of each judicial district concerning the determination and interpretation of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.

Section 2. **Water divisions defined.** (1) There are four water divisions whose boundaries are formed by the natural divides between drainages and the borders of the state of Montana and which are described as follows:

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(a) The Yellowstone River Basin water division consists of those areas drained by the Yellowstone and Little Missouri Rivers and any remaining areas in Carter County.

(b) The lower Missouri River Basin water division consists of those areas drained by the Missouri River from below the mouth of the Marias River and any remaining areas in Glacier and Sheridan Counties.

(c) The upper Missouri River Basin water division consists of those areas drained by the Missouri River to below the mouth of the Marias River.

(d) The Clark Fork River Basin water division consists of the areas drained by the Clark Fork River, the Kootenai River, and any remaining areas in Lincoln County.

(2) Whenever a question arises concerning which water judge shall preside over adjudication of a matter concerning the determination and interpretation of existing water rights, the question shall be settled by the water judges involved.

Section 3. **Appointment of water masters — qualifications — removal.** (1) The water judge in each water division shall appoint a water master.

(2) A water master may be appointed after July 1, 1980, and must be appointed on or before July 1, 1982.

(3) In appointing a water master, the water judge shall consider a potential master's experience with water law, water use, and water rights.

(4) A water master shall serve at the pleasure of the water judge and may be removed by the water judge.

Section 4. **Salary, expenses, and retirement of water masters.** (1) The water judges shall set a uniform salary for water masters. Water masters shall receive expenses as provided in 2-18-501 through 2-18-503.

(2) A water master shall participate in the Montana Public Employees' Retirement System established in Title 19, chapter 3.

(3) The salary and expenses of a water master shall be paid from the water right adjudication account established in [section 18].

Section 5. **Duties of water masters.** (1) The water master has the general powers given to a master by M.R.Civ.P., Rule 53(c).

(2) Within a reasonable time after June 30, 1983, the water master shall issue a report to the water judge meeting the requirements for the preliminary decree as specified in [section 22].

(3) After a water judge issues a preliminary decree, the water master shall assist the water judge in the performance of the water division's further duties as ordered by the water judge.

Section 6. **Jurisdiction of the water division.** (1) The action for the adjudication of all existing water rights under [this act] is commenced

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with the issuing of the order by the Montana supreme court to file a statement of a claim of an existing water right as provided in [section 16]. As to each claim, the action is considered filed in the judicial district of the county in which the diversion is made or, if there is a claimed right with no diversion, in the judicial district of the county in which the use occurs.

(2) The water judge for each division shall exercise jurisdiction over all matters concerning the determination and interpretation of existing water rights within his division as specified in [section 2] that are considered filed in or transferred to a judicial district wholly or partly within the division.

(3) The water judge may consolidate all matters concerning the determination and interpretation of existing water rights within the water judge's division in any combination or groups of claims or matters for joint hearings or proceedings conducted by the water judge or water master in any location within the division. The water judge may make such consolidations as are necessary to administer the requirements of [this act] in adjudicating claims of existing water rights.

(4) All matters concerning the determination and interpretation of existing water rights shall be brought before or immediately transferred to the water judge in the proper water division unless witnesses have been sworn and testimony has been taken by a district court prior to the date of the Montana supreme court order as provided in [section 16].

(5) The water judge of each water division may appoint and supervise a water commissioner as provided for in Title 85, chapter 5.

(6) The water judge of each water division may enforce the provisions of a final decree issued in that water division as provided in [section 24].

(7) The water judge may designate any other district judge within the water division to preside in his absence on his behalf as water judge for the immediate enforcement of an existing decree or the immediate granting of extraordinary relief as may be provided for by law upon an allegation of irreparable harm.

Section 7. **Disqualification of water judges or water master.** (1) A water judge may disqualify himself or the water master in any proceeding or pertinent portion thereof in which his or the water master's impartiality might reasonably be questioned.

(2) A water judge may also disqualify himself or the water master in the following circumstances:

(a) if he or the water master has a personal bias or prejudice concerning a party of personal knowledge or disputed evidentiary facts concerning the proceeding;

(b) if in private practice he or the water master served as a lawyer in the matter in controversy or a lawyer with whom he or the water master previously practiced law served during such association as a lawyer concerning the matter or the judge or the lawyer has been a material witness concerning it;

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(c) if he or the water master has served in governmental employment and in such capacity participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(d) if he or the water master knows that he or the water master individually or as a fiduciary, or his or the water master's spouse or minor child residing in his or the water master's household has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be substantially affected by the outcome of the proceeding; or

(e) if he or the water master or his or the water master's spouse or a person within the third degree of relationship to any of them (as calculated according to 72-11-101 through 72-11-105) or the spouse of such a person:

(i) is a party to the proceeding or an officer, director, or trustee of a party;

(ii) is known by the judge or water master to have an interest that could be substantially affected by the outcome of the proceeding;

(iii) is to the judge's or water master's knowledge likely to be a material witness in the proceeding.

(3) A water judge should inform himself about his and the water master's personal and fiduciary financial interests and make a reasonable effort to inform himself about the personal financial interests of his and the water master's spouse and minor children residing in his or the water master's respective household.

(4) For the purposes of this section, the following definitions apply:

(a) "Proceeding" includes prehearing, hearing, appellate review, or other stages of adjudication conducted by the water master or water judge.

(b) "Fiduciary" includes such relationships as executor, administrator, trustee, or guardian.

(c) "Financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a financial interest in such securities unless the judge or water master participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a financial interest in securities held by the organization;

(iii) the proprietary interest of a policyholder in a mutual insurance company or a depositor in a mutual savings association or a similar proprietary interest is a financial interest in the organization only if the outcome of the proceeding could substantially affect the value of the interest; and

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(iv) ownership of government securities is a financial interest in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(5) A water judge may accept from the parties to the proceeding a waiver of any ground for disqualification if it is preceded by a full disclosure on the record of the basis for disqualification.

(6) The procedure for disqualification of a water judge or water master specified in this section is exclusive unless otherwise specifically altered by the Montana supreme court.

Section 8. **Designation of water judge to fill vacancy.** If a vacancy occurs, it shall be filled in the manner provided in [section 1] for the initial designation of a water judge. A vacancy is created when a water judge dies, retires, is not elected to a subsequent term, forfeits his judicial position, is removed, or is otherwise unable to complete his term as a district judge.

Section 9. **Water judges — term of office.** The term of office for water judges is from the date of initial appointment as provided in [section 1] to June 30, 1985. After June 30, 1985, the term of office of a water judge is 4 years, subject to continuation of the water divisions by the legislature.

Section 10. **Promulgation of rules and prescription of forms.** As soon as practicable the Montana supreme court may promulgate special rules of practice and procedure and shall prescribe forms for use in connection with [this act] in consultation with the water judge and the department.

Section 11. **Claim of existing water right — filing statement of claim required — exemptions.** (1) A person claiming an existing right, unless exempted below or unless an earlier filing date is ordered as provided in [section 16], shall file with the department no later than June 30, 1983, a statement of claim for each water right asserted on a form provided by the department.

(2) The department shall file a copy of each statement of claim with the clerk of the district court for the judicial district in which the diversion is made or, if there is a claimed right with no diversion, the department shall file a copy of the statement of claim with the clerk of the district court of the judicial district in which the use occurs.

(3) Claims for existing rights for livestock and individual as opposed to municipal domestic uses based upon instream flow or groundwater sources and claims for rights in the Powder River Basin included in a declaration filed pursuant to the order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, or under sections 3 and 4 of Chapter 485, Laws of 1975, are exempt from the filing requirements of subsection (1) of this section. Such claims may, however, be voluntarily filed.

Section 12. **Department of fish and game to represent public recreational uses.** The department of fish and game shall exclusively

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represent the public for purposes of establishing any prior and existing public recreational use in existing right determinations under [sections 11 through 26], provided that the foregoing shall not exclude a federal governmental entity from representing the public for the purpose of establishing any prior and existing public recreational use in existing right determinations under [sections 11 through 26] and further provided that the foregoing shall not be construed in any manner as a legislative determination of whether or not a recreational use sought to be established prior to July 1, 1973, is or was a beneficial use.

Section 13. **Statement of claim — contents.** (1) The statement of claim for each right shall include substantially the following:

(a) the name and mailing address of the claimant;

(b) the name of the watercourse or water source from which the right to divert or make use of water is claimed, if available;

(c) the quantities of water and times of use claimed;

(d) the legal description, with reasonable certainty, of the point or points of diversion and places of use of waters;

(e) the purpose of use, including, if for irrigation, the number of acres irrigated;

(f) the approximate dates of first putting water to beneficial use for the various amounts and times claimed in subsection (c); and

(g) the sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief.

(2) The claimant shall submit maps, plats, aerial photographs, decrees, or pertinent portions thereof, or other evidence in support of his claim. All maps, plats, or aerial photographs should show as nearly as possible to scale the point of diversion, place of use, place of storage, and other pertinent conveyance facilities.

Section 14. **Abandonment by failure to file claim.** The failure to file a claim of an existing right as required by [section 11] establishes a conclusive presumption of abandonment of that right.

Section 15. **Claim to constitute prima facie evidence.** A claim of an existing right filed in accordance with [section 11] constitutes prima facie proof of its content until the issuance of a final decree.

Section 16. **Order to file claim.** (1) The Montana supreme court shall within 10 days of the filing of the petition by the attorney general issue an order to file a statement of a claim of an existing water right in substantially the following form:

"WATER RIGHTS ORDER

FAILURE TO FILE A CLAIM AS REQUIRED BY LAW WILL RESULT IN A CONCLUSIVE PRESUMPTION THAT THE WATER RIGHT OR CLAIMED WATER RIGHT HAS BEEN ABANDONED. (This introductory sentence shall be printed in not less than 12-point boldface type.) This order is notice of commencement of procedures for the

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general adjudication of existing rights to the use of water and of the requirement to file a claim for certain existing rights to the use of water. Every person, including but not limited to an individual, partnership, association, public or private corporation, city or other municipality, county, state agency or the state of Montana, and federal agency of the United States of America on its own behalf or as trustee for any Indian or Indian tribe, asserting a claim to an existing right to the use of water arising prior to July 1, 1973, is ordered to file a statement of claim to that right with the department no later than June 30, 1983. Claims for stock and individual as opposed to municipal domestic uses based upon instream flow or groundwater sources are exempt from this requirement; however, claims for such uses may be voluntarily filed. Claims filed with the department in the Powder River Basin in a declaration filed pursuant to the order of the department of natural resources and conservation or a district court issued pursuant to sections 8 and 9 of Chapter 452, Laws of 1973, or under sections 3 and 4 of Chapter 485, Laws of 1975, are also exempt.

For further information, contact the department of natural resources and conservation, Helena, Montana, for a copy of the law and an explanation of it."

(2) Upon petition of the attorney general, the Montana supreme court shall issue the order called for in subsection (1) with a shorter claim filing period of not less than 1 year, subject to extension not beyond June 30, 1983, by the Montana supreme court upon petition of the attorney general, in those basins or subbasins where state adjudication jurisdiction is being or is likely to be challenged.

Section 17. **How notice of the order to be given.** To assure that all persons who may claim an existing water right are notified of the requirement to file a claim of that right, the Montana supreme court shall give notice of the order as follows:

(1) It shall cause the order printed in not less than 10-point type to be placed in a prominent and conspicuous place in all daily newspapers of the state and in at least one newspaper published in each county of the state within 30 days after the Montana supreme court order as provided in [section 16] and in April of 1980, 1981, 1982, and 1983.

(2) It shall cause the order in writing to be placed in a prominent and conspicuous location in each county courthouse in the state within 30 days after the Montana supreme court order as provided in [section 16].

(3) It shall provide a sufficient number of copies of the order to the county treasurers before October 15, 1979, 1980, 1981, and 1982, and the county treasurers shall enclose a copy of the order with each statement of property taxes mailed in 1979, 1980, 1981, and 1982. In the implementation of this subsection, the department shall provide reimbursement to each county treasurer for the reasonable additional costs incurred by the treasurer arising from the inclusion of the order required by this section. The department shall be reimbursed for such costs from the water right adjudication account created by [section 18].

(4) It shall provide copies of the order in writing to the press services with offices located in Helena within 30 days after the Montana supreme

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court order as provided in [section 16], and in April of 1980, 1981, 1982, and 1983.

(5) It shall, under authority granted to the states by 43 U.S.C. 666, provide for service of the petition and order upon the United States attorney general or his designated representative.

(6) It may also in its discretion give notice of the order in any other manner that will carry out the purposes of this section.

(7) It may also in its discretion order that the department or the water judge assist the Montana supreme court in the carrying out of this section.

Section 18. **Fees — special account created.** (1) Each claim filed under [section 11] shall be accompanied by a filing fee in the amount of $40, subject to the following exceptions:

(a) the total filing fees for all claims filed by one person in any one water court division may not exceed $480; and

(b) no filing fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and which is accompanied by a certified copy of that decree or pertinent portion thereof or verified as otherwise ordered by the court.

(2) There is established a water right adjudication account in the earmarked revenue fund of the state treasury. All fees collected under this section and [section 22] shall be deposited in the account to pay the expenses incurred by the state for administering [this act].

Section 19. **Expenses to be borne by state.** All expenses incurred by the state as a result of [this act] are to be paid from the water right adjudication account in the earmarked revenue fund established in [section 18]. Expenses include but are not limited to the salaries and expenses of personnel, equipment, office space, and other necessities incurred in administering [this act]. If sufficient revenue is not available from the earmarked revenue fund, the expense shall be paid from the state's general fund.

Section 20. **Adjudication of existing rights.** (1) Within 20 days after [the effective date of this act], the state of Montana upon relation of the attorney general shall petition the Montana supreme court to require all persons claiming a right within a water division to file a claim of the right as provided in [section 11].

(2) The water judge shall monitor the claim filing procedure for claims within his water division and make any orders necessary to assure timely and accurate compliance with the claim filing procedure.

Section 21. **Department assistance to water judges.** The department, subject to the direction of the water judge, shall, without cost to the judicial districts wholly or partly within his water division:

(1) provide such information and assistance as may be required by the water judge to adjudicate claims of existing rights;

(2) establish information and assistance programs to aid claimants in the filing of claims for existing rights required by [section 11];

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(3) conduct field investigations of claims that the water judge in consultation with the department determines warrant investigation; and

(4) provide the water judge with all information in its possession bearing upon existing rights, including all declarations filed with and all information gathered by the department with respect to existing rights in the Powder River Basin.

Section 22. **Preliminary decree.** (1) Within a reasonable time after the close of the filing period, the water judge shall issue a preliminary decree. The preliminary decree shall be based on the statements of claim before the water judge, the data submitted by the department, and any additional data obtained by the water judge.

(2) The preliminary decree shall contain the information and make the determinations, findings, and conclusions required for the final decree under [section 24].

(3) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree set forth in subsections (1) and (2), and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not so satisfied, he may, at his option, recommit the report to the master with instructions, or modify the report and issue the preliminary decree.

(4) The water judge shall send a copy of the preliminary decree to the department, and the water judge shall serve by mail a notice of availability of the preliminary decree to each person who has filed a claim of existing right, or, in the Powder River Basin, to each person who has filed a declaration of an existing right. The water judge shall enclose with the notice an abstract of the disposition of such person's claimed or declared existing right. The notice of availability shall also be served upon those issued or having applied for and not having been denied a beneficial water use permit pursuant to Title 85, chapter 2, part 3, those granted a reservation pursuant to 85-2-316, or other interested persons who request service of the notice from the water judge. The clerk or person designated by the water judge to mail the notice shall make a general certificate of mailing certifying that a copy of the notice has been placed in the United States mail, postage prepaid, addressed to each party required to be served notice of the preliminary decree. Such certificate shall be conclusive evidence of due and legal notice of entry of decree.

(5) Any person may obtain a copy of the preliminary decree upon payment of a fee of $20 or the cost of printing, whichever is greater, to the water judge.

Section 23. **Hearing on preliminary decree.** (1) Upon objection to the preliminary decree by the department, a person named in the preliminary decree, or any other person, for good cause shown, the department or such person is entitled to a hearing thereon before the water judge.

(2) If a hearing is requested, such request must be filed with the water judge within 90 days after notice of entry of the preliminary decree. The

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water judge may, for good cause shown, extend this time limit an additional 30 days if application for the extension is made within 90 days after notice of entry of the preliminary decree.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions in the preliminary decree with which the department or person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based.

(4) Upon expiration of the time for filing objections and upon timely receipt of a request for a hearing, the water judge shall notify each party named in the preliminary decree that a hearing has been requested. The water judge shall fix a day when all parties who wish to participate in future proceedings must appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing shall be conducted as for other civil actions. At the order of the water judge a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in M.R.Civ.P., Rule 53(e).

Section 24. **Final decree.** (1) The water judge shall, on the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the water judge shall enter it as the final decree.

(2) The final decree shall establish the existing rights and priorities within the water judge's jurisdiction of persons required by [section 11] to file a claim for an existing right and of persons required to file a declaration of existing rights in the Powder River Basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973.

(3) The final decree shall state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person named in the decree are based.

(4) For each person who is found to have an existing right, the final decree shall state:

(a) the name and post-office address of the owner of the right;

(b) the amount of water, rate, and volume, included in the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land, if any, to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

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(h) the inclusive dates during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

Section 25. **Appeals from final decree.** A person whose existing rights and priorities are determined in the final decree may appeal the determination only if:

(1) he requested a hearing and appeared and entered objections to the preliminary decree; or

(2) his rights as determined in the preliminary decree were altered as the result of a hearing requested by another person.

Section 26. **Certificate of water right.** When a final decree is entered, the water judge shall send a copy to the department. The department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The original of the certificate shall be sent to the county clerk and recorder of the county where the point of diversion or place of use is located for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the person to whom the right is decreed.

Section 27. **Legislative intent regarding Indian water rights — suspension of adjudication — negotiation of compacts authorized — procedure — negotiation of federal rights.** (1) Because the water and water rights within each water division are interrelated, it is the intent of the legislature to conduct unified proceedings for the general adjudication of existing water rights under the Montana Water Use Act. Therefore, it is the intent of the legislature that the attorney general's petition required in [section 16] include all claimants of reserved Indian water rights as necessary and indispensable parties under authority granted the state by 43 U.S.C. 666. However, it is further intended that the state of Montana proceed under the provisions of this section in an effort to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state.

(2) From the time of filing the petition required in [section 16] until July 1, 1982, and while negotiations for the conclusion of a compact under this section are being pursued, all actions to generally adjudicate reserved Indian water rights from a source of water in question under [this act] are suspended, unless an action is commenced or is pending by or on behalf of an Indian tribe to adjudicate water from that source other than as provided for in Title 85, chapter 2. In such case, the suspension is maintained only if the action is dismissed or if the parties to the action stipulate to the suspension during compact negotiations of all further proceedings in the action except the determination of jurisdictional issues and an order is so issued.

(3) The compact commission may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under subsection (1). Compact proceedings shall be commenced

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by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under [this act] and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Upon receipt of such written designation from the governing body of a tribe, compact negotiations shall be considered to have commenced. When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana, any affected tribal governing body, and the congress of the United States. The water judge shall include in the preliminary decree the contents of a compact that has been agreed upon by the parties to the compact whether or not it has been ratified by congress.

(4) (a) There is created a reserved water rights compact commission. Commissioners are appointed within 30 days of [the effective date of this act] as follows:

(i) two members of the house of representatives appointed by the speaker, each from a different political party;

(ii) two members of the senate appointed by the president, each from a different political party;

(iii) four members designated by the governor; and

(iv) one member designated by the attorney general.

(b) Legislative members of the commission are entitled to receive compensation and expenses as provided in 5-2-301 for each day actually spent on commission business. Other members are entitled to salary and expenses as state employees.

(c) The commission is attached to the governor's office for administrative purposes only. The costs of the commission shall be paid from funds appropriated for that purpose from the water right adjudication account established in [section 19].

(d) Members appointed to the commission shall serve until the work of the commission is completed or until they resign or are otherwise unable to serve. A vacancy must be filled in the manner of the original appointment.

(5) The commission or any other party to the negotiations may terminate negotiations by providing notice to all parties 30 days in advance of the termination date. On the termination date, the suspension of the application of [this act] provided for in subsection (2) shall also terminate.

(6) The compact commission may also enter into separate negotiations with the federal government for the conclusion of compacts concerning the equitable division and apportionment of water between the state and its people and the federal government claiming non-Indian reserved waters

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within the state. The terms and conditions of such negotiations shall be the same as provided in this section for negotiations with Indian tribes.

Section 28. Section 3-5-111, MCA, is amended to read:

"3-5-111. District courts presided over by judges of other districts. A judge of the district court of any judicial district may hold the district court in any county of another district than his own at the request of the judge thereof *or as otherwise provided by law.* Upon the request of the governor, it is his duty to do so. In either case the judge holding the court has the same power either in court or chambers as a judge thereof."

Section 29. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use" means a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses. A use of water for slurry to export coal from Montana is not a beneficial use. Slurry is a mixture of water and insoluble matter.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means *a* certificate of water right issued by the department.

(5) "Declaration" means the declaration of an existing right filed with the department under *section 8, Chapter 452, Laws of 1973.*

(6) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(7) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(8) "Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(9) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(10) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

(11) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other

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public body of the state empowered to appropriate water but not a private corporation, association, or group.

(12) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(13) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including geothermal water and diffuse surface water.

(14) "Water division" means a drainage basin as defined in [section 2].

(15) "Water judge" means a judge as provided for in [sections 1 through 10].

(16) "Water master" means a master as provided for in [sections 1 through 10].

(17) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 30. Section 85-2-112, MCA, is amended to read:

"85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted by the board under 85-2-113;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, declarations, *claims of existing rights,* and proceedings under this chapter and prescribe the information to be contained in any application, declaration, *claim of existing right,* or other document to be filed with the department under this chapter *not inconsistent with the requirements of this chapter*;

(3) *establish and* keep in its Helena office a centralized *record system of all existing rights and a* public record of permits, certificates, declarations, *claims of existing rights,* applications, and other documents filed in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing declarations with the department *or claims of existing rights with a district court* under this chapter."

Section 31. Section 85-2-113, MCA, is amended to read:

"85-2-113. Board powers and duties. (1) The board may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates. There shall be no fees for

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the filing of declarations or for *any action taken by the department at the request of the water judge or for* the issuance of certificates of existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of groundwater.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property."

Section 32. Section 85-2-114, MCA, is amended to read:

"85-2-114. Prevention of waste. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, or preventing water from moving to another person having a prior right to use the same, it may petition the district court *supervising the distribution of water among appropriators from the source* to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use; or

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take such steps as may be necessary to remedy the waste, unlawful use, or interference.

(2) The department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it, which notice shall be legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin such waste, unlawful use, or interference."

Section 33. Section 85-2-401, MCA, is amended to read:

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"**85-2-401. Priority.** (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise his water right under the changed conditions.

(2) Priority of appropriation made under this chapter dates from the filing of an application for a permit with the department, except as otherwise provided in 85-2-301 through 85-2-303, 85-2-306, 85-2-310(3), and 85-2-313.

(3) Priority of appropriation perfected before July 1, 1973, shall be determined as provided in *part 2 of this chapter.*"

Section 34. Section 85-2-406, MCA, is amended to read:

"**85-2-406. District court supervision of water distribution.** (1) The district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision shall be governed by the principle that first in time is first in right.

(2) When a water distribution controversy arises upon a source of water in which existing rights have not been determined according to *part 2 of this chapter*, any party to the controversy may petition the district court for relief. The district court from which relief is sought may grant such injunctive or other relief which is necessary and appropriate to preserve property rights or the status quo pending the *issuance of the final decree.*

(3) A controversy between appropriators from a source which has been the subject of a general determination of existing rights under *part 2 of this chapter* shall be settled by the district court which issued the final decree. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy shall be appended to the final decree, and a copy shall be filed with the department. The department shall be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding."

Section 35. **Codification.** (1) Sections 1 through 10 of this act are intended to be codified as an integral part of Title 3, and the provisions contained in Title 3 apply to this act.

(2) Sections 11 through 27 are intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions contained in Title 85, chapter 2, apply to this act.

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(3) If the provisions of this act are not codified as stated above, the code commissioner shall add to the MCA, if necessary, statutory language to convey the intent of this section.

Section 36. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 37. **Repealer.** Sections 85-2-201 through 85-2-210, MCA, are repealed.

Section 38. **Effective date.** This act is effective on passage and approval.

Approved May 11, 1979.

CHAPTER NO. 698

AN ACT TO ENACT THE MONTANA PROPERTY AND INCOME TAX RELIEF ACT; PROVIDING FOR A DIRECT PROPERTY TAX RELIEF PAYMENT TO A PERSON SUBJECT TO PROPERTY TAX ON HIS PRINCIPAL RESIDENCE FOR THE CALENDAR YEARS 1979 AND 1980; INCREASING THE INDIVIDUAL INCOME TAX DEDUCTION FOR EXEMPTIONS, THE STANDARD DEDUCTION, AND THE MINIMUM FILING REQUIREMENT; PROVIDING A MECHANISM FOR INCREASING THE EXEMPTION DEDUCTION FOR TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1978, AND BEFORE JANUARY 1, 1981; AMENDING SECTIONS 15-30-112, 15-30-114, 15-30-122, AND 15-30-142, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Montana Property and Income Tax Relief Act".

Section 2. **Definitions.** As used in [sections 2 through 6], the following definitions apply:

(1) "Applicant" means a person applying for property tax relief on his principal residence.

(2) "Department" means the department of revenue.

(3) "Principal residence" means a dwelling, including a mobile home as defined in 15-24-201, and appurtenant land occupied by an applicant for at least 10 months during the year immediately preceding the date of application.

(4) "Property tax" means any tax levied against the value of property except special assessments.

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Section 3. **Property tax relief on principal residence.** A person to whom property taxes are assessed on his principal residence for the calendar years 1979 and 1980 is entitled to a direct payment from the department in the amount provided for in [section 5] as property tax relief.

Section 4. **Application for property tax relief.** (1) A person may apply for property tax relief on his principal residence each year.

(2) Each application must be made on forms prescribed by the department. Each form must require the applicant to include:

(a) his name, address, and social security number;

(b) the address of his principal residence;

(c) the length of time he has resided at that address;

(d) the amount of property tax due on the residence for the current year; and

(e) any other information required by the department.

(3) Each application must also contain the certification of the county assessor of the county in which the applicant's principal residence is located certifying that the applicant is the person to whom the property tax on the residence is assessed.

(4) The department shall establish by rule a final date for submission of applications for property tax relief. The rule must assure a reasonable opportunity for eligible persons to apply.

Section 5. **Amount of property tax relief allowed for a principal residence.** (1) Except as provided in subsection (2), each applicant eligible for relief under [section 3] is entitled to receive the lesser of:

(a) the amount of property tax due on his principal residence for the current year; or

(b) $65.

(2) If the amount appropriated for a fiscal year is insufficient to provide relief for all eligible applicants in the amounts specified in subsection (1), the department shall determine the amount of relief each eligible applicant is entitled to receive based upon the funds appropriated and the number of eligible applicants.

Section 6. **Duties of the department.** (1) The department shall:

(a) determine the eligibility of each applicant; and

(b) compute the amount of relief to which the applicant is entitled.

(2) After December 1 of each year, the department shall cause a warrant to be issued to each eligible applicant for the amount of relief to which he is entitled.

Section 7. **Appropriation.** There is appropriated $10 million in fiscal year 1980 and $10 million in fiscal year 1981 to the department of revenue

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from the general fund for property tax relief payments and administrative costs associated with the property tax relief program.

Section 8. Section 15-30-112, MCA, is amended to read:

"15-30-112. Exemptions. (1) *Except as provided in subsection (7), in* the case of an individual, the exemptions provided by *subsections (2) through (6)* shall be allowed as deductions in computing taxable income.

(2) (a) An exemption of *$800* shall be allowed for taxable years beginning after December 31, *1978*, for the taxpayer.

(b) An additional exemption of *$800* shall be allowed for taxable years beginning after December 31, *1978*, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of *$800* shall be allowed for taxable years beginning after December 31, *1978*, for the taxpayer if he has attained the age of 65 before the close of his taxable year.

(b) An additional exemption of *$800* shall be allowed for taxable years beginning after December 31, *1978*, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of *$800* shall be allowed for taxable years beginning after December 31, *1978*, for the taxpayer if he is blind at the close of his taxable year.

(b) An additional exemption of *$800* shall be allowed for taxable years beginning after December 31, *1978*, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer, except that if the spouse dies during such taxable year, such determination shall be made as of the time of such death.

(c) For purposes of this subsection (4), an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of *$800* shall be allowed for taxable years beginning after December 31, *1978*, for each dependent:

(i) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than *$800*; or

(ii) who is a child of the taxpayer and who:

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(A) has not attained the age of 19 years at the close of the calendar year in which the taxable year of the taxpayer begins; or

(B) is a student.

(b) No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins:

(i) is a full-time student at an educational institution; or

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(6) In the case of a nonresident taxpayer, the exemption deduction shall be prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income.

(7) For taxable years beginning after December 31, 1978, and before January 1, 1981, the amount allowed as a deduction in subsections (2) through (6) shall be adjusted as provided under [section 9]."

Section 9. **Deductions for exemptions in 1979 and 1980.** (1) The exemption amounts allowed in 15-30-112 are increased for taxable years beginning after December 31, 1978, and before January 1, 1980, by $50 for each $2.5 million by which the general fund balance, as certified by the director of the department of administration to the director of the department of revenue, exceeds $14 million as of June 30, 1979.

(2) The exemption amounts allowed in 15-30-112 are increased for taxable years beginning after December 31, 1979, and before January 1, 1981, by $50 for each $2.8 million by which the general fund balance, as certified by the director of the department of administration to the director of the department of revenue, exceeds $13 million as of June 30, 1980.

Section 10. Section 15-30-114, MCA, is amended to read:

"**15-30-114. Additional exemption for dependent child with handicap.** (1) In lieu of the exemption in 15-30-112(5), an exemption for twice the amount allowed for dependents shall be allowed for taxable years beginning after December 31, 1976, for each dependent child with a handicap.

(2) In order to be eligible for the exemption, a dependent child with a handicap must, for the taxable year of the taxpayer, have as his principal

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place of abode the home of the taxpayer and have a permanent handicap of great enough severity that it constitutes not less than 50% disability to the body as a whole. An exemption may be allowed for a dependent with a permanent handicap after he reaches the age of majority if he continues to be a dependent.

(3) For taxable years beginning after December 31, 1978, and before January 1, 1981, the additional exemption for a dependent child with a handicap is twice the amount allowed for dependents as adjusted under [section 9]."

Section 11. Section 15-30-122, MCA, is amended to read:

"**15-30-122. Standard deduction.** In the case of a resident individual, a standard deduction equal to *15%* of adjusted gross income shall be allowed if elected by the taxpayer on his return. The standard deduction shall be in lieu of all deductions allowed under 15-30-121. The maximum standard deduction shall be *$1,000*, except in the case of a single joint return of husband and wife the maximum standard deduction shall be *$2,000*. The standard deduction shall not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married shall be made as of the last day of the taxable year; provided, however, if one of the spouses dies during the taxable year, the determination shall be made as of the date of death."

Section 12. Section 15-30-142, MCA, is amended to read:

"**15-30-142. Returns and payment of tax — penalty and interest — refunds — credits.** (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of more than *$940* and married individuals not filing separate returns and having a combined gross income for the taxable year of more than *$1,880* shall be liable for a return to be filed on such forms and according to such rules as the department may prescribe. The gross income amounts referred to in the preceding sentence shall be increased by *$800* for each additional personal exemption allowance the taxpayer is entitled to claim for himself and his spouse under 15-30-112(3) and (4). A nonresident shall be required to file a return if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of 15-30-112(2), (3), and (4), as prorated according to 15-30-112(6).

(2) In accordance with instructions set forth by the department, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department so consents.

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(3) If any such taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld as provided by 15-30-202 and/or any payment made by reason of an estimated tax return provided for in 15-30-241; provided, however, the tax so computed is greater by $1 than the amount withheld and/or paid by estimated return as provided in this chapter. If the amount of tax withheld and/or payment of estimated tax exceeds by more than $1 the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the department within 30 days after notice of the amount of the tax as computed, with interest added at the rate of 9% per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within 30 days after the first notice of the amount is mailed to the taxpayer."

Section 13. **Effective date.** This act is effective on passage and approval.

Approved May 11, 1979.

CHAPTER NO. 699

AN ACT TO AUTHORIZE THE DEPARTMENT OF REVENUE TO BUY, IMPORT, AND SELL TABLE WINE; ALLOCATING THE TAX ON WINE; AMENDING SECTIONS 1, 2, 4, 5, AND 9 OF INITIATIVE NO. 81; AND SECTIONS 16-1-302, 16-1-303, AND 16-1-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1 of Initiative No. 81 is amended to read:

"Section 1. There is a new section in Title *16, MCA*, that reads as follows:

The public policy of the state of Montana is to *maintain a system for the importation and sale of wine by the state through state liquor facilities and provide for,* regulate, and control the acquisition, importation, and distribution of table wine containing not more than 14% alcohol by volume *by licensed wine distributors and the state.* When the words

"table wine" are used in this act in either the singular or plural they refer only to wine containing not more than 14% alcohol by volume."

Section 2. Section 2 of Initiative No. 81 is amended to read:

"Section 2. Section 4-1-107, RCM 1947, is amended to read as follows:

"4-1-107. **Definitions.** As used in this code:

"(1) 'Agency agreement' means an agreement between the department and a person appointed to sell liquor as a commission merchant, rather than as an employee.

"(2) 'Alcohol' means ethyl alcohol, also called ethanol or the hydrated oxide of ethyl.

"(3) 'Alcoholic beverage' means a compound produced and sold for human consumption as a drink that contains more than one-half of one percent (0.5%) of alcohol by volume.

"(4) 'Beer' means a malt beverage containing not more than seven percent (7%) of alcohol by weight.

"(5) 'Brewer' means a person who produces malt beverages.

"(6) 'Department' means the Montana department of revenue.

"(7) 'Immediate family' means a spouse, dependent children, or dependent parents.

"(8) 'Industrial use' means a use described as industrial use by the Federal Alcohol Administration Act and the federal rules and regulations of 27 CRF.

"(9) 'Liquor' means an alcoholic beverage except beer and table wine.

"(10) 'Malt beverage' means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts, or their products, and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without other wholesome products suitable for human food consumption.

"(11) 'Package' means a container or receptacle used for holding an alcoholic beverage.

"(12) 'Proof gallon' means a U.S. gallon of liquor at sixty degrees on the Fahrenheit scale that contains fifty percent (50%) of alcohol by volume.

"(13) 'Public place' means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

"(14) 'Residence' means a building, part of a building where a person resides, but does not include any part of a building that is not actually and exclusively used as a private residence.

"(15) 'Rules and regulations' means rules and regulations published by the department pursuant to this act.

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"(16) 'State liquor facility' means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

"(17) 'State liquor store' means a retail store operated by the department in accordance with this code for the purpose of selling distilled spirits and wines.

"(18) 'Storage depot' means a building or structure owned or operated by a brewer at any point in the state of Montana, off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer, and from which a brewer may sell or distribute beer as permitted by this code.

"(19) 'Warehouse' means a building or structure owned or operated by a licensed wholesaler for the receiving, storage and distribution of beer or table wine as permitted by this code.

"(20) 'Wine' means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe, fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging and that contains not less than seven percent (7%) nor more than twenty-four percent (24%) of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine, labeled and sold as wine in accordance with federal regulations are also wine.

"(21) 'Table wine' means wine as defined above which contains not more than 14% alcohol by volume.""

Section 3. Section 4 of Initiative No. 81 is amended to read:

"Section 4. There is a new section in Title *16, MCA*, that reads as follows:

Wine distributor's license — records. (1) Any person desiring to sell and distribute table wine at wholesale to retailers under the provisions of this code shall apply to the department of revenue for a license to do so and shall tender with his application the annual license fee of $400 and the department may issue licenses to qualified applicants in accordance with the provisions of this code. All table wine distributors' licenses issued in any year shall expire on the 30th day of June at midnight of such year. No license fee may be imposed upon table wine distributors by a municipality or any other political subdivision of the state. The license shall be at all times prominently displayed in the place of business of such table wine distributor.

To qualify for a table wine distributor's license the applicant shall be a resident of Montana; provided, however, any individual or partnership which has been licensed as a table wine distributor may, upon incorporation in accordance with the laws of Montana, transfer such license to the corporation if a majority of the capital stock thereof is held by said individual or the members of said partnership; or if applicant is a foreign corporation said corporation shall be authorized to do business in Montana;

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and said applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house or warehouse for the receiving of, storage, handling, and moving of table wine in large and jobbing quantities for distribution and sale in original packages to other licensed table wine distributors or licensed retailers. Each table wine distributor shall be entitled to only one (1) wholesale table wine license, which license shall be issued for his principal place of business in Montana; a duplicate license may be issued for one (1) subwarehouse only in Montana for each table wine distributor's license, which said duplicate license shall at all times be prominently displayed at said subwarehouse. A table wine distributor may also hold a license to sell beer at wholesale but shall not hold or have any interest, direct or indirect, in any license to sell beer, wine, or liquor at retail.

With the exception of table wine purchased by the department and shipped to its warehouse, all table wine manufactured outside of the state of Montana and shipped into Montana shall be consigned to and shipped to a licensed table wine distributor, and by him unloaded into his warehouse in Montana or subwarehouse in Montana; said distributor shall distribute said table wine from such warehouse or subwarehouse; said distributor shall keep records at his principal place of business of all table wine including the name or kind received, on hand, sold and distributed; said records may at all times be inspected by any member or representative of the department of revenue; any table wine which has been shipped into Montana and has not been shipped to and distributed from a warehouse of a licensed table wine distributor *or the department* shall be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of intoxicating liquor."

Section 4. Section 5 of Initiative No. 81 is amended to read:

"Section 5. There is a new section in Title *16, MCA*, that reads as follows:

To whom table wine distributor may sell. A table wine distributor may sell and deliver table wine purchased or acquired by him to another table wine distributor, retailer, or common carrier which holds a license issued by the department of revenue, *or to the department.* It shall be unlawful for any table wine distributor to sell, deliver or give away any table wine to be consumed on such distributor's premises or to give, sell, deliver, or distribute any table wine purchased or acquired by him to the public."

Section 5. Section 9 of Initiative No. 81 is amended to read:

"Section 9. There is a new section in Title *16, MCA*, that reads as follows:

Tax on Wine. *(1)* A tax of *20* cents per *liter* is hereby levied and imposed on table wine imported by any table wine distributor *or the department.*

(2) The tax on table wine imported by a table wine distributor shall be paid by the table wine distributor by the 15th of the month following receipt of the table wine at the table wine distributor's warehouse.

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(3) The tax on table wine imported by the department shall be collected at the time of sale, be retained in a separate account, and be deposited with the state treasurer to the credit of the general fund not later than the 10th day of the month following the sale.

(4) The tax computed and paid in accordance with this section shall be the only tax imposed by the state or any of its subdivisions, including cities and towns.

(5) The tax paid by a table wine distributor shall be distributed *16 cents to the state general fund; and of the remaining 4 cents one-third to the earmarked revenue account to the credit of the department of institutions for the treatment, rehabilitation, and prevention of alcoholism, one-third to the counties, based on population, for the purpose established in 16-1-404, and one-third to the cities and towns, based on population, for the purpose established in 16-1-405.*"

Section 6. Section 16-1-302, MCA, is amended to read:

"16-1-302. Functions, powers, and duties of department. The department shall have the following functions, duties, and powers:

(1) to buy, import, have in its possession for sale, and sell liquors *and table wine* in the manner set forth in this code;

(2) to control the possession, sale, and delivery of liquors in accordance with the provisions of this code;

(3) to determine the municipalities within which state liquor stores shall be established throughout the state and the situation of the stores within every such municipality;

(4) to lease, furnish, and equip any building or land required for the operation of this code;

(5) to buy or lease all plants and equipment it may consider necessary and useful in carrying into effect the objects and purposes of this code;

(6) to employ store managers and also every officer, investigator, clerk, or other employee required for the operation or carrying out of this code and to dismiss the same, fix their salaries or remuneration, assign them their title, define their respective duties and powers, and to engage the service of experts and persons engaged in the practice of a profession, if deemed expedient;

(7) to determine the nature, form, and capacity of all packages to be used for containing liquor kept or sold under this code;

(8) to grant and issue licenses under and in pursuance to this code;

(9) without in any way limiting or being limited by the foregoing, to do all such things as are deemed necessary or advisable by the department for the purpose of carrying into effect the provisions of this code or the rules made thereunder."

Section 7. Section 16-1-303, MCA, is amended to read:

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"16-1-303. Department rules. (1) The department may make such rules not inconsistent with this code as to the department seem necessary for carrying out the provisions of this code and for the efficient administration thereof.

(2) Without thereby limiting the generality of the provisions contained in subsection (1) hereof, it is declared that the power of the department to make rules in the manner set out in that subsection shall extend to and include the following:

(a) regulating the equipment and management of state stores and warehouses in which liquor *or table wine* is kept or sold and prescribing the books and records to be kept therein;

(b) prescribing the duties of the employees of the liquor division and regulating their conduct while in the discharge of their duties;

(c) governing the purchase of liquor and the furnishing of liquor to state stores established under this code;

(d) determining the classes, varieties, and brands of liquor *and table wine* to be kept for sale at any state store;

(e) prescribing, subject to this code, the hours during which state liquor stores shall be kept open for the sale of alcoholic beverages;

(f) providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each class, variety, or brand of liquor *and table wine* kept for sale under this code;

(g) prescribing an official seal which shall be attached to every package of liquor sold or sealed under this code;

(h) prescribing forms to be used for the purpose of this code or of the rules made thereunder and the terms and conditions in permits and licenses issued and granted under this code;

(i) prescribing the form of records of purchase of liquor *and table wine* and the reports to be made thereon to the division and providing for inspection of the records so kept;

(j) prescribing the manner of giving and serving notices required by this code or the rules thereunder;

(k) prescribing the fees payable in respect of permits and licenses issued under this code for which no fees are prescribed in this code and prescribing the fees for anything done or permitted to be done under the rules made thereunder;

(l) prescribing, subject to the provisions of this code, the conditions and qualifications necessary for the obtaining of a liquor or beer license and the books and records to be kept and the returns to be made by the licensees and providing for the inspection of such licensed premises;

(m) specifying and describing the place and the manner in which liquor or beer may be lawfully kept or stored;

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(n) specifying and regulating the time and periods when and the manner, methods, and means by which vendors and brewers shall deliver liquor under this code and the time and periods when and the manner, methods, and means by which liquor, under this code, may be lawfully conveyed or carried;

(o) governing the conduct, management, and equipment of any premises licensed to sell liquor or beer under this code;

(p) providing for the imposition and collection of taxes and making rules respecting returns, accounting, and payment of the taxes to the department.

(3) Whenever it is provided in this code that any act, matter, or thing may be done if permitted or authorized by the rules or may be done in accordance with the rules or as provided by the rules, the department, subject to the restrictions set out in subsection (1) hereof, shall have the power to make rules respecting such act, matter, or thing."

Section 8. Section 16-1-304, MCA, is amended to read:

"16-1-304. Prohibited acts within division. (1) No officer or employee of the liquor division, including those engaged in the sale of liquor at the various state liquor *or table wine* stores, may be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor *or table wine*, whether as owner, part owner, partner, member of syndicate, shareholder, agent, or employee and whether for his own benefit or in a fiduciary capacity for some other person.

(2) No member or employee of the division or any employee of the state may solicit or receive directly or indirectly any commission, remuneration, or gift whatsoever from any person or corporation having sold, selling, or offering liquor *or table wine* for sale to the state or division pursuant to this code.

(3) No person selling or offering for sale to or purchasing liquor *or table wine* from the state liquor division may either directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any member or employee of the division, to any employee of the state, or to anyone on behalf of such member or employee.

(4) The prohibition contained in subsection (3) of this section does not prohibit the division from receiving samples of liquor *or table wine* for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor or any other person, firm, or corporation proposing to sell any liquor *or table wine* to the Montana liquor division shall submit, without cost to the division prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding 25 fluid ounces of such merchandise to the division.

(b) When a brand of liquor *or table wine* has been accepted for testing by the division, the division shall forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

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(c) The division shall maintain written records of all samples received. The records shall show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the division's action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) No liquor, wine, or other alcoholic beverage may be withdrawn from the regular warehouse inventory or from the state liquor stores of the Montana liquor division for any purpose other than sale at the prevailing state retail prices or for destroying damaged or defective merchandise. The division shall maintain a written record including the type, brand, container size, number of bottles or other units, signatures of witnesses, and method of destruction or other disposition of damaged or defective warehouse or state store merchandise."

Section 9. **Retail selling price on table wine sold by the state.** The retail selling price at which table wine is sold by the department shall be computed by adding to the statewide weighted average cost of table wine the tax and state markup as designated by the department.

Section 10. **State distribution.** The department may import and distribute one or more named table wines to one or more designated state liquor stores, in the same manner as if the table wine contained more than 14% alcohol by volume.

Section 11. **Department prohibited from engaging in unfair competition.** (1) The department in engaging in the retail sale of table wine is subject to the provisions of Title 30, chapter 14, parts 1 and 2, except those provisions relating to enforcement and penalties.

(2) A person aggrieved by a violation of this section by the department may maintain an action to enjoin the alleged violation and for the recovery of damages in the district court of the district where the conduct complained of occurred or where the department's principal office is located.

Section 12. **Transition period.** (1) In order to make an orderly transition to the wine marketing policies set forth in Initiative 81 and [this act], the department shall, prior to July 1, 1979:

(a) issue licenses or temporary authorizations to distribute or retail wine to applicants who qualify under the provisions of Initiative 81 and [this act]; and

(b) authorize licensed wine distributors to import and, during the last 20 days of June 1979, distribute to licensed wine retailers, stocks of table wine that may not be sold to the public prior to July 1, 1979.

(2) The department may adopt temporary rules under 2-4-303 to implement Initiative 81 and [this act] without being required to find an imminent peril to public health, safety, or welfare.

Section 13. **Effective date.** (1) Sections 1 through 11 of this act are effective on July 1, 1979.

(2) Section 12 of this act is effective on passage and approval.

Approved May 14, 1979.

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CHAPTER NO. 700

AN ACT TO ALLOCATE YEARLY INCREASES IN THE OIL AND GAS SEVERANCE TAX COLLECTED IN EACH COUNTY TO THE LOCAL GOVERNMENTS IN THE COUNTY FROM WHICH THE TAX WAS COLLECTED; CORRECTING AN ERRONEOUS REFERENCE TO THE OIL PRODUCER'S LICENSE TAX; AMENDING SECTION 15-1-501, MCA.

WHEREAS, the development of oil and gas in Montana has and will continue to have a serious impact on the various counties, cities, and towns located in developing areas, the legislature finds that the revenue raised by the oil and gas severance tax could be best used to alleviate the impact of development by distributing a portion of that revenue directly to the counties, cities, and towns affected by the development.

THEREFORE, it is the intent of this bill to allocate yearly increases in the oil and gas severance tax to the general fund of the county in which the tax was collected.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Disposal of oil and gas severance taxes.** (1) Each year the department of revenue shall determine the amount of tax collected under this chapter from within each county.

(2) The severance taxes collected under this chapter are allocated as follows:

(a) the amount, if any, by which the tax collected from within a county for any fiscal year exceeds the total amount collected from within that county for the previous fiscal year, by reason of increased production and not because of increase in or elimination of federal price ceilings on oil and gas, is allocated to the general fund of the county for distribution as provided in subsection (3);

(b) any amount not allocated to the county under subsection (2)(a) is allocated to the state general fund.

(3) (a) The county treasurer shall distribute the money received under this section to the county and to all the incorporated cities and towns within the county in the following manner. The county receives the available money multiplied by the ratio of the rural population to the county population. Each incorporated municipality receives the available money multiplied by the ratio of the population of the incorporated municipality to the county population. The rural population is that population of the county living outside the boundaries of an incorporated municipality. Population shall be based on the most recent figures as determined by the department of community affairs.

(b) The money distributed under this subsection may be used for any purpose as determined by the governing body of the county, city, or town.

Section 2. Section 15-1-501, MCA, is amended to read:

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"15-1-501. Disposition of moneys from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund all moneys received by him from the collection of:

(a) automobile driver's license fees under subsections (1) through (6) of 61-5-111;

(b) electric energy producer's license taxes under chapter 51;

(c) metalliferous mines license taxes under chapter 37;

(d) oil *and gas severance* taxes *allocated to the general fund* under chapter 36;

(e) liquor license taxes under Title 16;

(f) telephone license taxes under chapter 53; and

(g) inheritance and estate taxes under Title 72, chapter 16.

(2) Seventy-five percent of all moneys received from the collection of income taxes under chapter 30 and corporation license and income taxes under chapter 31 shall be deposited in the general fund subject to the prior pledge and appropriation of such income tax and corporation license tax collections for the payment of long-range building program bonds. The remaining 25% of the proceeds of the corporation license tax, corporation income tax, and income tax shall be deposited to the credit of the earmarked revenue fund for state equalization aid to the public schools of Montana.

(3) The state treasurer shall also deposit to the credit of the state general fund all moneys received by him from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code."

Section 3. **Codification.** It is intended that section 1 be codified as an integral part of Title 15, chapter 36, part 1, and the provisions of Title 15, chapter 36, part 1, apply to section 1.

Approved May 14, 1979.

CHAPTER NO. 701

AN ACT TO PROVIDE THAT A NOTICE OF BUYER'S INTEREST IN REAL PROPERTY MAY BE RECORDED WITH THE COUNTY CLERK AND RECORDER; AMENDING SECTIONS 7-4-2613 AND 7-4-2619, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2613, MCA, is amended to read:

"7-4-2613. Documents subject to recording. The county clerk must, upon payment of his fees for the same, record, photograph, or correctly copy, separately, in large and well-bound or to be bound separate

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books, either in a fair hand or by printing, typewriting, or photographic process or by the use of prepared blank forms:

(1) deeds, grants, transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property any part of which is situated in the county, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, leases which have been acknowledged or proved, and abstracts of such instruments which have been acknowledged or proved;

(2) notices of buyer's interest in real property, notwithstanding any other requirement of law or rule relating to eligibility for recording of the deed, contract for deed, or other document relating to the notice of buyer's interest; however, if the instrument of conveyance underlying a notice of buyer's interest would be unrecordable the clerk and recorder shall notify the buyer by certified mail that the underlying instrument is unrecordable and may be void.

(3) certificates of births and deaths;

(4) wills devising real estate admitted to probate;

(5) official bonds;

(6) transcripts of judgments which by law are made liens upon real estate;

(7) instruments describing or relating to the individual property of married persons and sole trader judgments;

(8) all orders and decrees made by the district court in probate matters affecting real estate and which are required to be recorded;

(9) notice of preemption claims;

(10) notice and declaration of water rights;

(11) assignments for the benefit of creditors;

(12) affidavits of annual work done on mining claims;

(13) notices of mining locations and declaratory statements;

(14) estrays and lost property;

(15) a book containing appraisement of state lands;

(16) such other writings as are required or permitted by law to be recorded."

Section 2. Section 7-4-2619, MCA, is amended to read:

"7-4-2619. Indexes to recorded documents. Every county clerk, as ex officio recorder, must keep:

(1) an index of deeds, grants and transfers, and contracts to sell or convey real estate *and notices of buyer's interest in real property* labeled "Grantors", with each page divided into four columns headed, respectively:

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"Names of grantors", "Names of grantees", "Date of deeds, grants, transfers, contracts, *or notices*", and "Where recorded";

(2) an index of deeds *and notices of buyer's interest in real property* labeled "Grantees", with each page divided into four columns headed, respectively: "Names of grantees", "Names of grantors", "Date of deeds, grants, transfers, contracts, *or notices*", and "Where recorded";

(3) an index of mortgages labeled "Mortgages of real property", with the pages thereof divided into six columns headed, respectively: "Names of mortgagors", "Names of mortgagees", "Dates of mortgages", "Where recorded", "When filed", and "When canceled";

(4) an index of mortgages labeled "Mortgages of real property", with the pages thereof divided into six columns headed, respectively: "Names of mortgagees", "Names of mortgagors", "Date of mortgage", "Where recorded", "When filed", and "When canceled";

(5) an index of mortgages labeled "Releases of mortgages of real property—Mortgagees", with the pages thereof divided into six columns headed, respectively: "Parties whose mortgages are released", "Parties releasing", "Date of release", "Where recorded", "Dates of mortgages released", and "Where mortgages released are recorded";

(6) an index of powers of attorney labeled "Powers of attorney", with each page divided into five columns headed, respectively: "Names of parties executing powers", "To whom powers are executed", "Date of powers", "Date of recording", and "To whom powers are executed";

(7) an index of leases labeled "Leases", with each page divided into four columns headed, respectively: "Names of lessors", "Names of lessees", "Date of leases", and "When and where recorded";

(8) an index of leases labeled "Lessees", with each page divided into four columns headed, respectively: "Names of lessees", "Names of lessors", "Date of leases", and "When and where recorded";

(9) an index of marriage certificates labeled "Marriage certificate —Men", with each page divided into six columns headed, respectively: "Men married", "To whom married", "When married", "By whom married", "Where married", and "Where certificates are recorded";

(10) an index of marriage certificates labeled "Marriage certificates —Women", with each page divided into six columns headed, respectively: "Women married" (and under this head placing the family names of the women), "To whom married", "When married", "By whom married", "Where married", and "Where certificates are recorded";

(11) an index of assignments of mortgages and leases labeled "Assignments of mortgages and leases—Assignors", with each page divided into five columns headed, respectively: "Assignors", "Assignees", "Instruments assigned", "Date of assignment", and "When and where recorded";

(12) an index of assignments of mortgages and leases labeled "Assignments of mortgages and leases—Assignees", with each page divided into

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five columns headed, respectively: "Assignees", "Assignors", "Instruments", "Date of assignment", and "When and where recorded";

(13) an index of wills labeled "Wills", with each page divided into four columns headed, respectively: "Names of testators", "Date of will", "Date of probate", and "When and where recorded";

(14) an index of official bonds labeled "Official bonds", with each page divided into five columns headed, respectively: "Names of officers", "Names of offices", "Date of bond", "Amount of bond", and "When and where recorded";

(15) an index of notices of mechanics' liens labeled "Mechanics' liens", with each page divided into three columns headed, respectively: "Parties claiming liens", "Against whom claimed", and "Notices, when filed";

(16) an index to transcripts of judgments labeled "Transcripts of judgments", with each page divided into seven columns headed, respectively: "Judgment debtors", "Judgment creditors", "Amount of judgment", "Where recovered", "When recovered", "When transcript filed", and "When judgment satisfied";

(17) an index of attachments labeled "Attachments", with each page divided into six columns headed, respectively: "Parties against whom attachments are issued", "Parties issuing attachments", "Notices of attachments", "When filed", and "When attachments discharged";

(18) an index of notices of the pendency of actions labeled "Notices of actions", with each page divided into three columns headed, respectively: "Parties to actions", "Notices, when recorded", and "When filed";

(19) an index of certificates of sale of real estate sold under execution or under orders made in any judicial proceedings labeled "Certificates of sale", with each page divided into four columns headed, respectively: "Plaintiff", "Defendant", "Purchaser at sale", and "Date of sale";

(20) an index of the individual property of married persons and sole trader judgments labeled "Individual property of married persons and sole traders", with each page divided into five columns headed, respectively: "Names of married persons", "Names of their spouses", "Nature of instruments recorded", "When recorded", and "Where recorded";

(21) an index to affidavits for annual work done on mining claims labeled "Annual work on mining claims", showing the name of the affiant, the name of the claim, where situated, and the year when the work was done;

(22) an index of mining claims and declaratory statements labeled "Notices of location of mining claims and declaratory statements", with each page divided into four columns headed, respectively: "Locators", "Name of claim", "Notice, when filed", and "Where recorded";

(23) an index to the register of births and deaths;

(24) an index to notices and declarations of water rights;

(25) an index to the "estray and lost property book";

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(26) an index to the record of assignments for the benefit of creditors, containing names of assignor and assignee, date and where recorded, and inventory, when filed;

(27) an index to financing statements as provided in Part 4 of the Uniform Commercial Code—Secured Transactions;

(28) an index to filed subdivision plats, containing number of lots, number of acres, filing date, and the location of the quarter section of each subdivision;

(29) an index to the book of maps and plats, which must contain the name of the proprietor of the town, village, or addition platted and a general description of the same;

(30) a miscellaneous index, in which must be indexed papers not hereinbefore stated."

Approved May 14, 1979.

CHAPTER NO. 702

AN ACT TO ALLOW AN OWNER OF RESIDENTIAL PROPERTY TO FILE AN APPLICATION TO INSURE THAT HIS PROPERTY WILL BE APPRAISED AS RESIDENTIAL; REQUIRING HIM TO SIGN A STATEMENT THAT THE PROPERTY WILL BE USED FOR RESIDENTIAL PURPOSES ONLY; IMPOSING A ROLLBACK TAX UPON A CHANGE IN USE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The legislature finds that the rapid commercial and industrial growth in many Montana cities and towns is engulfing homes. Owners of these homes are often forced to pay higher property taxes upon these homes because their property is appraised on its industrial or commercial use. The legislature intends that houses and lots in these areas of changing use shall be appraised on their value as residential property.

Section 2. **Application for residential appraisal of certain land and improvements.** (1) Any person wishing to insure that his residential land and improvements are appraised as residential may file a signed application with the department of revenue or its agents.

(2) In the application, the owner must:

(a) assert that the property is used only for human habitation and is the principal residence of the owner;

(b) sign a statement pledging that the property will continue to be used as residential property; and

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(c) show that the statement has been filed with the county clerk and recorder of the county in which the property is located.

(3) When the department has approved an application for residential use, the department and its agents shall consider only those indicia of value that the property has for residential use.

(4) Failure to file an application under this section shall not result in reclassification on real property unless there has been an actual change in use.

Section 3. **Rollback tax — computation.** (1) (a) If land and improvements appraised as residential as a result of an application filed under [section 2] are changed to industrial or commercial use, the property is subject to a rollback tax in addition to the property tax levied on the property. The rollback tax is a lien on the property and is due and payable by the owner of the property at the time of the change in use.

(b) As used in [this act], "rollback" means the period preceding the change in use, not to exceed 5 years, during which the property was appraised as residential.

(2) The department's agent shall determine the amount of rollback tax due on the property by:

(a) determining the taxable value of the property as industrial or commercial property;

(b) multiplying this value by the sum of the annual mill levies applied in the taxing jurisdiction in which the land is located during the rollback period; and

(c) subtracting from this figure the actual property tax paid on the property during this period.

Section 4. **Effective and applicability date.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1978.

Approved May 14, 1979.

CHAPTER NO. 703

AN ACT TO WAIVE PARK DEDICATION REQUIREMENTS FOR ANY DIVISION THAT CREATES ONLY ONE ADDITIONAL LOT; AMENDING SECTION 76-3-606, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-606, MCA, is amended to read:

"76-3-606. Dedication of land to public — cash donations. (1) A plat of a residential subdivision shall show that one-ninth of the combined area of lots 5 acres or less in size and one-twelfth of the combined

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area of lots greater than 5 acres in size, exclusive of all other dedications, is forever dedicated to the public for parks or playgrounds. No dedication may be required for the combined area of those lots in the subdivision which are larger than 10 acres exclusive of all other dedications. The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.

(2) Where the dedication of land for parks or playgrounds is undesirable because of size, topography, shape, location, or other circumstances, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.

(3) The park dedication and cash in lieu requirements of subsections (1) and (2) do not apply to any division that creates only one additional lot."

Approved May 14, 1979.

CHAPTER NO. 704

AN ACT PROVIDING FOR A PERMIT SYSTEM FOR THE AERIAL HUNTING OF PREDATORY ANIMALS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Aerial hunting prohibited — exceptions.** (1) Except as provided in [section 7], no person except an employee of the state, its subdivisions, or the federal government, acting within the scope of his employment may engage in the aerial hunting of wild animals as defined in 81-7-101 without first obtaining a permit from the department of livestock.

(2) No person issued a permit as required by this section may engage in aerial hunting of wild animals in violation of the terms of his permit, the rules promulgated by the board of livestock, or the terms of [this act].

Section 2. **Rulemaking authority.** The department of livestock may adopt rules to effectuate the purposes of [this act] and to implement and conduct the aerial hunting permit system provided for by [this act].

Section 3. **Duration of permit — fee.** Each permit shall be valid for a period set by the department of livestock not to exceed 3 years and shall cost $50 or portion thereof if a period of less than a year is set. All fees for permits shall be paid to the department of livestock for deposit in the state treasury to the credit of the earmarked revenue fund for predatory animal control.

Section 4. **Residency requirement.** No person not having residence and domicile in Montana may be issued a permit provided for in [section 1] except when authorized by the board of livestock.

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Section 5. **Resident landowners authorized to aerially hunt over their own lands without permit — conditions.** Any landowner having residence and domicile in Montana may engage in the aerial hunting of wild animals, as defined in 81-7-101, over his own land without a permit, provided he annually notifies the department in writing that he will be engaged in aerial hunting and gives an adequate description of the location of the land over which he will aerial hunt. Such hunting must be in accordance with all rules of the department of livestock.

Section 6. **Penalties — jurisdiction — revocation of permit.** (1) Any person violating any provision of [this act] who is permitted to engage in aerial hunting pursuant to [this act] is guilty of a misdemeanor.

(2) A conviction for a violation of subsection (1) is punishable by a fine of not more than $500.

(3) Any person who is not permitted to engage in aerial hunting pursuant to [this act] who violates any provisions of [this act] is guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than $250 or more than $1,000. A subsequent conviction under this subsection is punishable by a fine of not less than $500 or more than $1,000.

(4) The justice court has jurisdiction over violations of [this act].

(5) The department may revoke or suspend the permit of anyone violating its terms.

Section 7. **Enforcement.** (1) Investigations of violations of [this act], arrests, and seizures may be made by any peace officer, or agent of the department designated by the department.

(2) To enforce [this act], the department may enter into agreement with federal agencies with predatory animal control. Such agreements may allow the federal agency to assist in investigations, arrests, and seizures.

Section 8. **Codification.** Sections 1 through 7 in this act are intended to be codified as an integral part of Title 81, chapter 7, and the provisions contained in Title 81, chapter 7, apply to these sections.

Approved May 14, 1979.

CHAPTER NO. 705

AN ACT TO REVISE THE LAWS RELATING TO THE DETERMINATION AND PAYMENT OF THE MONTANA INHERITANCE TAX; PROVIDING THAT CERTAIN FARM AND OTHER REAL PROPERTY MAY BE VALUED ON THE BASIS OF ITS USE AT THE TIME OF THE DECEDENT'S DEATH; PROVIDING AN ELECTION FOR A 15-YEAR INSTALLMENT PAYMENT METHOD FOR THE TRANSFER OF CERTAIN FARM OR CLOSELY HELD BUSINESS INTERESTS; AMENDING SECTION 72-16-308, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 12], the following definitions apply:

(1) "Adjusted value" means:

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(a) in the case of a gross estate, the gross value of all transfers subject to the tax imposed by this part, determined without regard to [sections 1 through 12], reduced by the amount of unpaid mortgages and indebtedness;

(b) in the case of real or personal property, the value of the property for the purposes of this part, determined without regard to [sections 1 through 12], reduced by the amount of unpaid mortgages and indebtedness.

(2) "Agreement" means a written agreement signed by each person in being who has an interest, whether or not he is in possession, in any property designated in such agreement consenting to the application of [section 7] with respect to such property.

(3) "Department" means the department of revenue.

(4) "Farm" means truck farms, ranches, nurseries, ranges, greenhouses, orchards, woodlands, or structures used primarily for raising agricultural or horticultural commodities. The term includes stock, dairy animals, poultry, fur-bearing animals, and fruit.

(5) "Farming purposes" means:

(a) cultivating the soil or raising or harvesting any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and managing of animals on a farm;

(b) handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; or

(c) (i) planting, cultivating, caring for, or cutting trees; or

(ii) preparing, other than milling, trees for market.

(6) "Internal Revenue Code" means the Internal Revenue Code of 1954. A reference to a specific section of that code is a reference to that section as it may be labeled or amended.

(7) "Involuntary conversion" means a compulsory or involuntary conversion within the meaning of section 1033 of the Internal Revenue Code.

(8) "Material participation" is determined in a manner similar to the manner used for the purposes of section 1402(a)(1) of the Internal Revenue Code.

(9) "Member of the family" means, with respect to any individual, only the individual's ancestor or lineal descendant, a lineal descendant of a grandparent of the individual, the spouse of the individual, or the spouse of any such descendant. For purposes of the preceding sentence, a legally adopted child of an individual is treated as a child of the individual by blood.

(10) "Qualified heir" means, with respect to any property, a member of the decedent's family who acquired the property or to whom the property

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passed from the decedent. If a qualified heir disposes of any interest in qualified real property to any member of his family, such member shall thereafter be treated as the qualified heir with respect to such interest.

(11) "Qualified real property" means real property located in this state that was acquired from or passed from the decedent to a qualified heir of the decedent and that on the date of the decedent's death was being used for a qualified use, but only if:

(a) 50% or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property that:

(i) on the date of the decedent's death was being used for a qualified use; and

(ii) was acquired from or passed from the decedent to a qualified heir of the decedent;

(b) 25% or more of the adjusted value of the gross estate consists of the adjusted value of real property that meets the requirements of (a)(ii) and (c) of this subsection;

(c) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which:

(i) the real property was owned by the decedent or a member of the decedent's family and used for a qualified use; and

(ii) there was material participation by the decedent or a member of the decedent's family in the operation of the farm or other business; and

(d) the real property is designated in the agreement referred to in [subsection (2) of section 1].

(12) (a) "Qualified replacement property" means:

(i) in the case of an involuntary conversion as described in section 1033(a)(1) of the Internal Revenue Code, any real property into which the real property is converted;

(ii) in the case of an involuntary conversion as described in section 1033(a)(2) of the Internal Revenue Code, any real property purchased by the qualified heir during the period specified in section 1033(a)(2)(B) of the Internal Revenue Code for the purpose of replacing the qualified real property.

(b) "Qualified replacement property" only includes property that is to be used for the qualified use set forth in (a) or (b) of subsection (13) of this section under which the qualified real property qualified under [section 2].

(13) (a) "Qualified use" means devotion of the property to any of the following:

(i) use as a farm for farming purposes; or

(ii) use in a trade or business other than the trade or business of farming.

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(b) In the case of real property that meets the requirements of subsection (11)(c), residential buildings and related improvements on the real property occupied on a regular basis by the owner or lessee of the real property or by persons employed by the owner or lessee for the purpose of operating or maintaining the real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use.

Section 2. **Valuation of certain farm and real property — limitation.** (1) If the decedent was at the time of his death a resident of this state and the personal representative elects to have [sections 1 through 12] apply and files an agreement with the department, the value of qualified real property for the purposes of the tax imposed by this part is its value for the use under which it qualifies under [subsection (11) of section 1] as qualified real property.

(2) The aggregate decrease in the value of qualified real property taken into account for the purposes of the Montana inheritance tax that results from the application of (1) of this section may not exceed $500,000.

Section 3. **Election for valuation.** An election for valuation under [sections 1 through 12] must be made within 18 months of the date of the decedent's death and must be made in such manner as the department may prescribe.

Section 4. **Valuation of farms.** (1) Except as provided in (2) of this section, the value of a farm for farming purposes is determined by dividing the excess of the average annual gross cash rental for comparable land used for farming purposes and located in the locality of the farm over the average annual state and local real estate taxes for comparable land by the average annual effective interest rate for all new federal land bank loans. For purposes of the preceding sentence, each average annual computation must be made on the basis of the 5 most recent calendar years ending before the date of the decedent's death.

(2) The formula in (1) of this section may not be used:

(a) if it is established that there is no comparable land from which the average annual gross cash rental may be determined; or

(b) if the personal representative elects to have the value of the farm for farming purposes determined under [section 5].

Section 5. **Valuation of closely held business interests.** If [section 4] does not apply, the following factors apply in determining the value of any qualified real property:

(1) The capitalization of income that the property can be expected to yield for farming or closely held business purposes over a reasonable period of time under prudent management using traditional cropping patterns for the area, taking into account soil capacity, terrain configuration, and similar factors;

(2) the capitalization of the fair rental value of the land for farmland or closely held business purposes;

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(3) assessed land values;

(4) comparable sales of other farm or closely held business land in the same geographical area far enough removed from a metropolitan or resort area so that nonagricultural use is not a significant factor in the sales price; and

(5) any other factor that fairly values the farm or closely held business value of the property.

Section 6. **Time limitations.** (1) If qualified real property is disposed of or ceases to be used for a qualified use, the statutory period for the assessment of any additional tax under [section 7] attributable to disposition or cessation may not expire until 3 years after the date the department is notified, in a manner to be prescribed by the department, of the disposition or cessation.

(2) The additional tax may be assessed before the expiration of the 3-year period referred to in (1) of this section, notwithstanding the provisions of any other law or rule of law that would otherwise prevent such assessment.

Section 7. **Disposition or failure to use for qualified use.** (1) There is hereby imposed an additional inheritance tax if within 15 years after the decedent's death and before the death of the qualified heir:

(a) the qualified heir disposes of any interest in qualified real property other than by a disposition to a member of his family; or

(b) the qualified heir ceases to use for the qualified use the qualified real property which was acquired or passed from the decedent.

(2) The amount of additional tax imposed by (1) of this section with respect to any interest is the amount equal to the lesser of:

(a) the adjusted tax difference attributable to such interest; or

(b) the excess of the amount realized with respect to the interest or in any case other than a sale or exchange at arm's length, the fair market value of the interest over the value of the interest determined under [section 2].

(3) For the purposes of (2) of this section, the adjusted tax difference attributable to an interest is the amount that bears the same ratio to the adjusted tax difference with respect to the estate as determined under (4) of this section as the excess of the value of such interest for purposes of the Montana inheritance tax, determined without regard to [sections 1 through 12], over the value of such interest determined under [section 2] bears to a similar excess determined for all qualified real property.

(4) For the purposes of (3) of this section, "adjusted tax difference with respect to the estate" means the excess of what would have been the tax liability but for [section 2] over the tax liability. For the purposes of this subsection, "tax liability" means the tax imposed by Title 72, chapter 16.

(5) For the purposes of this section, if the qualified heir disposes of a portion of the interest acquired by or passing to such heir or a predecessor

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qualified heir, or there is a cessation of use of such a portion, the value determined under [section 2] taken into account under (2)(b) of this section with respect to such portion shall be its pro rata share of the value of the interest and the adjusted tax difference attributable to the interest taken into account with respect to the transaction involving the second or any succeeding portion shall be reduced by the amount of the tax imposed by this section with respect to all prior transactions involving portions of the interest.

(6) If the date of the disposition or cessation occurs more than 120 months and less than 180 months after the date of the death of the decedent, the amount of the tax imposed by this section shall be reduced, but not below zero, by an amount determined by multiplying the amount of the tax determined without regard to this subsection, by a fraction in which the numerator is the number of full months after the death in excess of 120 and the denominator is 60.

(7) In the case of an interest acquired from or passing from any decedent, if (a) or (b) of subsection (1) of this section applies to any portion of an interest, (b) or (a) of subsection (1) of this section, as the case may be, does not apply with respect to the same portion of the interest.

(8) The additional tax imposed by this section is due on the day that is 6 months after the date of the disposition or cessation.

(9) The qualified heir is personally liable for the additional tax with respect to his interest unless the heir has furnished bond that meets the requirements of [section 10].

Section 8. **Cessation of qualified use.** For the purposes of [section 7], real property ceases to be used for the qualified use if:

(1) the property ceases to be used for the qualified use set forth in [section 1] under which the property qualified under [section 1]; or

(2) during any period of 8 years ending after the date of the decedent's death and before the date of the death of the qualified heir, there had been periods aggregating 3 years or more during which:

(a) in the case of periods during which the property was held by the decedent, there was no material participation by the decedent or any member of his family in the operation of the farm or other business; and

(b) in the case of periods during which the property was held by any qualified heir, there was no material participation by such qualified heir or any member of his family in the operation of the farm or other business.

Section 9. **Property acquired from decedent.** Property is considered to have been acquired from the decedent if the property:

(1) is so considered under section 1014(b) of the Internal Revenue Code;

(2) is acquired by any person from the estate in satisfaction of the right of such person to a pecuniary request; or

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(3) is acquired by any person from a trust in satisfaction of a right, which such person has by reason of the death of the decedent, to receive from the trust a specific dollar amount that is the equivalent of a pecuniary request.

Section 10. **Bond in lieu of personal liability.** (1) If the qualified heir makes written application to the department for the determination of the additional tax that may be imposed by [section 7] with respect to the qualified heir's interest, the department must, as soon as possible and in any event within 1 year after the making of the application, notify the heir of the maximum amount.

(2) The qualified heir, on furnishing a bond in such amount and for such period as may be required, is discharged from personal liability for any additional tax imposed by [section 7] and is entitled to a receipt or writing showing such discharge.

Section 11. **Application to interests in partnerships, corporations, and trusts.** The department shall prescribe regulations setting forth the application of [sections 1 through 12] in the case of an interest in a partnership, corporation, or trust that, with respect to the decedent, is an interest in a closely held business within the meaning of [section 15].

Section 12. **Involuntary conversion of qualified real property.** (1) If there is an involuntary conversion of an interest in qualified real property and the qualified heir makes an election under this section, no tax is imposed by [section 7] on the conversion if the cost of the qualified replacement property equals or exceeds the amount realized on the conversion.

(2) If (1) of this section does not apply, the tax imposed by [section 7], with respect to any involuntary conversion, is the amount of tax that, but for this subsection, would have been imposed on the conversion reduced by an amount that bears the same ratio to such tax as the cost of the qualified replacement property bears to the amount realized on the conversion.

(3) (a) For the purposes of [section 7], any qualified replacement property shall be treated in the same manner as if it were a portion of the interest in qualified real property that was involuntarily converted, except that with respect to such qualified replacement property:

(i) the 15-year period under [section 7] shall be extended by any period, beyond the 2-year period referred to in section 1033(a)(2)(B)(i) of the Internal Revenue Code, during which the qualified heir was allowed to replace the qualified real property; and

(ii) the phaseout period under [subsection (6) of section 7] shall be appropriately adjusted to take into account the extension referred to in (a)(i) of this subsection.

(b) Any tax imposed by [section 7] on the involuntary conversion shall be treated as a tax imposed on a partial disposition. The provisions of [section 8] shall be applied by not taking into account periods after the involuntary conversion and before the acquisition of the qualified replacement property and by treating material participation with respect to the

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converted property as material participation with respect to the qualified replacement property.

(4) The rules of the last sentence of section 1033(a)(2)(B) of the Internal Revenue Code apply for the purposes of [subsection (12)(a)(ii) of section 1].

(5) An election under this section may be made at such time and in such manner as prescribed by the department.

Section 13. **Definitions.** As used in [sections 13 through 27], the following definitions apply:

(1) "Adjusted gross estate" means the clear market value of the property passing by reason of a decedent's death determined under Title 72, chapter 16, without reduction for the federal estate tax due or paid. The sum must be determined on the basis of the facts and circumstances in existence on the date on which the tax imposed by Title 72, chapter 16, is determined, but in no event later than a date 18 months after the date of the death of the decedent.

(2) "Closely held business amount" means the value of the interest in a closely held business that qualifies under [subsection (1) of section 14].

(3) "Internal Revenue Code" means the Internal Revenue Code of 1954. A reference to a specific section of that code is a reference to that section as it may be labeled or amended.

(4) "Value" means value determined for the purposes of the Montana inheritance tax.

Section 14. **Extension of time for transfer of closely held business interest.** (1) If the value of an interest in a closely held business that is taxable under Title 72, chapter 16, part 3, as a transfer from a decedent who was at the time of death a resident of this state exceeds 65% of the adjusted gross estate, the personal representative may elect to pay all or part of the tax imposed by Title 72, chapter 16, part 3, in 2 or more but less than 11 equal installments.

(2) The maximum amount of tax that may be paid in installments by each beneficiary is an amount that bears the same ratio to the tax imposed by Title 72, chapter 16, part 3, as the closely held business amount passing to the beneficiary bears to the clear market value of all property passing to the beneficiary, without reduction for the federal estate tax due or paid.

(3) If an election is made under (1) of this section, the first installment must be paid on or before a date selected by the personal representative that is not more than 5 years after the date prescribed by 72-16-441 for the payment of tax without interest. If, however, a credit is claimed on the federal estate tax return for state death taxes on the estate under the provisions of section 2011(a) of the Internal Revenue Code, as amended, an amount of inheritance tax due equal to the federal credit must be paid within the period established in section 2011(c) of the Internal Revenue Code, as amended. Each succeeding installment must be paid on or before the date that is 1 year after the date of the preceding installment. The department may for reasonable cause extend the time for payment of any

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installment under this section, including any part of an additional tax prorated to any installment, for a reasonable period but not beyond the date that is 12 months after the due date for the last installment.

(4) If an election is made under (1) of this section, the tax due may not be further deferred under the provisions of 72-16-1438.

Section 15. **Closely held business.** (1) For the purposes of [section 14], the term "interest in a closely held business" means:

(a) an interest as a proprietor in a trade or business carried on as a proprietorship;

(b) an interest as a partner in a partnership carrying on a trade or business if:

(i) 20% or more of the total capital interest in the partnership is taxable under Title 72, chapter 16, part 3, as a transfer from the decedent; or

(ii) the partnership had 15 or fewer partners;

(c) stock in a corporation carrying on a trade or business if:

(i) 20% or more in value of the voting stock of the corporation is taxable under Title 72, chapter 16, part 3, as a transfer from the decedent; or

(ii) the corporation had 15 or fewer shareholders.

(2) Determination for qualification under (1) of this section must be made as of the time immediately before the decedent's death.

(3) Stock or a partnership interest held by a husband and wife as joint tenants or tenants in common is treated as owned by one shareholder or one partner, as the case may be.

(4) Property owned directly or indirectly by or for a corporation, partnership, estate, or trust is considered as being owned proportionately by or for its shareholders, partners, or beneficiaries. For the purposes of this subsection, a person is a beneficiary of a trust only if he has a present interest in the trust.

(5) All stock and all partnership interests held by the decedent or by any member of his family within the meaning of section 267(c)(4) of the Internal Revenue Code is treated as being owned by the decedent.

Section 16. **Farmhouses and other structures taken into account.** For the purposes of the 65% requirement of [section 14], an interest in a closely held business that is the business of farming includes an interest in residential buildings and related improvements on the farm which are occupied on a regular basis by the owner or lessee of the farm or by persons employed by the owner or lessee for purposes of operating or maintaining the farm.

Section 17. **Partnership interests and stock not readily tradable.** (1) If the personal representative elects the benefits of this

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section, at such time and in such manner as the department may prescribe:

(a) for the purposes of subsection (1)(b)(i) or (1)(c)(i) of [section 15], whichever is appropriate, and for the purposes of [section 18], any capital interest in a partnership and any nonreadily tradable stock, which after the application of subsections (2) through (5) of [section 15] is treated as owned by the decedent, shall be treated as taxable under Title 72, chapter 16, part 3, in determining the value of a transfer from the decedent;

(b) the personal representative shall be treated as having selected under [subsection (3) of section 14] the date prescribed by 72-16-441 for the payment of the tax without interest; and

(c) [section 27] does not apply.

(2) For the purposes of this section, "nonreadily tradable stock" means stock for which at the time of the decedent's death there was no market on the stock exchange or in an over-the-counter market.

Section 18. **Interests in more than one closely held business.** (1) Interests in two or more closely held businesses, with respect to which there is taxable under Title 72, chapter 16, part 3, as a transfer from the decedent more than 20% of the total value of each business, shall be treated as an interest in a single closely held business.

(2) For the purposes of the 20% requirement of (1) of this section, an interest in a closely held business that represents the surviving spouse's interest in property held by the decedent and the surviving spouse as joint tenants or tenants in common shall be treated as taxable under Title 72, chapter 16, part 3, in determining the value of a transfer from the decedent.

Section 19. **Election.** An election under [section 14] must be made not later than 18 months after the death of the decedent and must be made in such manner as the department prescribes.

Section 20. **Proration of additional tax.** (1) If an election is made under [section 14] to pay any part of the tax imposed by Title 72, chapter 16, part 3, in installments and an additional tax is determined, the additional tax, subject to the limitation provided by [subsection (2) of section 14], shall be prorated to the installments payable under [section 14].

(2) (a) The part of the additional tax so prorated to any installment, the date for payment of which has not arrived, shall be collected at the same time as and as part of the installment.

(b) The part of the additional tax so prorated to any installment already paid shall be paid on notice and demand from the department.

(3) This section does not apply if the additional tax is due to negligence, intentional disregard of rules, or fraud with intent to evade tax.

Section 21. **Interest.** (1) If the time for payment of any amount of tax has been extended under [sections 13 through 27], interest payable under [section 27] on any unpaid portion of such amount:

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(a) attributable to the first 5 years after the date prescribed by 72-16-441 for the payment of the tax without interest shall be paid annually;

(b) attributable to any period after the 5-year period referred to in (1)(a) of this section shall be paid annually at the same time as and as part of each installment payment of the tax.

(2) In the case of an additional tax to which [section 20] applies that is determined after the close of the 5-year period referred to in (1)(a) of this section, interest attributable to such 5-year period and interest assigned to any installment the date for which has arrived on or before the date of the assessment of the additional tax must be paid on notice and demand from the department.

(3) If the personal representative has selected a period shorter than 5 years, the shorter period shall be substituted for 5 years in (1) and (2) of this section.

Section 22. **Acceleration of payment.** (1) The extension of time for payment of tax provided in [section 14] shall cease to apply and any unpaid portion of the tax payable must be paid upon notice and demand of the department if:

(a) one-third or more in value of an interest in a closely held business that qualifies under [section 14] is distributed, sold, exchanged, or otherwise disposed of; or

(b) aggregate withdrawals of money and other property from the trade or business, an interest in which qualifies under [section 14], made with respect to such interest, equal or exceed one-third of the value of such trade or business.

(2) In the case of a distribution in redemption of stock to which section 303 of the Internal Revenue Code or so much of section 304 of the Internal Revenue Code as relates to section 303 applies:

(a) subsection (1)(a) of this section does not apply with respect to the stock redeemed and, for the purposes of subsection (1)(a), the interest in the closely held business shall be considered to be such interest reduced by the value of the stock redeemed; and

(b) subsection (1)(b) of this section does not apply with respect to withdrawals of money and other property distributed and, for the purposes of subsection (1)(b), the value of the trade or business shall be considered to be such value reduced by the amount of money and other property distributed.

(3) Subsection (1)(a) of this section does not apply to an exchange of stock pursuant to a plan of reorganization described in (D), (E), or (F) of section 368(a)(1) of the Internal Revenue Code or to an exchange to which section 355 of the Internal Revenue Code or so much of section 356 of the Internal Revenue Code applies to section 355, but any stock received in such an exchange shall be treated for purposes of subsection (1)(a) as an interest qualifying under [section 14].

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(4) Subsection (1)(a) of this section does not apply to a transfer of property of the decedent to a person entitled by reason of the decedent's death to receive such property under the decedent's will, intestate succession, or a trust created by the decedent.

Section 23. **Failure to pay installment.** If any installment under [sections 13 through 27] is not paid on or before the date fixed for its payment, including any extension of time for the payment of the installment, the unpaid portion of the tax payable in installments must be paid on notice and demand from the department.

Section 24. **Election in the case of additional tax.** (1) If an additional tax is determined under Title 72, chapter 16, part 3, and the estate qualifies under [section 14] and the personal representative has not made an election under [section 14], the personal representative may elect to pay the additional tax in installments.

(2) An election under this section must be made not later than 60 days after notice and demand for payment of the additional tax has been given by the department and must be made in the manner prescribed by the department.

(3) If an election is made under this section, the additional tax shall, subject to the limitation in [subsection (2) of section 14], be prorated to the installments that would have been due if an election had been timely made under [section 14]. The part of the additional tax so prorated to any installment the date for payment of which would have arrived shall be paid at the time of the making of the election under this section. The portion of the additional tax prorated to installments, the date for payment of which would not have so arrived, shall be paid at the time such installments would have been due if such an election had been made.

Section 25. **Security.** If the time for payment of any amount of tax has been extended under [section 24], the department may require the taxpayer to furnish a bond in an amount not exceeding double the amount with respect to which the extension is granted conditioned upon the payment of the amount extended in accordance with the terms of the extension.

Section 26. **Extensions of time for payment of tax.** The running of the period of limitations for collection of any tax imposed by Title 72, chapter 16, part 3, is suspended for the period of any extension of time for payment granted under [section 14].

Section 27. **Interest rate.** (1) If the time for payment of an amount of tax imposed by Title 72, chapter 16, part 3, is extended as provided in [section 14] interest on the 4% portion of such amount shall, in lieu of the annual rate provided by 72-16-441, be paid at the rate of 4%. For the purposes of this section, the amount of any additional tax that is prorated to installments payable under [section 24] shall be treated as an amount of tax payable in installments under that section.

(2) For the purposes of this section, "4% portion" means the lesser of:

(a) $345,800; or

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(b) the amount of the tax imposed by Title 72, chapter 16, part 3, which is extended as provided in [section 14].

(3) If the amount of tax imposed by Title 72, chapter 16, part 3, that is extended exceeds the 4% portion, any payment of a portion of such amount shall, for the purpose of computing interest for periods after such payment, be treated as reducing the 4% portion by an amount that bears the same ratio to the amount of such payment as the amount of the 4% portion, determined without regard to this section, bears to the amount of tax that is extended as provided in [section 14].

Section 28. **Definitions.** As used in [sections 28 through 39], the following definitions apply:

(1) "Deferral period" means the period for which the payment of tax is deferred under [section 14].

(2) "Deferred amount" means the aggregate amount deferred under [section 14] determined as of the date prescribed by 72-16-441 for payment without interest of the tax imposed by Title 72, chapter 16, part 3.

(3) "Lien property" means interests in real and other property to the extent such interests can be expected to survive the deferral period and are designated in the agreement referred to in [section 32].

(4) "Required interest amount" means the aggregate amount of interest that will be payable over the first 4 years of the deferral period with respect to the deferred amount determined as of the date prescribed for payment without interest of the tax imposed by Title 72, chapter 16, part 3.

Section 29. **Lien for tax deferred.** In the case of any estate with respect to which an election has been made under [section 14], if the personal representative makes an election under this section at such time and in such manner as the department may prescribe and files the agreement referred to in [section 32] the deferred amount, plus any interest or additional amount shall be a lien in favor of the state on the lien property.

Section 30. **Maximum value.** (1) The maximum value of the property that the department may require as lien property with respect to any estate is a value that is not greater than the sum of the deferred amount and the required interest amount.

(2) For the purposes of (1) of this section, the value of any property is determined as of the date prescribed by 72-16-441 for payment of the tax without interest and is determined by taking into account any encumbrances.

Section 31. **Partial substitution of bond for lien.** If the value required as lien property exceeds the value of the interests in property covered by the agreement referred to in [section 32], the department may accept a bond in an amount equal to such excess conditioned on the payment of the amount extended in accordance with the terms of the extension.

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Section 32. **Agreement.** The agreement is a written agreement signed by each person in being who has an interest, whether or not in possession, in any property designated in the agreement:

(1) consenting to the creation of the lien under [section 29] with respect to the property; and

(2) designating a responsible person to be agent for the beneficiaries of the estate and for persons who have consented to the creation of the lien in dealings with the department on matters arising under [section 14] or [section 29].

Section 33. **Filing of lien.** The lien imposed by [section 29] is not valid against a purchaser, holder of a security interest, mechanic's lien, or judgment lien creditor until notice that meets the requirements of 71-3-204 has been filed by the department.

Section 34. **Period of lien.** The lien imposed by [section 29] arises at the time notice is filed under [section 33] and continues until liability for the deferred amount is satisfied or becomes unenforceable by reason of lapse of time.

Section 35. **Priorities.** (1) A lien filed under [section 29] is not valid:

(a) as against real property tax and special assessment liens;

(b) in the case of real property subject to a lien for repair or improvement, as against a mechanic's lienor; or

(c) as against a security interest set forth in paragraph 3 of section 6323(c) of the Internal Revenue Code, whether the security interest came into effect before or after the tax lien filing.

(2) Subsections (1)(b) and (1)(c) of this section do not apply to any security interest that came into existence after the date on which the department filed notice that payment of the deferred amount has been accelerated under [section 22].

Section 36. **Lien in lieu of other tax liens.** If there is a lien on property under [section 29], the lien under 72-16-432 does not apply to the property with respect to the same estate.

Section 37. **Additional lien property.** (1) If at any time the value of the property covered by the agreement is less than the unpaid portion of the deferred amount and the required interest amount, the department may require the addition of property to the agreement. The department may not require that the value of the property covered by the agreement exceed the unpaid portion.

(2) If property having the required value is not added to the property covered by the agreement or if other security equal to the required value is not furnished within 90 days after notice and demand by the department, the failure to comply shall be treated as an act accelerating payment of the installments under [section 22].

Section 38. **Lien in lieu of bond.** The department may not require the furnishing of any bond for the payment of tax to which an agreement that meets the requirements of [section 32] applies.

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Section 39. **Application of definitions to additional tax.** In the case of an additional tax, a separate deferral period, deferred amount, and required interest amount shall be determined as of the due date of the first installment after the additional tax is prorated to installments under [section 14].

Section 40. **Lien for additional tax attributable to farm and closely held business property.** (1) In the case of any interest in qualified real property within the meaning of [subsection (11) of section 1], an amount equal to the adjusted tax difference attributable to such interest within the meaning of [subsection (3) of section 7] is a lien in favor of the state on the property in which such interest exists.

(2) The lien imposed by this section shall arise at the time an election is filed under [section 2] and continues with respect to any interest in the qualified real property until:

(a) the liability for tax under [section 7] with respect to such interest has been satisfied or has become unenforceable by reason of lapse of time; or

(b) until it is established to the satisfaction of the department that no further tax liability may arise under [section 7] with respect to such interest.

(3) [Sections 33, 35, and 36] apply with respect to a lien imposed by [section 40].

Section 41. **Substitution of security for lien.** The department may provide by rule for the substitution of security for the lien imposed by [section 40].

Section 42. **Subordination of liens.** The department may consent to the subordination of a lien imposed by [section 29 or 40] upon any part of the property subject to the lien if the state will be adequately secured after the subordination.

Section 43. Section 72-16-308, MCA, is amended to read:

"72-16-308. Tax to be on clear market value — deductions allowed in determining value — valuation of certain farm and business property. (1) The tax so imposed shall be upon the clear market value of such property passing by any such transfer to each person, institution, association, corporation, or body politic at the rates hereinafter prescribed and only upon the excess of the exemption hereinafter granted to such person, institution, association, corporation, or body politic.

(2) In determining the clear market value of the property so passing by any such transfer, the following deductions and no other shall be allowed:

(a) debts of the decedent owing at the date of death;

(b) expenses of funeral and last illness;

(c) all Montana state, county, municipal, and federal taxes, including all penalties and interest thereon, owing by decedent at the date of death;

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(d) the ordinary expenses of administration, including:

(i) the commissions and fees of executors and administrators and their attorneys actually allowed and paid;

(ii) attorneys' fees, filing fees, necessary expenses, and closing costs incident to proceedings to terminate joint tenancies, termination of life estates and transfers in contemplation of death, and any and all other proceedings instituted for the determination of inheritance tax; and

(e) federal estate taxes due or paid.

(3) In determining clear market value, the valuation of certain farm and other real property may be made under [sections 1 through 12]."

Section 44. **Codification.** Sections 1 through 12 of this act are intended to be codified as an integral part of Title 72, chapter 16, part 3.

Section 45. **Effective date.** This act is effective on passage and approval and applies to estates of decedents who died after December 31, 1978.

Approved May 14, 1979.

CHAPTER NO. 706

AN ACT TO AMEND SECTION 15-6-116, MCA, TO PROVIDE A GRADUATED TAX FOR CLASS FIFTEEN PROPERTY, BASED ON THE INCOME OF THE OWNER; PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-116, MCA, is amended to read:

"**15-6-116. Class fifteen property — description — taxable percentage — income categories.** (1) Class fifteen property includes so much of the market value of any improvement on real property, a trailer affixed to land, or mobile home and appurtenant land not exceeding 5 acres as does not exceed $35,000, when such dwelling and land are owned or under contract for deed and are actually occupied for at least 10 months per year as the primary residential dwelling of:

(a) a widow or widower 62 years of age or older who qualifies under the income limitations of (c) of this subsection;

(b) a widow or widower of any age with dependent children who qualifies under the income limitations of (c) of this subsection; or

(c) a recipient or recipients of retirement or disability benefits whose *adjusted gross* income, *as reported on his latest federal income tax return,* is not more than *$8,000* for a single person or *$10,000* for a married couple.

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(2) (a) A person applying for classification of property under this class must make an affidavit to the department of revenue on a form provided by the department without cost as to:

(i) his income, if applicable;

(ii) his retirement benefits, if applicable;

(iii) his marital status, if applicable;

(iv) the fact that he maintains the land and improvements as his primary residential dwellings; and

(v) such other information as is relevant to the applicant's eligibility.

(b) This application must be made before March 1 of the year after the applicant becomes eligible under this classification.

(c) For the purpose of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for the purposes of 45-7-202, relating to the criminal offense of false swearing.

(3) Class fifteen property is taxed at *12%* of its market value or so much of *12%* as is determined under 15-7-121, whichever is less, *multiplied by a percentage figure based on adjusted gross income and determined from the following table:*

Adjusted Gross Income Single Person	*Adjusted Gross Income Married Couple*	*Percentage Multiplier*
$ 0 - $ 1,000	*$ 0 - $ 1,000*	*0%*
1,001 - 2,000	*1,001 - 2,000*	*10%*
2,001 - 2,800	*2,001 - 3,000*	*20%*
2,801 - 3,600	*3,001 - 4,000*	*30%*
3,601 - 4,400	*4,001 - 5,000*	*40%*
4,401 - 5,200	*5,001 - 6,000*	*50%*
5,201 - 6,000	*6,001 - 7,000*	*60%*
6,001 - 6,800	*7,001 - 8,000*	*70%*
6,801 - 7,600	*8,001 - 9,000*	*80%*
7,601 - 8,000	*9,001 - 10,000*	*90%*

(4) The market value in excess of $35,000 of a dwelling classified in this class is taxed as class eleven property, under 15-6-112."

Section 2. **Effective date.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1978.

Approved May 14, 1979.

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CHAPTER NO. 707

AN ACT TO ENSURE THAT MEDICAID ELIGIBLE PERSONS MAY NOT RECEIVE COUNTY MEDICAL ASSISTANCE; AMENDING SECTION 53-3-103, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-3-103, MCA, is amended to read:

"53-3-103. Medical aid and hospitalization for indigent. (1) Except as provided in other parts of this title, medical aid and hospitalization for county residents and nonresidents within the county unable to provide these necessities for themselves are the legal and financial duty and responsibility of the board of county commissioners and are payable from the county poor fund. The board of county commissioners shall make provisions for competent and skilled medical or surgical services as are approved by the department of health and environmental sciences or the state medical association or, in the case of osteopathic practitioners, by the state osteopathic association or chiropractors by the state chiropractic association or optometrical services as approved by the Montana optometric association or dental services as approved by the dental association. "Medical" or "medicine" as used in this section refers to the healing art as practiced by licensed practitioners.

(2) The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by physicians appointed by the board who shall be known as county physicians or deputy county physicians and may fix a rate of compensation for the furnishing of the medical attendance.

(3) The department may promulgate rules to determine under what circumstances persons in the county are unable to provide medical aid and hospitalization for themselves, including the power to define the term "medically needy". However, the definition may not allow payment by a county for general assistance—medical for persons whose income exceeds 300% of the limitation for obtaining regular county general relief assistance *or for persons who are eligible for medicaid in accordance with Title 53, chapter 6, part 1, or for persons who have the right or are entitled to medical aid and hospitalization from the federal government or any agency thereof.*

(4) In any case where the county or state pays medical expenses or hospitalization for an individual, the county or state is subrogated to the claims of the physician or hospital to the extent of payment. To the extent necessary for reimbursement of medical benefits paid to or on behalf of an individual, the county or state is subrogated to the rights of the individual to recover from a third party who may be liable to pay the medical

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expenses. The provisions of 53-2-612 which relate to medical benefits provided under Titles XIX and XX of the Social Security Act apply to medical benefits provided for in this section."

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved May 14, 1979.

CHAPTER NO. 708

AN ACT TO ESTABLISH A WATER RESOURCES AND ADJUDICATION OVERSIGHT COMMITTEE; APPROPRIATING FUNDS FOR COMMITTEE SUPPORT; AND PROVIDING AN IMMEDIATE EFFECTIVE AND EXPIRATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Water resources and adjudication oversight committee — establishment — appointment — organization.** (1) There is established a water resources and adjudication oversight committee.

(2) The speaker of the house and committee on committees of the senate shall each appoint four members of their respective house to serve on the committee. No more than two members from each house may be from the same party.

(3) Committee members shall elect a chairman and vice-chairman from among their number.

(4) Committee members are entitled to compensation and expenses as provided in 5-2-302.

Section 2. **Function of the committee.** (1) The water resources and adjudication oversight committee shall work with and oversee the efforts of state agencies charged with the responsibility of developing and managing the state's water resources. The committee may work with these agencies to investigate new means to accomplish the construction of dams, water distribution systems, and the development of recreation areas and fisheries. The committee may also study any other issues related to water development and conservation as its members consider important to the people of the state.

(2) The committee may make such recommendations to agencies and the legislature relating to water development and conservation programs as it considers necessary. Such recommendations may include proposals for legislation.

(3) The committee shall oversee the implementation of the water rights adjudication system as provided for in Title 85, chapter 2, and may make recommendations to agencies, courts, and the legislature relating to water adjudication as it considers necessary. Such recommendation may include proposals for legislation.

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Section 3. **Committee assistance.** The committee may arrange with the legislative council to receive support services subject to the limitations of funds available for that purpose.

Section 4. **Appropriation.** There is appropriated $30,000 from the renewable resource development clearance fund account to the legislative council for the biennium ending June 30, 1981, for the purpose of supporting the activities of the water resources oversight committee.

Section 5. **Effective and expiration date.** This act is effective on passage and approval and expires June 30, 1981.

Approved May 14, 1979.

CHAPTER NO. 709

AN ACT TO ALLOW ATTORNEYS' FEES TO THE PREVAILING PARTY IN A CONTESTED CASE HEARING UNDER THE HUMAN RIGHTS ACT; AMENDING SECTION 49-2-505, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-2-505, MCA, is amended to read:

"49-2-505. Contested case hearing. (1) If the informal efforts to eliminate the alleged discrimination are unsuccessful, the staff shall inform the commission of the failure and the commission shall cause written notice to be served, together with a copy of the complaint, requiring the person, employer, business, corporation, or agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission.

(2) The hearing shall be held by the commission in the county where the unlawful conduct is alleged to have occurred unless the person, employer, business, corporation, organization, agency, or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the staff, the complainant, or an attorney representing the complainant. The hearing and any subsequent proceedings under this chapter, except as permitted under 49-2-508, shall be held in accordance with the Montana Administrative Procedure Act.

(3) The commission may make provision for defraying the expenses of any indigent party in a contested hearing held pursuant to this chapter.

(4) The prevailing party in a hearing under this section may bring an action in district court for attorneys' fees. The court in its discretion may allow the prevailing party reasonable attorneys' fees. An action under this section must comply with the Montana Rules of Civil Procedure."

Approved May 14, 1979.

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CHAPTER NO. 710

AN ACT TO GENERALLY REVISE THE LAWS GOVERNING THE PROPERTY TAX APPRAISAL AND APPEAL PROCESS; REQUIRING THE REVENUE OVERSIGHT COMMITTEE TO CONSIDER DEPARTMENT OF REVENUE RULES GOVERNING APPRAISAL AND ALLOWING IT TO POLL THE LEGISLATURE CONCERNING THESE RULES; AND AMENDING SECTIONS 15-7-102 AND 15-7-103, MCA, AND SECTION 4 OF CHAPTER 458, LAWS OF 1977.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-103, MCA, is amended to read:

"15-7-103. Classification and appraisal — general and uniform methods. (1) It is the duty of the department of revenue to implement the provisions of 15-7-101 through 15-7-103 by providing:

(a) for a general and uniform method of classifying lands in the state for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes;

(b) for a general and uniform method of appraising city and town lots;

(c) for a general and uniform method of appraising rural and urban improvements;

(d) for a general and uniform method of appraising timberlands.

(2) All lands shall be classified according to their use or uses and graded within each class according to soil and productive capacity. In such classification work, use shall be made of soil surveys and maps and all other pertinent available information.

(3) All lands must be classified by 40-acre tracts or fractional lots.

(4) All agricultural lands must be classified and appraised as agricultural lands without regard to the best and highest value use of adjacent or neighboring lands.

(5) In any periodic revaluation of taxable property completed under the provisions of 15-7-111 after January 1, 1979, all property classified in 15-6-112 must be appraised on its market value in the same year. The department must publish a rule specifying the year used in the appraisal."

Section 2. Section 4, Chapter 458, Laws of 1977, is amended to read:

"Section 4. **Committee duties.** (1) The committee shall make interim studies of the statewide reappraisal of real property and its property tax consequences, the taxation of financial institutions by methods which could replace the bank shares tax, and the appropriate level of taxation of the gross proceeds of metal mines. The committee may also exercise continuing legislative oversight of the department of revenue, including without limitation the review of:

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(a) proposed and adopted rules;

(b) proposed budgets;

(c) proposed legislation;

(d) pending litigation; and

(e) major contracts and personnel actions of the department.

(2) The committee shall:

(a) consider any method proposed in any rule published by the department of revenue to appraise real property to determine whether the method is general and uniform for similar types of property;

(b) prepare written recommendations for the adoption, amendment, or rejection of the rule;

(c) submit these recommendations to the department.

(3) The committee shall prepare a biennial critique of the department's activities, which shall be published by the department as an appendix to the biennial report of the department."

Section 3. Section 15-7-102, MCA, is amended to read:

"15-7-102. Notice of classification and appraisal to owners — appeals. (1) It shall be the duty of the department of revenue to cause to be mailed to each owner a notice of the classification of the land owned by him and the appraisal of the improvements thereon.

(2) If the owner of any land and improvements *is* dissatisfied with the *appraisal or* classification of his land or improvements, *he may submit his objection in writing to the department's agent. The* department shall give reasonable notice to such taxpayer of the time and place of hearing and hear any testimony or other evidence which the taxpayer may desire to produce at such time and afford the opportunity to other interested persons to produce evidence at such hearing. Thereafter, the department shall determine the true and correct *appraisal and* classification of such land or improvements and forthwith notify the taxpayer of its determination. *In the notification, the department must state its reasons for revising the classification or appraisal. When* so determined, the land shall be classified and improvements appraised in the manner ordered by the department.

(3) Whether a hearing as provided in subsection (2) is held or not, the department or its agent may not adjust an appraisal or classification upon taxpayer's objection unless:

(a) the taxpayer has submitted his objection in writing; and

(b) the department or its agent has stated its reason in writing for making the adjustment.

(4) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. Each county

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appraiser shall make such records available for inspection during regular office hours.

(5) If any property owner shall feel aggrieved at the classification and/or the appraisal so made by the department, he shall have the right to appeal to the county tax appeal board and then to the state tax appeal board, whose findings shall be final subject to the right of review in the proper court or courts."

Approved May 14, 1979.

CHAPTER NO. 711

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO ALCOHOLISM TREATMENT PROGRAMS AND THE DISTRIBUTION OF REVENUES FROM THE LIQUOR LICENSE TAX PROCEEDS; AMENDING SECTIONS 16-1-404, 53-24-103, 53-24-108, 53-24-204, AND 53-24-206 THROUGH 53-24-208, MCA; AND REPEALING SECTION 53-24-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-24-103, MCA, is amended to read:

"53-24-103. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Alcoholic" means a person who *has a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to the extent that it endangers the health, interpersonal relationships, or economic function of the individual or public health, welfare, or safety.*

(2) "Approved private treatment facility" means a private *nonprofit* agency, *receiving public funds (whose function is the treatment, rehabilitation, and prevention of alcoholism and drug dependence)* meeting the standards prescribed in 53-24-208(1) and approved under 53-24-208.

(3) "Approved public treatment facility" means:

(a) a treatment agency operating under the direction and control of the department *as a state agency* and approved under 53-24-208*; or*

(b) a treatment agency operating under the direction and control of a local government and approved under 53-24-208.

(4) "Department" means the department of institutions provided for in 2-15-2301.

(5) "Family member" is the spouse, mother, father, child, or member of the household of an alcoholic whose life has been affected by the actions of the alcoholic and may require treatment.

(6) "Incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or has his judgment otherwise so impaired

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that he is incapable of realizing and making a rational decision with respect to his need for treatment.

(7) "Incompetent person" means a person who has been adjudged incompetent by the district court.

(8) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

(9) "Prevention" has meaning on four levels; these are:

(a) education to provide information to the school children and general public relating to alcohol dependence and alcoholism, treatment, and rehabilitative services and to reduce the consequences of life experiences acquired by contact with an alcoholic;

(b) early detection and recovery from the illness before lasting emotional or physical damage, or both, have occurred;

(c) if lasting emotional or physical damage, or both, have occurred, to arrest the illness before full disability has been reached;

(d) the provision of facility requirements to meet division program standards and improve public accessibility for services.

(10) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, which may be extended to alcoholics, intoxicated persons, and family members."

Section 2. Section 53-24-108, MCA, is amended to read:

"53-24-108. Utilization of funds generated by taxation on alcoholic beverages. (1) Revenue generated by 16-1-404, 16-1-406, and 16-1-408 *to state approved programs whose function is* the treatment, rehabilitation, and prevention of alcoholism may be distributed in either of the following manners:

(a) as payment of fees for alcoholism services provided by state-approved alcoholism programs, certified alcoholism counselors, licensed physicians, and licensed hospitals; and

(b) as grants to persons operating state-approved alcoholism programs.

(2) No person operating a state-approved alcoholism program may be required to provide matching funds as a condition of receiving a grant under subsection (1) of this section.

(3) In addition to funding received under this section, a person operating a state-approved alcoholism program may accept gifts, bequests, or the donation of services or money for the treatment, rehabilitation, or prevention of alcoholism.

(4) No person receiving funding under this section to support operation of a state-approved alcoholism program may refuse alcoholism treatment, rehabilitation, or prevention services to a person solely because of that person's inability to pay for those services.

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(5) A grant made under this section is subject to the following conditions:

(a) The grant application must contain an estimate of all program income, including income from earned fees, gifts, bequests, donations, and grants from other than state sources during the period for which grant support is sought.

(b) Whenever, during the period of grant support, program income exceeds the amount estimated in the grant application, the amount of the excess shall be reported to the grantor.

(c) The excess shall be used by the grantee under the terms of the grant in accordance with one or a combination of the following options:

(i) use for any purpose that furthers the objectives of the legislation under which the grant was made; or

(ii) *to allow program growth through the expansion of services or for capital expenditures necessary to improve facilities where services are provided.*

(6) Revenue generated by 16-1-404, 16-1-406, and 16-1-408 for the treatment, rehabilitation, and prevention of alcoholism which has not been encumbered for those purposes by the counties of Montana or the department shall be returned to the state's *earmarked revenue* fund *for the treatment, rehabilitation, and prevention of alcoholism* within 30 days after the close of each fiscal year."

Section 3. Section 53-24-204, MCA, is amended to read:

"53-24-204. Powers of department. *(1)* To carry out this chapter, the department may:

(a) accept gifts, grants, and donations of money and property from public and private sources;

(b) enter into contracts;

(c) acquire and dispose of property.

(2) The department shall:

(a) approve treatment programs as provided for in 53-24-208;

(b) prepare an annual state plan for the delivery of treatment services;

(c) provide for and conduct statewide service system evaluations;

(d) distribute state and federal funds to the counties for approved treatment programs in accordance with the provisions of 53-24-206;

(e) plan in conjunction with approved programs and provide for training of program personnel delivering services to alcoholics;

(f) establish criteria to be used for the development of new programs;

(g) certify and establish standards for the certification of alcoholism and drug dependence counselors;

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(h) encourage planning for the greatest utilization of funds by discouraging duplication of services, encouraging efficiency of services through existing programs, and encouraging rural counties to form multicounty districts or contract with urban programs for services; and

(i) cooperate with the board of pardons in establishing and conducting programs to provide treatment for alcoholics and intoxicated persons in or on parole from penal institutions."

Section 4. Section 53-24-206, MCA, is amended to read:

"**53-24-206. Administration of financial assistance.** *(1)* The department may apply for and receive grants, allotments, or allocations of funds or other assistance for purposes pertaining to the problems of alcohol and drug dependence or related social problems under laws and rules of the United States, any other state, or any private organization.

(2) The department may cooperate with any other government agency or private organization in programs on alcohol and drug dependence *or* related social problems. In carrying out cooperative programs, the department may make grants of financial assistance to government agencies and private organizations under terms and conditions agreed upon.

(3) (a) In administering proceeds derived from the liquor license tax or the beer license tax, the department shall distribute those funds appropriated by the legislature. Money that is appropriated for distribution to approved programs on a discretionary basis shall be distributed to those programs that can demonstrate that:

(i) the program is achieving the goals and objectives mutually agreed upon by the program and the department; and

(ii) the receipt of additional funds would be justified.

(b) The remainder of the proceeds shall be distributed to the counties for use by approved programs in the following manner:

(i) Eighty-five percent shall be allocated according to the proportion of each county's population to the state's population according to the most recent United States census.

(ii) Fifteen percent shall be allocated according to the proportion of the county's land area to the state's land area.

(c) Money distributed under subsection (3) may only be used for purposes pertaining to the problems of alcoholism or related social problems.

Section 5. Section 53-24-207, MCA, is amended to read:

"**53-24-207. Comprehensive program for treatment.** (1) The department shall establish a comprehensive and coordinated program for the treatment of alcoholics, intoxicated persons, and family members.

(2) The program shall include:

(a) emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital;

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(b) inpatient treatment;

(c) intermediate treatment;

(d) outpatient treatment; *and*

(e) follow-up services.

(3) The department shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under 53-24-301 through 53-24-304.

(4) All appropriate public and private resources shall be coordinated with and utilized in the program if possible.

(5) The department shall prepare, publish, and distribute annually a list of all approved public and private treatment facilities."

Section 6. Section 16-1-404, MCA, is amended to read:

"16-1-404. License tax on liquor — amount — distribution of proceeds. (1) The department is hereby authorized and directed to charge, receive, and collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of 10% of the retail selling price on all liquor sold and delivered. Said tax shall be charged and collected on all liquor brought into the state and taxed by the department. The retail selling price shall be computed by adding to the cost of said liquor the state markup as designated by the department. Said 10% license tax shall be figured in the same manner as the state excise tax and shall be in addition to said state excise tax. The department shall retain in a separate account the amount of such 10% license tax so received. *Thirty percent of these revenues shall be allocated to the counties according to the amount of liquor purchased in each county to be distributed to the incorporated cities and towns, as provided in subsection (2). Four and one-half percent of these revenues shall be allocated to the counties according to the amount of liquor purchased in each county, and this money may be used for county purposes. The remaining revenues shall be deposited in the earmarked revenue fund to the credit of the department of institutions for the treatment, rehabilitation, and prevention of alcoholism.* Provided, however, in the case of purchases of liquor by a retail liquor licensee for use in his business, the department shall make such regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in 16-1-405. The department shall pay quarterly to each county treasurer the proportion of the license tax due each county *to be allocated to the incorporated cities and towns of the county.*

(2) *The license tax proceeds allocated to the county under subsection (1) for use by cities and towns shall be distributed by the county treasurer to the incorporated cities and towns within 30 days of receipt from the department. The distribution of funds to the cities and towns shall be based on the proportion that the gross sale of liquor in each city or town is to the gross sale of liquor in all of the cities and towns of the county.*

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(3) *The license tax proceeds that are allocated to the department of institutions for the treatment, rehabilitation, and prevention of alcoholism shall be credited quarterly to the department of institutions. The legislature may appropriate a portion of the license tax proceeds to support alcohol programs. The remainder shall be distributed as provided in 53-24-206.*"

Section 7. Section 53-24-208, MCA, is amended to read:

"**53-24-208. Facility standards.** (1) The department shall establish standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility and fix the fees to be charged for the required inspections. The standards may concern only the health standards to be met and standards of treatment to be afforded patients.

(2) Facilities applying for approval must demonstrate a local need currently exists for proposed services and that the proposed services do not duplicate existing local services.

(3) The department shall periodically inspect approved public and private treatment facilities at reasonable times and in a reasonable manner.

(4) The department shall maintain a list of approved public and private treatment facilities.

(5) Each approved public and private treatment facility shall, on request, file with the department data, statistics, schedules, and information the department reasonably requires. An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules, or information as requested or files fraudulent returns thereof shall be removed from the list of approved treatment facilities.

(6) The department, after holding a hearing in accordance with the Montana Administrative Procedure Act, may suspend, revoke, limit, or restrict an approval or refuse to grant an approval for failure to meet its standards.

(7) A district court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.

(8) Upon petition of the department and after a hearing held upon reasonable notice to the facility, a district court may issue a warrant to the department authorizing it to enter and inspect at reasonable times and examine the books and accounts of any approved public or private treatment facility refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter."

Section 8. **County plan to be submitted to department.** (1) By January 1, 1980, each county must submit to the department a comprehensive countywide plan for the treatment, rehabilitation, and prevention of alcoholism.

(2) The plan must have been approved by the board of county commissioners and must contain information regarding existing nonprofit and

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local government programs within the county. The plan must also contain information regarding the current and future needs of the county for the treatment, rehabilitation, and prevention of alcoholism.

(3) The department shall approve or disapprove the countywide plan. If the department disapproves a plan, the county may submit another plan to the department. In distributing funds to approved programs in a county, the department shall give consideration to the county plan.

(4) (a) After December 31, 1979, no money may be distributed to a county by the department for the treatment, rehabilitation, and prevention of alcoholism if the county has not submitted a plan as required by subsection (1).

(b) After June 30, 1980, no money may be distributed to a county by the department for the treatment, rehabilitation, and prevention of alcoholism if a county plan has not been approved by the department.

(5) The department may adopt rules regarding the submission, approval, and disapproval of plans.

Section 9. **Repealer.** Section 53-24-203, MCA, is repealed.

Approved May 14, 1979.

CHAPTER NO. 712

AN ACT TO PROVIDE A FEE IN LIEU OF PROPERTY TAX FOR MOTOR HOMES, TRAVEL TRAILERS, SNOWMOBILES, AND CAMPERS; AMENDING SECTIONS 15-6-101, 15-6-110, 15-6-111, 15-6-201, 15-8-201, 15-8-202, 23-2-611, 23-2-612, 23-2-616 THROUGH 23-2-618, 23-2-642, 61-3-303, 61-3-317, 61-3-322, 61-3-441, 61-3-442, 61-3-501 THROUGH 61-3-504, AND 61-3-509, MCA; REPEALING SECTIONS 15-6-121 AND 15-8-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Fee in lieu of tax for certain vehicles.** (1) There is a fee in lieu of property tax imposed on motor homes, travel trailers, and campers. The fee is in addition to annual registration fees.

(2) The fee imposed by subsection (1) need not be paid by a dealer for vehicles that constitute inventory of the dealership.

Section 2. **Schedule of fees for motor homes.** (1) The owner of a motor home shall pay a fee based on the age of the motor home according to the following schedule:

less than 2 years old	$200
2 years old and less than 3 years old	180
3 years old and less than 4 years old	145
4 years old and less than 5 years old	100
5 years old and less than 6 years old	75

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6 years old and less than 7 years old	50
7 years old and less than 8 years old	25
8 years old and older	15

(2) The age of a motor home is determined by subtracting the manufacturer's designated model year from the current calendar year.

Section 3. **Schedule of fees for travel trailers and campers.** (1) The fee imposed by [section 1] on a travel trailer less than 3 years old is $40. In all other cases the fee is $15.

(2) The fee imposed by [section 1] on a camper less than 3 years old is $35. In all other cases the fee is $15.

(3) The age of a travel trailer or camper is determined by subtracting the manufacturer's designated model year from the current calendar year.

Section 4. **Fee in lieu of tax on snowmobiles.** (1) There is a fee in lieu of tax on snowmobiles.

(2) The fee for a snowmobile less than 4 years old is $22. In all other cases the fee is $15.

(3) The age of a snowmobile is determined by subtracting the manufacturer's designated model year from the current calendar year.

(4) The fee need not be paid by a dealer for snowmobiles that constitute inventory of the dealership.

Section 5. **Motor home.** "Motor home" means a self-propelled motor vehicle originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.

Section 6. **Travel trailer.** "Travel trailer" means a trailer 32 feet or less in length and 8 feet or less in width originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.

Section 7. Section 61-3-303, MCA, is amended to read:

"61-3-303. Application for registration. (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as herein otherwise expressly provided, file or cause to be filed in the office of the county treasurer where the motor vehicle is owned or taxable an application for registration or reregistration upon a blank form to be prepared and furnished by the division. The application shall contain:

(a) name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable;

(b) name and address of conditional sales vendor, mortgagee, or holder of other lien against the motor vehicle, with statement of amount owing under such contract or lien;

(c) description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, type of body, and if truck, the rated capacity;

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(d) in case of reregistration, the license number for the preceding year; and

(e) such other information as the division may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 15-1-101(1), shall upon the filing of the application *pay to the county treasurer*:

(a) the registration fee, as provided in 61-3-311 and 61-3-321; and

(b) the personal property taxes assessed, the new motor vehicle sales tax against the vehicle for the current year of registration, *or in the case of a motor home, travel trailer, or camper, the fee in lieu of property tax for the current year of registration,* unless the same shall have been theretofore paid for the year, before the application for registration or reregistration may be accepted by the county treasurer.

(3) The county treasurer may make full and complete investigation of the tax status of the vehicle. Any applicant for registration or reregistration must submit proof from the tax records of the proper county at the request of the county treasurer."

Section 8. Section 61-3-317, MCA, is amended to read:

"61-3-317. New registration required for transferred vehicle — grace period — penalty — display of proof of purchase. (1) Except as otherwise provided herein, the new owner of the transferred motor vehicle shall have the grace period of 20 calendar days from the date of purchase to make application and pay the taxes as provided by part 5 of this chapter *or the fee in lieu of tax as provided by [section 1] unless the tax or fee has been paid for the year,* as if the same was being registered for the first time in that registration year. If the motor vehicle was not purchased from a duly licensed motor vehicle dealer as provided in this chapter, it shall not be a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a certificate of registration during the 20-day period; provided, that at all times during that period a bill of sale or other proof of purchase reciting the date of purchase shall be clearly displayed in the rear window of the motor vehicle. Registration and license fees collected under 61-3-321 are not required to be paid when a license plate is transferred under this section and 61-3-335. Failure to make application within the time provided herein shall subject the purchaser to a penalty of $10. The penalty shall be collected by the county treasurer at the time of registration, and shall be in addition to the fees otherwise provided by law.

(2) Any purchaser of a new or used motor vehicle from a duly licensed motor vehicle dealer shall have the grace period of 20 calendar days from the date of purchase to make application for registration and to obtain registration plates, and it shall not be a violation of this chapter or any other law for such purchaser to operate such vehicle upon the streets and highways of this state without a certificate of registration and registration plates during the 20-day period; provided that at all times during said period the sticker issued by the dealer at the time of purchase shall remain

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affixed to said vehicle as provided in 61-4-111. Failure to make such application within the time provided herein subjects the purchaser to a penalty of $10. The penalty is to be collected by the county treasurer at the time of registration and is in addition to the fees otherwise provided by law."

Section 9. Section 61-3-322, MCA, is amended to read:

"61-3-322. Certificates of registration — issuance. (1) Upon completion of the application for registration, on forms furnished by the division, the county treasurer shall *file one copy in his office and* issue to the applicant two copies of the application marked "Owner's Certificate of Registration and Tax Receipt", one of which shall be marked "file copy".

(2) The certificate of registration shall contain upon the face thereof:

(a) the date issued;

(b) the registration number assigned to the owner and the vehicle;

(c) the name and complete address of the owner, or the names and addresses of joint owners;

(d) the name and complete address of any conditional sales vendor, and also the name and address of any other lienor as shown by said application;

(e) a description of the registered vehicle including the year built and serial number, if any;

(f) any lien against such motor vehicle and the amount due at the date of registration; and

(g) such other statement of facts as may be determined by the division.

(3) Every owner, upon receiving a registration receipt shall write his signature thereon with pen and ink in the space provided. Every such registration receipt or a notarized photostatic copy thereof or a duplicate thereof furnished by the division shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of such vehicle, who shall display the same upon demand of a police officer or any officer or employee of the division or the highway department.

(4) The county treasurer shall daily forward to the division one copy of *all applications* for registration *received that day.*

(5) It shall not be necessary for the county treasurer, in said receipt, to segregate the amount of said taxes for state, county, school district, and municipal purposes."

Section 10. Section 61-3-441, MCA, is amended to read:

"61-3-441. Fee-paid decal required on camper — application for decal — application fee — issuance. (1) No camper, subject to taxation in Montana, *may* be operated by any person on the public highways or streets *in this state* unless there is displayed in a conspicuous place thereon a decal as visual proof that *the fee in lieu of tax has* been paid thereon for the current year.

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(2) Application for the issuance of *the* decal shall be made to the department of revenue or the county treasurer upon forms to be furnished for this purpose, which may be obtained from the department or at the county *treasurer's* office in the county wherein the owner resides, and is to provide for substantially the following information:

(a) name of owner;

(b) address;

(c) name of manufacturer;

(d) model number;

(e) make;

(f) year of manufacture;

(g) statement evidencing payment of *the fee in lieu of* property tax; and

(h) such other information as the department may require.

(3) *The* application *must* be signed by the county treasurer and transmitted by him to the department accompanied by *an application* fee of $1. Upon receipt of the application in approved form the department or county treasurer shall issue to the applicant a decal in the style and design prescribed by the department and of a different color than the preceding year, numbered numerically."

Section 11. Section 61-3-442, MCA, is amended to read:

"61-3-442. Annual application for decals. Application may be made to the department of revenue or county treasurer for the issuance of *camper* decals annually when the motor vehicle to which the camper is customarily attached is registered."

Section 12. Section 61-3-501, MCA, is amended to read:

"61-3-501. When vehicle property tax is due. (1) Property taxes, new car taxes, *and fees in lieu of tax on a motor home or travel trailer must* be paid on the date of registration or reregistration of the vehicle.

(2) If the anniversary date for reregistration of a vehicle *passes* while the vehicle is owned and held for sale by a licensed new or used car dealer, property taxes *or the fee in lieu of property taxes* abate on such vehicle properly reported with the department of revenue until the vehicle is sold and thereafter the purchaser shall pay the pro rata balance of the taxes *or the fee in lieu of tax* due and owing on the vehicle.

(3) In the event a vehicle's registration period is changed under 61-3-315, all taxes and other fees due thereon shall be prorated and paid from the last day of the old period until the first day of the new period in which the vehicle shall be registered. Thereafter taxes and other fees must be paid from the first day of the new period for a minimum period of 1 year. When the change is to a later registration period, taxes and fees shall be prorated and paid based on the same tax year as the original

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registration period. Thereafter, during the appropriate anniversary registration period, each vehicle shall again register or reregister and shall pay all taxes and fees due thereon for a 12-month period."

Section 13. Section 61-3-502, MCA, is amended to read:

"61-3-502. Sales tax on new motor vehicles — exemptions. (1) In consideration of the right to use the highways of the state, there shall be imposed a tax upon all sales of new motor vehicles for which a license is sought and an original application for title is made. The tax shall be paid by the purchaser when he applies for his original Montana license through the county treasurer.

(2) The sales tax shall be:

(a) 1 ½% of the F.O.B. factory list price or F.O.B. port of entry list price, during the first quarter of the year or prorated one-twelfth for each month or part of month for a registration period other than a calendar year or calendar quarter;

(b) 1 ⅛% of the list price during the second quarter of the year;

(c) ¾ of 1% during the third quarter of the year;

(d) ⅜ of 1% during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the F.O.B. factory list price or F.O.B. port of entry list price, the department may use published price lists.

(4) The proceeds from this tax shall be remitted to the state treasurer every 30 days for credit to the state highway account of the earmarked revenue fund.

(5) The new vehicle is not subject to any other assessment, taxation, *or fee in lieu of tax* during the calendar year in which the original application for title is made.

(6) (a) The applicant for original registration of any wholly new and unused motor vehicle or new motor vehicle furnished without charge by the dealer to the school district for use as a traffic education motor vehicle by a school district operating a state-approved traffic education program within the state, whether or not previously licensed or titled to the school district, except a mobile home as defined in 15-1-101(1), acquired by original contract after January 1 of any year shall be required, whenever such vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by this section irrespective of whether the vehicle was in the state of Montana on January 1 of the year.

(b) No such motor vehicle may be registered or licensed under the provisions of this subsection unless the application for registration is accompanied by a statement of origin to be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided herein, by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

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(7) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from such limits are exempt from subsection (1). Motor vehicles brought or driven into Montana by a nonresident migratory bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are also exempt from subsection (1). Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-102 are exempt from subsection (1) when moving to or from a dealer's place of business when unladen or laden with dealer's property only, and in the case of vehicles having a gross laden weight of less than 24,000 pounds, while in the process of demonstration in the course of the dealer's business."

Section 14. Section 61-3-503, MCA, is amended to read:

"61-3-503. Assessment. (1) A person who files an application for registration or reregistration of a motor vehicle, *other than a motor home, travel trailer, or* a mobile home as defined in 15-1-101(1), shall before filing such application with the county treasurer submit the same to the county assessor of the county. The county assessor shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle for the year for which the application for registration is made.

(2) Except as provided in subsection (3) motor vehicles, *other than motor homes, travel trailers, or* mobile homes as defined in 15-1-101(1), are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. In no event may any motor vehicle be subject to assessment, levy, and taxation more than once in each year.

(3) Vehicles subject to the provisions of 61-3-313 through 61-3-316 shall be assessed as of the first day of the year in which the registration period occurs and a lien for taxes and fees due thereon shall occur on the anniversary date of the registration and shall continue thereafter until such fees and taxes shall have been paid."

Section 15. Section 61-3-504, MCA, is amended to read:

"61-3-504. Computation of tax. The amount of taxes on *a* motor vehicle, *other than a motor home, travel trailer, or* a mobile home as defined in 15-1-101(1), is computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration. The determination is entered on the application form in a space provided therefor."

Section 16. Section 61-3-509, MCA, is amended to read:

"61-3-509. Disposition of taxes and fees in lieu of tax. The county treasurer shall credit all taxes on motor vehicles *and fees in lieu of tax on motor homes and travel trailers* collected to a motor vehicle suspense fund, and at some time between March 1 and March 10 of each year and every 60 days thereafter, the county treasurer shall distribute the *money in the motor vehicle suspense fund* in *the* relative proportions

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required by the levies for state, county, school district, and municipal purposes in the same manner as other personal property taxes are distributed."

Section 17. **Disposition of fees in lieu of tax on snowmobiles.** The county treasurer shall credit all fees in lieu of tax collected on snowmobiles to the county motor vehicle suspense fund provided for in 61-3-509.

Section 18. Section 15-6-101, MCA, is amended to read:

"15-6-101. Property subject to taxation — classification. (1) All property in this state is subject to taxation, except as provided otherwise.

(2) For the purpose of taxation, the taxable property in the state shall be classified in accordance with 15-6-102 through *15-6-120*."

Section 19. Section 15-6-110, MCA, is amended to read:

"15-6-110. Class nine property — description — taxable percentage. (1) Class nine property includes:

(a) automobiles, motor trucks, and other power-driven cars and vehicles of all kinds except *motor homes,* mobile homes, motorcycles, aircraft, camper trailers, and truck campers; and

(b) furniture and fixtures used in commercial, office, and hotel activities, except improvements included in class thirteen.

(2) Class nine property is taxed at 13.3% of its market value."

Section 20. Section 15-6-111, MCA, is amended to read:

"15-6-111. Class ten property — description — taxable percentage. (1) Class ten property includes:

(a) aerial, surface, and portable ski lifts and ski tows, including the towers, cables, ropes, sheave assemblies, conveying devices, power units, and all accessories; *and*

(b) manufacturing and mining machinery, fixtures, and supplies, except those included in class eighteen.

(2) Class ten property is taxed at 12% of market value."

Section 21. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) (a) The property of the United States, the state, counties, cities, towns, school districts, irrigation districts organized under the laws of Montana and not operating for profit, municipal corporations, public libraries; buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship and for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings owned by a church; such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, hospitals, and all property, both real and personal, without limitation as to amount except that real property

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owned shall not exceed 640 acres, owned and held by any association or corporation organized under Title 35, chapter 20 or 21, Cemeteries, provided such cemeteries and any land claimed to be exempt are not maintained and operated for private or corporate profit; institutions of purely public charity; evidence of debt secured by mortgages of record upon real or personal property in the state of Montana; and public art galleries and public observatories not used or held for private or corporate profit are exempt from taxation, but no more land than is necessary for such purpose is exempt.

(b) As used in this subsection, the term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit, and the terms "public art galleries" and "public observatories" mean only such art galleries and observatories, whether of public or private ownership, as are open to the public without charge or fee at all reasonable hours and are used for the purpose of education only.

(2) All household goods and furniture, including clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence are exempt from taxation.

(3) A truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached is exempt from taxation *and the fee in lieu of tax.*"

Section 22. Section 15-8-201, MCA, is amended to read:

"15-8-201. General assessment day. (1) The department of revenue or its agent must, between January 1 and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county. The department or its agent must assess property to the person by whom it was owned or claimed or in whose possession or control it was at midnight of January 1 next preceding. It must also ascertain and assess all mobile homes arriving in the county after midnight of January 1 next preceding. No mistake in the name of the owner or supposed owner of real property, however, renders the assessment invalid.

(2) The procedure provided by this section may not apply to:

(a) motor vehicles that are required by 15-8-202 to be assessed on January 1 or upon their anniversary registration date;

(b) motor homes and travel trailers subject to a fee in lieu of property tax;

(c) livestock which are required by 15-24-908 to be assessed on an average inventory basis in each county;

(d) property defined in 61-1-104(2) as "special mobile equipment" that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate; and

(e) mobile homes held by a distributor or dealer of mobile homes as a part of his stock-in-trade.

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(3) Credits must be assessed as provided in 15-1-101(1)(b)."

Section 23. Section 15-8-202, MCA, is amended to read:

"15-8-202. Motor vehicle assessment. (1) (a) The department or its agent must, in each year, ascertain and assess all motor vehicles *other than motor homes, travel trailers, or* mobile homes in each county subject to taxation as of January 1 or as of the anniversary registration date of those vehicles subject to 61-3-313 through 61-3-316 and 61-3-501. The motor vehicles shall be assessed in each year to the persons by whom owned or claimed or in whose possession or control they were at midnight of January 1 or the anniversary registration date thereof, whichever is applicable.

(b) No tax may be assessed against motor vehicles that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles brought into the state subsequent to January 1 as motor vehicle dealers' inventories shall be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.

(c) "Purchasers" includes dealers who apply for registration or reregistration of motor vehicles, except as otherwise provided by 61-3-502.

(d) Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall be assessed at market value as of January 1.

(2) In all cases where taxes *or a fee in lieu of tax* were required to be paid, the applicant for registration or reregistration of a motor vehicle, other than a mobile home, is not relieved of the duty of paying taxes *or the fee in lieu of tax* if the taxes *or fees* have not been paid by a prior applicant or owner."

Section 24. Section 23-2-611, MCA, is amended to read:

"23-2-611. Certificate of ownership. (1) No snowmobile may be operated upon any public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets, or highways, unless a certificate of ownership has first been obtained from the division of motor vehicles in accordance with the laws of this state.

(2) *The* owner of a snowmobile shall *apply* for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose *that must* require the following information:

(a) name of owner;

(b) residence by town and county;

(c) business or home mail address;

(d) name and address of lien holder;

(e) amount due under contract or lien;

(f) name and address of manufacturer;

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(g) model number or name;

(h) serial number; and

(i) name and address of dealer or other person from whom acquired.

(3) The application *must* be signed by at least one owner or by a properly authorized officer or representative of the owner.

(4) If a certificate of ownership for a snowmobile has previously been issued under the provisions of this part, the application for a new certificate must be accompanied by the immediately previous certificate or by an affidavit upon a prescribed form stating under oath that the vehicle had not been operated during the immediately previous year. This subsection does not apply to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of this part were not in force and effect.

(5) Upon completion of the application in quintuplicate on forms furnished by the division of motor vehicles, the county treasurer shall issue to the applicant two copies of the application, one of which shall be marked "file copy", and forward one copy and the original application to the division, which shall cause to be entered the information contained in the application upon the corresponding records of its office, and shall furnish the applicant a certificate of ownership which shall contain the information found on the application and a permanent ownership number. The certificate of ownership is not required to be renewed annually and is valid as long as the person holding it owns the snowmobile.

(6) The owner shall at all times retain possession of the certificate of ownership, except when the same is being transmitted to and from the division for endorsement or cancellation. The owner of a snowmobile shall display his certificate of ownership number on both sides of the cowling of the snowmobile and shall maintain the number in legible condition at all times. The number shall read from left to right and be marked in Arabic numerals, in block characters of good proportion, and shall be a minimum of 3 inches in height, excluding border or trim, and of a color that contrasts with the color of the background.

(7) Upon application for a certificate of ownership, a fee of $3 shall be paid to the county treasurer, one-half of which shall be forwarded by the county treasurer to the division of motor vehicles.

(8) Before a decal *indicating that the fee in lieu of property tax has been paid on the snowmobile for the current year* may be applied for pursuant to the laws of this state, the owner must present the certificate of ownership or copy of completed application therefor as a prerequisite to completing the application for the decal."

Section 25. Section 23-2-612, MCA, is amended to read:

"23-2-612. Transfer of interest. (1) Except as provided in subsection (3), upon a transfer of any certificate of ownership to a snowmobile registered as required under the provisions of this part, the person whose title or interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for the snowmobile in the

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appropriate space provided upon the reverse side of the certificate, and such signature shall be acknowledged before a notary public.

(2) Within 20 calendar days thereafter, the transferee shall forward the certificate of ownership so endorsed, together with the information required under this part, to the division of motor vehicles, which shall file the same upon receipt thereof. No certificate of ownership may be issued by the division until the outstanding certificates are surrendered to that office or their loss established to its reasonable satisfaction. The division shall collect a fee of $3 for each application for transfer of ownership.

(3) A purchaser of a new or used snowmobile from a licensed snowmobile dealer has a grace period of 20 calendar days from the date of purchase to make application for a certificate of ownership and to obtain a decal *indicating that the fee in lieu of property tax has been paid on the snowmobile for the current year.* It is not a violation of this part or any other law for the purchaser to operate such a snowmobile without a certificate of ownership and a decal during the 20-day period. During this period the sticker, provided for in subsection (4), shall remain affixed to the snowmobile.

(4) Prior to the delivery of the snowmobile to the purchaser, the dealer shall issue and affix to the snowmobile a sticker (in a form to be prescribed by the division of motor vehicles). The sticker shall contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the snowmobile, including its serial number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the division.

(5) The provisions of subsection (2) of this section, requiring a transferee to forward the certificate of ownership after endorsement to the division, do not apply in the event of the transfer of a snowmobile to a duly licensed snowmobile dealer intending to resell the snowmobile and who operates it only for demonstration purposes, but every such dealer, upon transferring such interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of this part. The division, upon receipt of the certificate of ownership and application for a new certificate, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership together with a statement of any conditional sales contract, mortgage, or other lien."

Section 26. Section 23-2-616, MCA, is amended to read:

"23-2-616. Display of decals — application and issuance — use of fees. (1) No snowmobile may be operated by any person in Montana unless there is displayed in a conspicuous place on it a decal as visual proof that *the fee in lieu of property tax has* been paid on it for the current year.

(2) Application for the decal shall be made to the county treasurer upon forms to be furnished for this purpose, which may be obtained from the division of motor vehicles or at the county *treasurer's* office in the county where the owner resides. The application shall contain the following information:

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(a) name of owner;

(b) address;

(c) certificate of ownership number;

(d) name of manufacturer;

(e) model number;

(f) make;

(g) horsepower;

(h) year of manufacture;

(i) statement evidencing payment of *the fee in lieu of* property tax; and

(j) such other information as the division of motor vehicles may require.

(3) The application shall be signed by the county treasurer and transmitted by him to the division of motor vehicles accompanied by a fee of $2. Upon receipt of the application in approved form, the division of motor vehicles or county treasurer shall issue to the applicant a decal in the style and design prescribed by the division and of a different color than the preceding year, numbered in sequence.

(4) The applicant shall pay the county treasurer the application fee and the *fee in lieu of property tax on* the snowmobile for the current year before the application may be accepted by the county treasurer.

(5) All *money* collected from payment of the *application* fees and all interest accruing from use of these moneys shall be turned over to the state treasurer and placed in the earmarked revenue fund to the credit of the department, with $1 designated for use in enforcing the purposes of this part and $1 designated for use in the development, maintenance, and operation of snowmobile facilities."

Section 27. Section 23-2-617, MCA, is amended to read:

"23-2-617. Duplicate decal. In the event any decal *indicating that the fee in lieu of property tax has been paid on a snowmobile for the current year* is lost, mutilated, or becomes illegible, the person to whom the same was issued shall immediately make application for and may obtain a duplicate thereof, upon payment of a fee of $1 to the county treasurer."

Section 28. Section 23-2-618, MCA, is amended to read:

"23-2-618. Application to be made annually — grace period — proof of purchase. (1) Application must be made *annually* to the county treasurer for the issuance of *a decal indicating that the fee in lieu of property tax has been paid for the current year.* All decals expire on June 30 of each year.

(2) An owner of a newly purchased snowmobile shall have a grace period of 20 calendar days from the date of purchase to make application

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for a current decal, provided that at all times during that period a bill of sale or other proof of purchase reciting the date of purchase shall be carried by the operator or with the snowmobile. An owner or operator of such a snowmobile being operated after the 20-day grace period without a current decal displayed on the snowmobile shall be subject to the penalties of 23-2-642(1), as amended."

Section 29. Section 23-2-642, MCA, is amended to read:

"23-2-642. Penalties. (1) The failure to display a current decal *indicating that the fee in lieu of property tax has been paid on the snowmobile for the current year* during the time provided in this part is a misdemeanor, punishable by a fine of not less than $10 or more than $50.

(2) A person who violates any other provision of this part or a rule adopted pursuant thereto shall pay a civil penalty of not less than $15 or more than $500 for each separate violation.

(3) A person who willfully violates any other provision of this part or a rule adopted pursuant thereto shall pay a civil penalty of not less than $50 or more than $1,000 for each separate violation.

(4) A manufacturer who certifies that a new snowmobile can meet the sound-level limitations imposed by this part shall be subject to the penalty provisions of subsections (2) and (3) if any machine so certified does not meet the appropriate sound level limitation. For the purposes of this section, every sale of a new snowmobile that does not meet the sound-level limitations imposed by this part constitutes a separate violation."

Section 30. **Repealer.** Sections 15-6-121 and 15-8-203, MCA, are repealed.

Section 31. **Applicability.** This act applies to motor homes, travel trailers, campers, and snowmobiles registered during and after 1980.

Approved May 14, 1979.

CHAPTER NO. 713

AN ACT TO ABOLISH THE DEFENSE OF MENTAL DISEASE OR DEFECT IN CRIMINAL ACTIONS AND TO PROVIDE AN ALTERNATIVE SENTENCING PROCEDURE TO BE FOLLOWED WHEN A CONVICTED DEFENDANT IS FOUND TO HAVE BEEN SUFFERING FROM A MENTAL DISEASE OR DEFECT AT THE TIME OF THE COMMISSION OF THE OFFENSE OF WHICH HE WAS CONVICTED; AMENDING SECTIONS 46-14-101, 46-14-201 THROUGH 46-14-203, 46-14-212, 46-14-213, 46-14-221, 46-14-222, 46-14-301, 46-14-401, AND 46-15-301, MCA; AND REPEALING SECTION 46-14-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-14-101, MCA, is amended to read:

"46-14-101. Mental disease or defect. As used in this chapter, the term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or other antisocial conduct."

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Section 2. Section 46-14-201, MCA, is amended to read:

"46-14-201. Requirement of notice — form of verdict and judgment. *(1)* Evidence of mental disease or defect is not admissible *in a trial on the merits* unless the defendant, at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for good cause permit, files a written notice of his purpose to rely on a mental disease or defect to prove that he did not have a particular state of mind which is an essential element of the offense charged. Otherwise, except on good cause shown, he shall not introduce in his case in chief expert testimony in support of that defense.

(2) When the defendant is acquitted on the ground *that due to a* mental disease or defect *he could not have a particular state of mind that is an essential element of the offense charged*, the verdict and the judgment shall so state."

Section 3. Section 46-14-202, MCA, is amended to read:

"46-14-202. Psychiatric examination of defendant. (1) When there is reason to doubt *the defendant's* fitness to proceed or reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the court shall appoint at least one qualified psychiatrist or shall request the superintendent of Warm Springs state hospital to designate at least one qualified psychiatrist, which designation may be or include himself, to examine and report upon the mental condition of the defendant.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period of not exceeding 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect."

Section 4. Section 46-14-203, MCA, is amended to read:

"46-14-203. Report of the examination. (1) The report of the examination shall include the following:

(a) a description of the nature of the examination;

(b) a diagnosis of the mental condition of the defendant;

(c) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense; *and*

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so

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state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(3) The report of the examination shall be filed in triplicate with the clerk of court, who shall deliver copies to the county attorney and to counsel for the defendant."

Section 5. Section 46-14-212, MCA, is amended to read:

"46-14-212. Examination by psychiatrist chosen by state or defendant. If either the defendant or the state wishes the defendant to be examined by a qualified psychiatrist or other expert selected by the one proposing the examination *in order to determine the defendant's fitness to proceed or whether he had, at the time the offense was committed, a particular state of mind which is an essential element of the offense*, the examiner shall be permitted to have reasonable access to the defendant for the purpose of the examination."

Section 6. Section 46-14-213, MCA, is amended to read:

"46-14-213. Psychiatric testimony upon trial. (1) Upon the trial, any psychiatrist who reported under 46-14-202 and 46-14-203 may be called as a witness by the prosecution or by the defense. If the issue is being tried before a jury, the jury may not be informed that the psychiatrist was designated by the court or by the superintendent of Warm Springs state hospital. Both the prosecution and the defense may summon any other qualified psychiatrist or other expert to testify, but no one who has not examined the defendant is competent to testify to an expert opinion with respect to the mental condition of the defendant, as distinguished from the validity of the procedure followed by or the general scientific propositions stated by another witness.

(2) When a psychiatrist or other expert who has examined the defendant testifies concerning the defendant's mental condition, he may make a statement as to the nature of his examination, his diagnosis of the mental condition of the defendant at the time of the commission of the offense charged, and his opinion as to the ability of the defendant to have a particular state of mind which is an element of the offense charged. The expert may make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion."

Section 7. Section 46-14-221, MCA, is amended to read:

"46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses. (1) *The issue of the defendant's fitness to proceed may only be raised by the defendant with the advice of counsel.* When the *issue* is *raised, it* shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed under 46-14-203, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to summon and cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

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(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall commit him to the custody of the director of the department of institutions to be placed in an appropriate institution of the department of institutions for so long as the unfitness endures.

(3) If the court determines that the defendant lacks fitness to proceed due to the fact that the person is developmentally disabled, as defined by 53-20-102, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall proceed to secure treatment as provided in chapter 20, part 1, or chapter 21, part 1, of Title 53.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of institutions to be placed in an appropriate institution of the state department of institutions, of keeping him there, and of bringing him back are in the first instance chargeable to the county in which the indictment was found or the information filed; but the county may recover them from the estate of the defendant, if he has any, or from a town, city, or county bound to provide for and maintain him elsewhere."

Section 8. Section 46-14-222, MCA, is amended to read:

"46-14-222. Proceedings if fitness regained. When the court, on its own motion or upon the application of the director of the department of institutions, the county attorney, or the defendant or his legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from *serious* mental *illness*, order the defendant committed to an appropriate institution of the department of institutions."

Section 9. Section 46-14-301, MCA, is amended to read:

"46-14-301. Commitment upon acquittal on the ground of lack of mental state — hearing to determine release or discharge. (1) When a defendant is acquitted on the ground *that due to a* mental disease or defect *he could not have a particular state of mind that is an essential element of the offense charged*, the court shall order him committed to the custody of the superintendent of Warm Springs state hospital to be placed in an appropriate institution for custody, care, and treatment.

(2) A person so confined shall have a hearing, unless waived, within 50 days of his confinement to determine his present mental condition and

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whether he may be discharged or released without danger to others. The court shall cause notice of the hearing to be served upon the person, his counsel, and the prosecuting attorney. Such a hearing shall be deemed a civil proceeding, and the burden shall be upon the defendant to prove by a preponderance of the evidence that he may be safely released.

(3) According to the determination of the court upon the hearing, the defendant shall be discharged or released on such conditions as the court determines to be necessary or shall be committed to the custody of the superintendent of the Warm Springs state hospital to be placed in an appropriate institution for custody, care, and treatment."

Section 10. **Consideration of mental disease or defect in sentencing.** Whenever a defendant is convicted on a verdict or a plea of guilty and he claims that at the time of the commission of the offense of which he was convicted he was suffering from a mental disease or defect which rendered him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, the sentencing court shall consider any relevant evidence presented at the trial and shall require such additional evidence as it considers necessary for the determination of the issue, including examination of the defendant and a report thereof as provided in 46-14-202 and 46-14-203.

Section 11. **Sentence to be imposed.** (1) If the court finds that the defendant at the time of the commission of the offense of which he was convicted did not suffer from a mental disease or defect as described in [section 9], it shall sentence him as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in [section 9], any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence him to be committed to the custody of the director of the department of institutions to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, provided the treatment of the individual and the protection of the public are provided for.

(3) A defendant whose sentence has been imposed under [section 11(2)], may petition the sentencing court for review of the sentence if the professional person certifies that the defendant has been cured of the mental disease or defect. The sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year.

Section 12. **Discharge of defendant from supervision.** At the expiration of the period of commitment or period of treatment specified by the court under [section 11(2)], the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness.

Section 13. Section 46-14-401, MCA, is amended to read:

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"46-14-401. Admissibility of statements made during examination or treatment. A statement made for the purposes of psychiatric examination or treatment provided for in this chapter by a person subjected to such examination or treatment is not admissible in evidence against him in any criminal proceeding, *except a sentencing hearing conducted under [section 9],* on any issue other than that of his mental condition. It is admissible on the issue of his mental condition, whether or not it would otherwise be considered a privileged communication, unless it constitutes an admission of guilt of the crime charged. *In a hearing held under [section 9], the court may hear and consider any such statement even if it constitutes an admission of guilt.*"

Section 14. Section 46-15-301, MCA, is amended to read:

"46-15-301. Discovery of witnesses, notice of certain defenses. In all criminal cases originally triable in district court the following rules apply:

(1) For the purpose of notice only and to prevent surprise, the prosecution shall furnish to the defendant and file with the clerk of the court at the time of arraignment a list of the witnesses the prosecution intends to call. The prosecution may, any time after arraignment, add to the list the names of any additional witnesses upon a showing of good cause. The list shall include the names and addresses of the witnesses. This subsection does not apply to rebuttal witnesses.

(2) (a) For purpose of notice only and to prevent surprise, the defendant shall furnish to the prosecution and file with the clerk of the court, at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for good cause permit, a statement of intention to interpose the defense of self-defense or alibi *or the defense that the defendant did not have a particular state of mind that is an essential element of the offense charged.*

(b) If the defendant intends to interpose any of these defenses, he shall also furnish to the prosecution and file with the clerk of the court the names and addresses of all witnesses to be called by the defense in support thereof. Prior to trial the defendant may, upon motion and showing of good cause, add to the list of witnesses the names of any additional witnesses. After the trial commences, no witnesses may be called by the defendant in support of these defenses unless the name of the witness is included on the list, except upon good cause shown."

Section 15. **Repealer.** Section 46-14-211, MCA, is repealed.

Approved May 14, 1979.

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APPROPRIATIONS

ENACTED BY THE

Forty-Sixth Legislature

IN REGULAR

SESSION

STATE OF MONTANA

1979

1985

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APPROPRIATIONS

HOUSE BILL NO. 1

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE FORTY-SIXTH LEGISLATURE AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following amounts are appropriated from the general fund for fiscal years 1979, 1980, and 1981 for the operation of the forty-sixth legislature:

House of Representatives	$1,382,997
Senate	850,275
Legislative Council	843,433
Printing Session Laws and Journals	160,000
Cost Overruns on Senate Bill No. 1	80,000
Legislative Fiscal Analyst	22,420

Section 2. **Effective date.** This act is effective on passage and approval.

Approved January 11, 1979.

HOUSE BILL NO. 9

AN ACT APPROPRIATING $135,000 TO THE BOARD OF CRIME CONTROL FOR THE PURPOSE OF FUNDING THE OPERATION OF THE MONTANA CRIMINAL LAW INFORMATION RESEARCH CENTER (MONTCLIRC) AT THE UNIVERSITY OF MONTANA SCHOOL OF LAW; PROVIDING THAT THE BOARD OF CRIME CONTROL MAY CONTRACT WITH THE UNIVERSITY FOR THE OPERATION OF MONTCLIRC; AND REQUIRING MONTCLIRC TO PROVIDE A CENTRALIZED LEGAL RESEARCH FACILITY AND MAKE QUARTERLY REPORTS TO THE BOARD.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following money is appropriated from the general fund to the board of crime control for the purpose of funding the Montana criminal law information research center at the university of Montana school of law:

Fiscal year ending June 30, 1980	$65,720

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Fiscal year ending June 30, 1981 $69,280

Section 2. **Authority of board of crime control to contract with university.** The board of crime control may contract with the university of Montana school of law for the operation of the Montana criminal law information research center (MONTCLIRC), which is currently housed at and using existing equipment at the school of law.

Section 3. **MONTCLIRC to provide centralized legal research facility.** The Montana criminal law information research center shall provide a centralized legal research facility, which shall be adequately staffed with selected law student research assistants, who shall, under the supervision of a director, prepare legal memoranda and answer questions as requested by mail and telephone by judges, prosecutors, public defenders, and other publicly paid members of the criminal justice system in Montana, pursuant to guidelines recommended by MONTCLIRC's advisory board, consisting of representatives of all elements of the criminal justice system in Montana.

Section 4. **MONTCLIRC to give board quarterly report.** The Montana criminal law information research center shall provide the board of crime control with quarterly financial reports and progress reports indicating the number of requests, the type of requests, the nature of the users, the volume of court usage, and the evaluations of the users.

Section 5. **Appropriations.** Appropriations from the general fund shall be reduced to the extent that other earmarked funds are available to fund the Montana criminal law information center.

Approved May 7, 1979.

HOUSE BILL NO. 79

AN ACT TO APPROPRIATE $250,000 TO THE LEGISLATIVE COUNCIL FOR THE FISCAL YEAR ENDING JUNE 30, 1979; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated to the Legislative Council from the General Fund for the fiscal year ending June 30, 1979, the sum of $250,000.

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved March 13, 1979.

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HOUSE BILL NO. 122

AN ACT TO APPROPRIATE MONEY FROM THE GENERAL FUND FOR PRESERVATION OF MONTANA'S ORIGINAL CONSTITUTIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $1,475.55 from the general fund to the office of secretary of state for the fiscal year ending June 30, 1980, for the purpose of deacidifying and laminating the original 1884, 1889, and 1972 Montana Constitutions at the W. J. Barrow Restoration Shop, Inc., of Richmond, Virginia.

Approved April 18, 1979.

HOUSE BILL NO. 273

AN ACT TO APPROPRIATE $350,000 TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FOR COMPLETION OF THE HEALTH EFFECTS AND MONITORING STUDY OF AMBIENT AIR POLLUTION CONCENTRATIONS IN BUTTE-ANACONDA, MISSOULA, BILLINGS, COLUMBIA FALLS, HARDIN, COLSTRIP COAL DEVELOPMENT AREA, AND THE EAST HELENA AREA; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated to the Department of Health and Environmental Sciences $227,000 for fiscal year 1979-80 and $123,000 for fiscal year 1980-81 for a study of the health effects, ambient air pollution concentrations, emission inventories, and meteorological monitoring in Missoula, Butte-Anaconda, Billings, Columbia Falls, Hardin, Colstrip coal development area, and the East Helena area in an effort to determine the health impacts of total suspended particulates, sulfur dioxide, sulfates, and trace elements on the population of these areas. The money for this study is appropriated from the resource indemnity trust interest account.

Section 2. **Termination date.** This project is terminated June 30, 1981.

Approved May 7, 1979.

HOUSE BILL NO. 284

AN ACT TO APPROPRIATE FUNDS FOR THE PURPOSE OF PROVIDING INCREASED PAYMENT FOR FOSTER CARE AND SPECIFYING THE MANNER OF PAYMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the general fund the sum of $153,000 for the fiscal year ending June 30, 1980, and $362,000 for the fiscal year ending June 30, 1981, and from other funds

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$129,802 for the fiscal year ending June 30, 1980, and $281,440 for the fiscal year ending June 30, 1981, to the department of social and rehabilitation services, the foster care program, for the purpose of providing increased payment to foster care group homes and institutions and to foster family homes as provided for in [section 2].

Section 2. **Manner of payment.** (1) A foster family home is entitled to receive payment at the rate of:

(a) at least $150 a month in the fiscal year ending June 30, 1980, and $200 a month in the fiscal year ending June 30, 1981, for a foster child placed in the home by the county department of welfare until the child's 13th birthday; and

(b) at least $200 a month in the fiscal year ending June 30, 1980, and $250 a month in the fiscal year ending June 30, 1981, for a foster child 13 years of age or older placed in the home by the county department of welfare, until the latter of the following occurs:

(i) the child's 18th birthday; or

(ii) the child's graduation from high school.

(2) A foster family home shall be paid for the care of a foster child on a monthly basis, and the department shall send payment no later than the 10th day of the month. The payment shall be accompanied by a document accounting for the number of days the foster family home is being paid for the care of the foster child and the amount of money allocated for each foster child.

(3) As used in this section, a "foster family home" means a home which is licensed by the department to receive from one to six children for full-time care to whom the foster parents are not related by blood, marriage, adoption, or wardship.

Section 3. **Codification.** It is intended that section 2 be codified as an integral part of Title 41, chapter 3, part 5, and the definitions and provisions of this part apply to section 2.

Approved May 7, 1979.

HOUSE BILL NO. 317

AN ACT TO APPROPRIATE SUPPLEMENTAL MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1979; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following money is appropriated from the Long-Range Building Program bond proceeds and insurance clearance account, number 06142, to the director of the Department of Administration for the biennium ending June 30, 1979:

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(1)	Science Building, University of Montana	$1,016,000
(2)	Two New Housing Units at the Prison	30,000
(3)	New Boys' Lodge—Pine Hills	20,000
(4)	Renovate Crockett-Terrill, Galen	100,000
(5)	Renovate Hospital, Boulder	75,000
(6)	Construct Physical Plant, EMC	62,000
(7)	Eastmont Furnishings	34,000

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 5, 1979.

HOUSE BILL NO. 354

AN ACT TO APPROPRIATE MONEY TO THE OFFICE OF THE CONSUMER COUNSEL FOR THE FISCAL YEAR ENDING JUNE 30, 1979; PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $150,000 to the office of the consumer counsel for operating expenses during the fiscal year ending June 30, 1979, from the account in the earmarked revenue fund established by 69-1-223.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 13, 1979.

HOUSE BILL NO. 410

AN ACT TO APPROPRIATE FUNDS TO THE MONTANA AGRICULTURAL EXPERIMENT STATION TO PROVIDE ADDITIONAL SUPPORT FOR THE BIOLOGICAL WEED CONTROL RESEARCH PROGRAM AT THE WESTERN AGRICULTURAL RESEARCH CENTER AT CORVALLIS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $63,500 from the general fund and $75,000 from the renewable resource development bond account funded under 15-35-108(2)(g) to the Montana Agricultural Experiment Station for the biennium ending June 30, 1981, for the purpose of providing additional support for the Biological Weed Control Research Program at the Western Agricultural Research Center at Corvallis.

Approved May 7, 1979.

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HOUSE BILL NO. 415

AN ACT TO INCREASE AGENCY BUDGETS DURING THE BIENNIUM ENDING JUNE 30, 1979, WITH FUNDS RECEIVED THROUGH THE MONTH OF JANUARY, 1979, WHICH WOULD USUALLY BE ADDED BY BUDGET AMENDMENT; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Increase in spending authority.** The following money is appropriated for the fiscal year ending June 30, 1979:

Agency and Program	Amount	Fund
MONTANA ARTS COUNCIL		
Promotion of the Arts Program	$154,836	Federal and Private Revenue
DEPARTMENT OF FISH AND GAME		
Fish Program	6,630	Federal and Private Revenue
Wildlife Program	7,901	Federal and Private Revenue
OFFICE OF THE GOVERNOR		
Lt. Governor's Program	84,973	Federal and Private Revenue
DEPARTMENT OF HIGHWAYS		
Equipment Program	606,125	Earmarked Revenue
DEPARTMENT OF INSTITUTIONS—Central Office		
Alcohol and Drug Abuse Program	40,500	Federal and Private Revenue
Alcohol and Drug Abuse Program	65,000	Federal and Private Revenue
Corrections Program	1,055	Federal and Private Revenue
MONTANA STATE PRISON		
Developmental Program	18,572	Federal and Private Revenue
SWAN RIVER YOUTH FOREST CAMP		
Developmental Program	3,500	Federal and Private Revenue
Administration Program	5,000	Federal and Private Revenue
DEPARTMENT OF JUSTICE		
Fire Marshall Program	2,855	Federal and Private Revenue

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DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION		
Energy Program	13,352	Earmarked Revenue
Forest Resources Program	36,325	Federal and Private Revenue
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING		
Board of Abstractors	800	Earmarked Revenue
Board of Athletics	1,000	Earmarked Revenue
Board of Landscape Architects	2,150	Earmarked Revenue
Board of Veterinarians	7,450	Earmarked Revenue
Board of Water Well Contractors	4,000	Earmarked Revenue
DEPARTMENT OF REVENUE		
Investigation Program	247,966	Federal and Private Revenue
DEPARTMENT OF LIVESTOCK	6,611	Earmarked Revenue

Section 2. **Limitations on expenditures.** The conditions set forth in sections 1 through 16 of House Bill 145 passed by the 45th legislature apply to appropriations under this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 7, 1979.

HOUSE BILL NO. 416

AN ACT TO APPROPRIATE MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1979; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Time limit.** The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. The unspent balance of any appropriation shall revert to the fund from which it was appropriated.

Section 2. **Governor's power to reduce appropriations.** The governor may reduce any appropriation in this act by not more than 15%.

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Section 3. **Other appropriated funds.** Unless otherwise indicated herein, the appropriations made under the column heading, "Other Appropriated Funds", are from funds within the earmarked revenue funds, the federal and private revenue fund, and the revolving fund that accrue under provisions of law to the spending agency.

Section 4. **Totals not appropriations.** The totals shown in this act are for informational purposes only and are not appropriations.

Section 5. **Appropriations.** The following money is appropriated subject to the terms and conditions of this act for the fiscal year ending June 30, 1979:

	Fiscal 1979	
	General Fund	Other Appropriated Funds
DEPARTMENT OF INSTITUTIONS		
Central Office		
Alcohol and Drug Abuse Division		$228,483
Eastmont Training Center	$ 8,954	
Swan River Youth Forest Camp	140,242	
Veterans' Home	21,188	
Pine Hills School	25,265	
Children's Center	50,869	
DEPARTMENT OF ADMINISTRATION		
State Tax Appeals Board	58,000	
Transportation of Prisoners	5,000	
Emergency and Disaster	1,100,000	

The appropriation for emergency and disaster shall be distributed as follows:

a. 75 percent prorated among verified claims as of the effective date of this act.

b. 25 percent prorated among claims not fully paid above and claims received by June 30, 1979.

Accounting Division	295,000	
DEPARTMENT OF JUSTICE		
Coal Tax Defense	75,000	
Law Enforcement Academy	19,268	
JUDICIARY		
District Courts	122,338	
SECRETARY OF STATE	105,065	
DEPARTMENT OF NATURAL RESOURCES		
Fire Suppression	554,440	
DEPARTMENT OF EDUCATION		
Library Commission		17,474

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Montana State University		
Personal Services	95,000	
Operations	249,421	

The fiscal 1979 current unrestricted subfund legislative appropriation to Montana State University totals $23,629,433. Notwithstanding any other provision of law, this current unrestricted subfund expenditure level may not be exceeded except by student tuition and fee revenue collected for fiscal 1979 in excess of $5,001,240.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES		
Environmental Health	100,000	

In addition to the above appropriation, $132,000 of the general fund money appropriated to the department for the fiscal year ending June 30, 1978, is reappropriated for the fiscal year ending June 30, 1979, and $85,000 received under provisions of 15-38-104, MCA, appropriated to the department for the fiscal year ending June 30, 1978, is reappropriated for fiscal year ending June 30, 1979.

DEPARTMENT OF COMMUNITY AFFAIRS		
Matching Funds for Flood Relief	29,929	
Reimbursement for Governor's Travel	45,221	
DEPARTMENT OF PUBLIC SERVICE REGULATION		
Public Service Commission		
Travel and Legal Notices	5,634	
Totals	$3,105,834	$245,957

Section 6. **Effective date.** This act is effective on its passage and approval.

Approved May 7, 1979.

HOUSE BILL NO. 417

AN ACT TO APPROPRIATE MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1981; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For the purposes of this act, unless otherwise stated the following definitions apply:

(1) "Agency" includes each state office, department, board, commission, council, committee, unit of the university system, or other entity or instrumentality of the executive branch, office of the legislative branch, or office of the judicial branch of state government.

(2) "Capital project" means acquisition of land or improvements, planning, capital construction, renovation, furnishing, or major repair projects authorized in this act.

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(3) "Approved budget amendment" means approval by the Budget Director of a request submitted through the Architecture and Engineering Division of the Department of Administration to transfer excess funds appropriated to a capital project within an agency to increase the appropriations of another capital project within that agency or to obtain financing to expand a project from funds which were not available for consideration by the Legislature but which have become available.

(4) "BPICA" means account number 06142 in the bond proceeds and insurance clearance fund; "FPRA" means federal and private revenue account; "ERA" means earmarked revenue account; and "other appropriated funds" means money other than general fund or BPICA money that accrue under provisions of law to an agency indicated herein.

Section 2. **Expansion required to be authorized.** No existing capital project may be expanded beyond the scope of the project as approved by the 46th Legislature unless the capital project expansion is authorized by an approved budget amendment.

Section 3. **Additional funding.** If a capital project is jointly financed by an appropriation or appropriations from state sources as well as by appropriations from other sources, the funds provided by appropriation from state sources shall be decreased by the amount that the funds received from other sources exceed the amount appropriated by the Legislature in the 1979 biennial budget if the decrease does not jeopardize the receipt of the funds to be received from other sources.

Section 4. **Federal funds for administration.** All federal funds received as a reimbursement for the cost of administering the federal funds when the cost was financed from the general fund shall revert to the general fund.

Section 5. **Reappropriation.** Notwithstanding any other provision of law, the remaining balances on capital projects previously appropriated are hereby reappropriated until June 30, 1981, for the purposes for which originally appropriated.

Section 6. **Revenue sharing appropriation.** There is appropriated from the federal revenue sharing capital construction account number 04001 to account number 06142 in the bond proceeds and insurance clearance fund $308,000 to be used with other available funds to support the projects provided below.

Section 7. General fund appropriation. There is appropriated from the general fund to account number 06142 in the bond proceeds and insurance clearance fund $265,000 to be used with other available funds to support the projects provided below.

Section 8. **Construction and maintenance appropriation.** The following money is appropriated from indicated accounts to the director of the Department of Administration:

Agency/Program	BPICA	Other Appropriated Funds
DEPARTMENT OF ADMINISTRATION		

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Construct Justice and State Library Building	$ 300,000	$
Provide Cathodic Protection	45,000	
Retrofit State Buildings for Energy Conservation	1,000,000	
Modify Corridor, State Capitol		46,500
Land Acquisitions, Grounds Improvements, Capitol Complex		145,000
Demolish Buildings, Capitol Complex		25,000
Handicapped Accessibility, State Facilities	75,000	25,000
Repair Elevator, Surplus Property Warehouse	18,000	
Records Center Roof	25,000	
DEPARTMENT OF COMMUNITY AFFAIRS		
Airport Improvements, West Yellowstone		190,000
Runway Improvements, West Yellowstone		500,000
BOARD OF EDUCATION		
Roof Vocational Building, School for Deaf and Blind	58,000	
DEPARTMENT OF FISH AND GAME		
Miscellaneous Coal Tax Park Improvements		100,000
Fishing Access Site Improvements		250,000
Snowmobile Facilities Development		25,000
Black Sandy Recreation Area		195,000
Roche Juane Recreation Area Improvements		15,000
Missoula Headquarters		786,332
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES		
Renovation and Addition to Cogswell Building	1,826,450	846,550
DEPARTMENT OF HIGHWAYS		
Additions, Upgrading, and Major Maintenance		240,000
Construct Equipment Garages		514,000
Construct Sand Houses		540,680
Road Oil Storage Tanks		200,000
Security Fencing		80,000
Cold Storage Sheds		132,000
Open Face Storage Sheds		54,800

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Helena Headquarters Shop Complex Federal funds of $830,000 are included in the above appropriation. The federal funds are for a solar energy system. The building is to be totally functional with the expenditure of $1,500,000 of the appropriation should the federal funds not become available.		2,330,000
Weigh Station, Idaho Border Ninety percent of the other funds appropriated shall be federal funds.		222,900
DEPARTMENT OF INSTITUTIONS		
Roof Replacements, Warm Springs	252,000	
Roof Replacements, Pine Hills School	115,000	
Roof Replacements, Veterans' Home	30,000	
Major Maintenance Projects, Warm Springs	164,000	
Replace Waterline and Repair Boiler, Pine Hills	142,620	
Auxiliary Boiler and Kitchen Ventilation, Center for the Aged	35,000	
Paving and Drainage, Center for the Aged	180,000	
New Cottage, Pine Hills	967,000	
Replace Warren Building Windows, Warm Springs	110,000	
Move Buildings, Prison	76,000	
Replace Waterline, Veterans' Home	72,000	
Security Tower, Prison	161,000	
Roof Replacement, Mountain View School	136,000	
Religious Activity Center, Prison		450,000
Swan River Tile	24,000	
DEPARTMENT OF MILITARY AFFAIRS		
Roof Replacements	313,500	55,300
Seal Coat Roofs	51,250	33,750
Sewer Modifications, Whitefish Armory	9,600	
Paint National Guard Armories	188,750	46,250

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DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION		
The following two projects are authorized in order to solicit nonstate funding and to begin construction contingent upon receipt of such funding.		
Construct District Forestry Complex, Plains		200,000
Construct Forestry Shop and Storage Buildings, Clearwater		40,000
UNIVERSITY SYSTEM		
University Maintenance	276,400	613,400
Plan Visual Communications Building		225,000
Handicapped Accessibility, University System	529,500	458,555
Oil and Gas Building Renovation, EMC	120,000	
Veterinary Clinic Remodel, MSU	90,000	
Equip Library, UM	100,000	
Social Science, UM		79,500
Plan Clinical Psychology, UM	30,000	
Computer and Site Renovation, MSU	1,000,000	1,500,000
Marsh Laboratory Annex, MSU		100,000
Plan Lewis, Cooley, MSU		90,000
The above appropriation of $1,500,000 is to be from federal, private, designated subfund computer accounting entity or other lawful purpose funds.		
The following three projects are authorized in order to solicit nonstate funding. The appropriation for construction is contingent on the department of administration certifying that money sufficient to complete the project is available and deposited within the department of administration's state treasury accounts.		
Classroom, Lab Building, MCMST		6,000,000
Yellow Bay Lab, UM		848,800
Lubrecht Forest, UM		635,000

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Section 9. **Land acquisition appropriation.** The following money is appropriated from the indicated accounts for the purposes of land acquisition to the director of the Department of Fish and Game:

Fishing Access Acquisition	
Fish and Game, ERA	1,000,000
Fish and Game Recreation, FPRA	1,000,000
Big Game Habitat Acquisitions	
Fish and Game, ERA	300,000
Fish and Game, FPRA	300,000

Section 10. **Appropriation of proceeds from the sale of long-range building bonds.** The following money is appropriated from the BPICA to the director of the Department of Administration, contingent upon the authorization of the sale of long-range building bonds by the Legislature as provided in 17-5-402 and 17-5-403, MCA, and the sale of the bonds by the State Board of Examiners:

Construct Justice and State Library Building	6,200,000	
Construct Library, NMC	2,302,000	
Construct Addition, Kalispell Job Service Office	350,000	
Construct Bozeman Job Service Office	880,000	
Construct 40-Bed Cottage, School for Deaf and Blind	717,000	105,000
The appropriation of other funds is from account 09601.		
Remodel Gym for Laboratories and Classrooms, MCMST	1,400,000	

Section 11. Appropriation. There is appropriated to the department of fish and game $265,000 from BPICA in full settlement of all the obligations of the department under the Montana supreme court decision in cause number 14086, and in full settlement of all the obligations of the department relating to operation and maintenance of a tram and railway under a contract entered into June 15, 1946, and a supplemental agreement entered into March 30, 1950, between the Montana state park commission and Link Brothers, Concessionaires.

Section 12. **Authorization of geothermal development at Warm Springs state hospital.** The department of institutions is authorized to enter into contracts for the development of geothermal energy research facilities at Warm Springs state hospital. No facilities may be constructed or modified without the express approval of the department of administration.

Section 13. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains

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in effect in all valid applications that are severable from the invalid applications.

Section 14. **Effective Date.** This act is effective on passage and approval.

Approved May 14, 1979.

HOUSE BILL NO. 483

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1981; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Title.** This act may be cited as the "General Appropriations Act of 1979".

Section 2. **Definitions.** For the purposes of this act, unless otherwise stated:

(1) "Agency" means each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government.

(2) "Approving authority" means the governor or his designated representative for executive branch agencies; the chief justice of the supreme court for judicial branch agencies; appropriate legislative committees for legislative branch agencies; or the board of regents for the university system.

(3) "University system unit" means the board of regents, office of the commissioner of higher education, the university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college at Dillon, the agricultural experiment station with central offices at Bozeman, the cooperative extension service with central office at Bozeman, or the bureau of mines and geology with central office at Butte.

Section 3. **Budget amendments.** The approving authority may approve a budget amendment to spend funds that were not available for consideration by the legislature but have become available from a source other than the state's general fund or earmarked revenue fund and other than receipts to the state from the United States government made available under provisions of P.L. 94-488, the federal Revenue Sharing Extension Act or any extension or modification of that act. Each budget amendment shall be submitted to the budget director and the office of legislative fiscal analyst.

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A budget amendment may be approved to spend money in the earmarked revenue fund only if the approving authority certifies that an emergency justifies the expenditure.

A budget amendment may be approved for a time period greater than one fiscal year but not to exceed the biennium ending June 30, 1981. Budget amendments for greater than one fiscal year shall itemize planned expenditures by fiscal year.

Section 4. **Amendment procedures.** (1) In approving a budget amendment, the approving authority shall:

(a) certify specific additional services to be provided as a result of a higher expenditure level;

(b) certify that no other alternative is available to provide the additional services;

(c) certify that the additional proposed services have not been considered and rejected by the legislature;

(d) certify that no commitment, implied or otherwise, is made for increased future general fund support;

(e) specify criteria for evaluating the effectiveness of the additional services provided.

(2) The additional funds are appropriated contingent upon total compliance with all budget amendment procedures.

Section 5. **Budget requests.** Sufficient funds are appropriated in this act to enable each agency to submit its budget request to the budget director and the legislative fiscal analyst pursuant to the time schedule established in 17-7-112(1), MCA. If any agency fails to submit its final, complete budget request by the deadlines established in 17-7-112(1), the expenditure authority herein granted shall be reduced or rescinded by the budget director unless the agency director certifies that an emergency situation has precluded a timely budget presentation and the budget director approves an extension not to exceed 30 days.

Section 6. **Detailed budget information.** Within ten days after the legislature convenes in regular session, the budget director and the legislative fiscal analyst shall mutually exchange expenditure recommendations by object of expenditure to the second level of detail and by funding source detailed by treasury fund. This information shall be filed in the respective offices and available to members of the legislature and the general public.

Section 7. **Expenditure limit.** Expenditures may not exceed appropriations.

Section 8. **Other appropriated funds.** Unless otherwise indicated herein, the appropriations made under the column heading "Other Appropriated Funds" are from funds within the earmarked revenue fund, the federal and private revenue fund, or the revolving fund that accrue under provisions of law to the expending agency.

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Section 9. **Operating budgets.** Expenditures may be made only in accordance with operating budgets approved by the approving authority. The respective appropriations are contingent upon approval of the operating budget by July 1 of each fiscal year. Each operating budget shall include expenditures for each agency program detailed at least by personal services, operating expenses, equipment, benefits and claims, transfers, and local assistance.

Section 10. **Access to records.** No funds appropriated by this act may be expended for any contract, written or oral, for services with a nonstate entity for services to be provided by the nonstate entity to members of the public on behalf of the state unless such contract contains a provision allowing access to those records of the nonstate entity as may be necessary for legislative audit and analysis purposes in determining compliance with the terms of the contract. Each such contract may be unilaterally terminated by the state, and each contract shall so provide, upon refusal of the nonstate entity to allow access to records necessary to carry out the legislative audit and analysis functions set out in Title 5, chapters 12 and 13, MCA.

Section 11. **Reduction of appropriation.** In the event of a shortfall in revenue, the governor may reduce any appropriation by not more than 15% except appropriations for:

1. payment of interest and retirement of state debt;
2. the legislative branch;
3. the judicial branch;
4. public schools; or
5. salaries of elected officials during their term of office.

Section 12. **Severability.** If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 13. **Reversion.** Notwithstanding other provisions of law, the unexpended balance of each appropriation shall revert to the fund from which it was appropriated at the end of each fiscal year unless otherwise provided in this act.

Section 14. **Other funds to offset general fund.** The approving authority shall decrease the general fund appropriation of the agency by the amount of funds received from other sources in excess of the appropriation provided in this act unless such action is expressly contrary to state or federal law, rule, or contract or the approving authority certifies that the services to be funded by the additional funds are significantly different from those for which the agency has received an appropriation.

Section 15. **National conference of state legislatures.** Agencies may participate in the activities and programs of the national conference of state legislatures within existing appropriations.

Section 16. **Totals not appropriations.** The totals shown in the act are for informational purposes only and are not appropriations.

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Section 17. **Appropriations.** The following money is appropriated only for the purposes shown for the respective fiscal years:

A. LEGISLATIVE, JUDICIAL, AND ADMINISTRATIVE AGENCIES

	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
LEGISLATIVE AUDITOR	1,378,859		1,496,317	

State agencies partially or totally funded by federal money shall, based upon a percentage of completion of an audit contracted or conducted by the legislative auditor, transfer an amount to the legislative auditor as reimbursement for the costs of audit associated with the federal funds. The costs of audit and amount to be transferred shall be determined by the legislative auditor, based upon actual costs incurred and available funds. The money transferred shall be deposited by the legislative auditor into the general fund as reimbursement to the general fund for costs of audits of such federally funded programs, unless such a transfer is specifically prohibited by federal law.

Based upon a percentage of completion of each audit of the respective programs and at the request of the legislative auditor, nongeneral fund and nonfederal fund revenue received by the following agencies shall be transferred to the legislative auditor. The amount to be transferred shall be determined by the legislative auditor and, upon transfer, deposited in the general fund as reimbursement for audit costs. Such transfers during the biennium may not exceed:

Public Employees' Retirement System	10,600
Teachers' Retirement System	8,500
Department of Administration,	
Computer Services Division	12,000
Investment Division (2 audits)	42,000
Department of Highways	75,000
Workers' Compensation Division	30,500
Department of Fish, Wildlife, and Parks	26,000
Department of Revenue,	
Liquor Division	25,000
Total	229,600

LEGISLATIVE FISCAL ANALYST	382,551		438,409	
LEGISLATIVE COUNCIL				
1. Operating and Capital Expense	712,462	125,000	513,895	25,000
2. Prioritized Interim Studies	125,000			
3. Council of State Governments travel	20,000			

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
4. Forestry Task Force	14,960			
5. Personal Services	809,745		981,502	
6. Revenue Oversight Committee Support	36,000			
7. Copying Machine Costs	11,000		11,000	
8. Dues - National Conference of State Legislatures	19,180		21,100	
Total Legislative Council	1,748,347	125,000	1,527,497	25,000

This appropriation includes expenses of the council incident to the 1981 legislature. Not included within the appropriation are legislative costs for the public information center, interns, mailroom, printroom, business office, and leadership travel. Also included is $426,151 in 1980 for the printing, postage, and extra titles cost of the Montana Code Annotated (MCA). A revolving account shall be established for collections received from the sale of the MCA.

Appropriations in items 2, 3, 4, and 6 are appropriated for the biennium.

Item 4 allows for membership dues and expenses of the western states legislative forestry task force. The funds are to be used only for expenses incurred by task force members.

Staff support for the revenue oversight committee is included in the legislative council personal services appropriation.

LEGISLATURE		
Senate	21,000	
House	42,000	
Total Legislature	63,000	

The appropriations are for the biennium and pay for added costs of group insurance mandated in House Bill 891, 46th legislature.

ENVIRONMENTAL QUALITY COUNCIL	134,412		144,247	
CONSUMER COUNSEL		441,560		460,361
JUDICIARY				
1. Supreme Court Operations	656,911		822,088	

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
2. Microfilming	30,000		30,000	
3. Boards and Commissioner	102,612		105,639	
4. Law Library	172,234		189,361	
5. District Court	1,378,780		1,479,048	
Total Judiciary	2,340,537		2,626,136	

The appropriation in item 1 includes $30,000 a year for the assembling and publishing of the Montana Reports in hard cover. The supreme court shall contract for the printing of Montana Reports. Proceeds from the sale of Montana Reports shall be deposited in a revolving account to finance publishing costs. It is further recommended these costs be reduced whether through in-house printing, computer-generated reports, or microfilming.

GOVERNOR'S OFFICE				
1. Executive Office	655,023		651,329	
2. Mansion Maintenance	77,851		79,291	
3. Office of Budget and Program Planning	628,583		640,739	
4. Office of Commerce	39,000	270,000	39,000	270,000
5. Economic Development	50,000	150,000	50,000	150,000
6. Citizens Advocate	55,067		56,424	
7. Lieutenant Governor	158,872	109,000	160,187	
8. Legal Jurisdiction	112,804		115,554	
Total Governor's Office	1,777,200	529,000	1,792,524	420,000

The appropriation in item 4 allows $39,000 a year in general fund money for matching purposes.

All grants or loans provided in item 5 shall be submitted to the legislative finance committee for review and no grants or loans may be made without prior review by the council of economic advisors.

The 1980 appropriation in item 7 for fiscal year 1980 includes $109,000 of federal funds for the northern Powder River EIS project and the old west beef export study. This funding is for the first 3 months of the fiscal year at which time these projects will be terminated.

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

It is the intent of the legislature that funds obtained for federal projects during the interim be placed within the appropriate functional department.

The office of budget and program planning is directed to study the individual needs of state agencies for microfilming equipment to further centralize this function within the department of administration.

SECRETARY OF STATE				
1. Records Management	425,319		480,145	
2. Administrative Code	132,811		100,412	
Total Secretary of State	558,130		580,557	
COMMISSIONER OF CAMPAIGN PRACTICES	83,661		98,225	
STATE AUDITOR				
1. Administration	1,068,059	110,810	1,232,215	80,000
2. Payroll System	255,000			
Total State Auditor	1,323,059	110,810	1,232,215	80,000

The appropriation in item 2 is for the biennium and contains sufficient funds to complete an upgraded payroll system.

In addition to the funds appropriated above, the local assistance distribution of funds provided for in 19-10-305(1), 19-11-512, 19-11-606, and 19-12-301 is appropriated.

Revenues generated under provisions of 50-3-109 shall be deposited in the general fund.

DEPARTMENT OF JUSTICE				
1. General Operations	630,022	10,143,437	1,123,952	10,209,158
2. Coal Tax Defense	500,000			
3. County Attorney Payroll	450,220		450,220	
4. Motor Vehicle Registration Out-of-State Travel		640		640
5. Transportation of Prisoners	85,000		85,000	

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
6. Housing of Prisoners		44,132		44,881
7. Legal Assistance Pool	50,000	85,836		146,909
8. Forensic Science Laboratory		271,143		
Total Department of Justice	1,715,242	10,545,188	1,659,172	10,401,588

Included within other appropriated funds in item 1 is $40,000 annually received under provisions of House Bill 513, 46th legislature.

Other appropriated funds in item 7 consist of charges to other agencies for utilizing the legal assistance pool. In the amount these charges exceed $85,836 in fiscal 1980, a reversion shall be made to the general fund by January 1, 1981.

The appropriation in item 8 is for the biennium.

The driver licensing program shall gradually replace patrolman-examiners with civilian-examiners. Any new hires, retirements, or terminations within field services shall be filled by patrolmen from the driver licensing program until all 26 positions have been transferred. Funding is provided to maintain high mileage patrol cars. These cars are to be used only by those examiners traveling between counties.

Item 1 contains $14,422,387 of highway earmarked funds to pay all costs related to the highway patrol notwithstanding other provisions of law, including section 19-6-404 and House Bill 403, 46th legislature.

The motor vehicle registration program shall mail motor vehicle registration notices notwithstanding other provisions of law.

Other appropriated funds in item 1 includes $151,289 in fiscal year 1980 and $156,243 in fiscal year 1981 to support the antitrust division. Included in these amounts is revolving fund authority of $26,289 and $46,243 in the respective fiscal years for collections from court settlements. Collections exceeding these amounts shall be deposited to the general fund. This program will terminate by June 30, 1981, if collections are less than expenditures.

The appropriation in item 2 is for the biennium.

No more than $640 a year may be expended on out-of-state travel within the motor vehicle registration program.

Revenue from the sale of attorney general opinions and other nonbudgeted revenue is to be deposited to the general fund and not used to abate expenditures.

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
BOARD OF CRIME CONTROL	186,144	3,612,822	187,572	3,785,499

The appropriation of "buy-in" money to the crime control division is made for the life of the grant to which it may be matched. All funds matched to funds in the federal and private grant clearance account as of June 30, 1979, are reappropriated for the matching period.

If general fund "buy-in" money is not required because of passage of new federal legislation, such amounts shall revert to the general fund.

DEPARTMENT OF HIGHWAYS		
1. General Operations	6,450,141	6,607,839
2. Construction	101,772,693	106,229,865
3. Preconstruction	9,987,419	9,993,040
4. Maintenance	27,766,937	28,611,788
5. Motor Pool	610,708	653,634
6. Equipment	6,844,883	7,070,973
7. Interstate Acceleration:		
a. Construction	44,832,392	55,755,550
b. Preconstruction	3,039,516	3,755,591
8. Railroad Planning	178,167	100,000
9. Travel Promotion	600,000	600,000
Total Department of Highways	202,082,856	219,378,280

Pursuant to 2-17-423(2)(b), executive agencies using privately owned vehicles on state business must attach a written authorization from the motor pool division to the transfer warrant claim before reimbursement for travel can be made.

The appropriation in item 6 contains $900,000 of highway earmarked funds a year for equipment purchases. Revolving funds are to be expended on equipment when possible in order to keep the fund balance within the revolving account at a minimum.

The appropriation in item 7 may not be spent for any other purpose. However, appropriation authority may be transferred from item 2 to item 7a and from item 3 to 7b.

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

Notwithstanding other provisions of this act, the budget director may approve the expenditure of funds in excess of the appropriations shown for highway construction.

DEPARTMENT OF REVENUE				
1. General Operations	9,939,862	1,824,214	9,989,241	1,798,246
2. Legal Counsel (Director's Office)	25,000		25,000	
3. Legal Counsel (Investigation)	100,000		100,000	
Total Department of Revenue	10,064,862	1,824,214	10,114,241	1,798,246

In addition to those amounts appropriated above, there is appropriated to the department funds necessary to maintain adequate inventories of liquor and wine and to operate the state liquor monopoly. The department shall deposit not less than $7.2 million in fiscal year 1979 and $13 million or more of liquor profits in the general fund during the 1981 biennium. Profits do not include proceeds from the liquor excise tax. The department has full authority to determine store operating hours and numbers and locations of liquor store employees and stores, provided that the pricing formulas in effect on January 1, 1979, are not raised and provided not less than $7.2 million in fiscal year 1979 and $13 million or more for the 1981 biennium of liquor profits are deposited in the general fund.

It is legislative intent that nonprofitable state stores be closed or converted to agency stores in an orderly manner. A nonprofitable store is one that shows a net loss or is less profitable than if run at agency store status after reducing gross revenues by all state excise and license taxes and by deducting therefrom all normal operating expenses, which includes a pro rata share, based on gross sales, of central administrative office expenses.

The appropriation in item 1 includes funds for two field offices within the income tax division.

Other appropriated funds in item 1 includes $100,000 a year of revolving fund authority for central supply. This amount may not be exceeded.

Fund balances within the various revolving funds are to be kept at a minimum operating level.

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

The appropriation in item 1 includes additional per diem expenses for the corporation tax division. Notwithstanding 2-18-501 and 2-18-502, actual per diem costs are to be paid to the audit staff when performing auditing duties in those cities designated by the department of administration as high-cost areas.

The county commissioners of the various counties and the governing bodies of local government units shall provide office space in county courthouses or government office buildings to the department of revenue of the state for its use at no cost to the state. The department is not liable for any expenses in connection with the use of such space, including but not limited to rent, utilities, or janitorial services. The department shall use such space as offices for its agents: the county assessor, appraiser, and their respective staffs.

Any money remaining in the "Property Tax Administration Account" (02802) is appropriated to the general fund and any further collections of delinquent taxes for that account are to be deposited directly to the general fund.

DEPARTMENT OF ADMINISTRATION				
1. General Operations	3,281,629	11,729,568	3,395,149	11,821,922
2. Data Processing Costs (Accounting Division)	595,296		561,600	
3. Governor-Elect			30,000	
4. Communication Costs		2,514,596		2,766,761
5. Position Control	58,000			
6. Board of Housing		211,324		245,128
7. Workers' Compensation Judge		155,942		156,732
8. Public Employees' Retirement	2,000	500,142	2,000	508,651
9. Teachers' Retirement		243,422		236,693
10. State Tax Appeals	271,072		208,647	
11. Group Benefit Program		35,959		36,057
12. SBAS (Vo-Tech Centers)	53,000		50,000	
Total Department of Administration	4,260,997	15,390,953	4,247,396	15,771,944

Funds appropriated in item 2 are not to be spent for system enhancements but only for data processing expenses.

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Fiscal Year 1980		Fiscal Year 1981	
General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

Funds appropriated in item 3 may be spent only in the event the present governor is not reelected.

The architecture and engineering program is funded solely from the long-range building account. Any fund balance at the end of a fiscal year shall be reverted to the long-range building account. This program shall assess a 1% charge on the cost of construction funded from accounts other than the long-range building account at the time a contract is let and this revenue shall be deposited to the long-range building account.

The intent of the legislature is that all office space rentals in Helena be based on competitive bid.

A separate revolving account shall be established for the information system division.

It is the intent of the legislature that the state may continue to use its own printing facilities.

The appropriation in item 11 is contingent on passage and approval of House Bill 437, 46th legislature.

The following money is contained within other appropriations in this act and shall be transferred to the department of administration to pay increases in insurance costs.

	Fiscal Year 1980	Fiscal Year 1981
Fish, Wildlife, and Parks ERA	21,592	26,925
Highway ERA 02138	222,991	321,536
Liquor RA 07154	5,900	7,489
University Auxiliary	128,316	128,316
Board of Housing RA 07005	2,593	2,872
Board of Investment RA 07260	200	200
General Service RA 07264	6,867	7,280
Data Processing RA 07159	7,000	7,000
Employment Security Division FPRA 04428	2,123	3,065
Workers' Compensation Division ERA 02140	164	321
Professional and Occupational		

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
Licensing Central Services ERA 02001				
			441	551
			398,187	505,555
DEPARTMENT OF MILITARY AFFAIRS				
1. Adjutant General	602,796	343,323	621,740	351,670
2. Disaster and Emergency Services	133,928	231,412	132,528	229,623
Total Department of Military Affairs	736,724	574,735	754,268	581,293
TOTAL LEGISLATIVE, JUDICIAL, AND ADMINISTRATIVE	26,753,725	235,237,138	26,898,776	252,705,211
B. HUMAN SERVICES				
DEPARTMENT OF COMMUNITY AFFAIRS				
1. General Operations	1,219,899	2,713,897	1,225,552	2,786,336
2. Research and Information Program	118,016	107,096	119,124	109,961
Total Department of Community Affairs	1,337,915	2,820,993	1,344,676	2,896,297

Included within the general fund appropriations in item 1 are $7,687 and $10,004 in the respective fiscal years for the county compensation board created by Senate Bill 352, 46th legislature.

In addition to other amounts appropriated herein, there is appropriated for coal impact grants made under provisions of 90-6-205(4) all of the funds available for that purpose from the local impact and educational trust fund account. Included within these amounts are $155,639 and $160,639 in the respective fiscal years for operating costs of the coal board and its staff. The appropriation to the coal board for grants may be spent only upon justification of each grant prior to its award to the budget director and the legislative finance committee. Such justification shall be furnished at least 4 weeks prior to approval of a grant.

Other appropriated funds in item 1 contains $118,580 in fiscal year 1980 and $119,452 in fiscal year 1981 from revenue generated under the provisions of 15-70-204 relating to other than aviation gasoline. Any funds generated under provisions of 15-35-103 and allocated by 15-35-108(2)(f) for county land planning are appropriated.

The research and information division is encouraged to use revolving funds and reduce use of general funds.

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

The accounting and management systems program shall end June 30, 1981.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES	2,527,946	14,903,883	2,568,719	14,836,348

Other appropriated funds include $118,000 each year received under authority of P.L. 93-641, which may be expended only if granted or contracted to local health departments.

Funds included in the above appropriations for study of nuclear radioactivity in the Butte area are not to be used to fund licensing programs.

DEPARTMENT OF LABOR AND INDUSTRY				
1. Employment Security Division	12,223,654			12,276,009
2. Workers' Compensation Division	948,536	3,573,692	945,098	3,633,801
3. Human Rights Division	65,091	100,000	105,091	60,000
4. Personnel Appeals Division	254,542	8,000	259,367	8,000
5. Labor Standards Division	327,364	406,827	336,754	418,305
6. Employment and Training Division		1,157,853		1,202,328
Total for Department of Labor and Industry	1,595,533	17,470,026	1,646,310	17,598,443

In item 3, general fund money shall revert in the amount other appropriated funds exceed the amounts shown for each fiscal year.

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES				
1. General Operations	35,774,454	17,625,385	38,213,161	17,895,047
2. Medicaid State Institutional Reimbursements	2,715,569		2,850,841	
Total Department of Social and Rehabilitation Services	38,490,023	17,625,385	41,064,002	17,895,047

The department may use general funds appropriated in item 1 together with matching federal funds to augment item 2. The department shall fully match the appropriation in item 2 at the maximum allowable federal rate with federal medicaid funds.

The department is authorized to employ four field representatives.

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

The appropriations in item 1 provide for increases in payments to foster parents and foster group homes of not less than 7 ¼ % in fiscal year 1980 and 6 ¾ % in fiscal year 1981.

The appropriation in item 1 allows the addition of five eligibility staff to be employed in selected areas of the state. The department will report on the cost effectiveness of the added staff to the next legislature.

No funds included in these appropriations may be allocated for support of or use by the developmental disabilities Montana advocacy program.

The veterans' affairs division may refill any position that becomes vacant during the biennium. Such positions shall be filled with temporary employees.

The board of veterans' affairs is authorized to contract for secretarial services with private veteran organizations maintaining full time veteran service offices at the Fort Harrison Veterans Administration Regional Center.

The board of veterans' affairs and veterans' affairs division shall study alternatives for providing services to veterans that are more comprehensive and less expensive. The results of these studies shall be reported to the next legislature.

In the amount federal revenues for aging services programs exceed $2,834,799 each year of the biennium, general fund shall revert until $202,500 general fund in each year has reverted.

If appropriated funds are not sufficient to provide medical care for all eligible persons, the department shall use the following priorities in keeping expenditures within appropriations:

(1) limit the increases in reimbursement rates for medical care to no more than 7 ¼ % in fiscal 1980 and 6 ¾ % in fiscal 1981 to the maximum extent feasible; and

(2) limit amount, scope and duration of medical services provided.

TOTAL HUMAN SERVICES	43,951,417	52,820,287	46,623,707	53,226,135

C. NATURAL RESOURCES AND BUSINESS REGULATION

DEPARTMENT OF AGRICULTURE				
1. Centralized Services	80,899	274,183	82,368	249,829
2. Hail Insurance	1,600	106,885	1,650	108,809
3. Crop and Livestock Reporting	36,317	13,500	43,477	13,900

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
4. Wheat Research and Marketing		505,987		510,419
5. Transportation	81,414	13,500	81,593	13,900
6. Environmental Management	178,750	709,990	180,547	612,152
7. Plant Industry	307,683	365,119	301,726	343,154
Total Department of Agriculture	686,663	1,989,164	691,361	1,852,163

Other appropriated funds in item 1 includes $132,242 in fiscal year 1980 and $106,613 in fiscal year 1981 of old west regional commission grants to be administered by the department.

DEPARTMENT OF BUSINESS REGULATION				
1. Centralized Services	110,177	31,076	110,527	31,174
2. Weights and Measures	267,080		272,891	
3. Financial Division	466,313		450,840	
4. Milk Control		211,982		214,602
5. Consumer Protection	123,312		124,229	
Total Department of Business Regulation	966,882	243,058	958,487	245,776
DEPARTMENT OF FISH, WILDLIFE, AND PARKS				
1. Centralized Services		2,210,776		2,139,433
2. Ecological Services		966,696		914,396
3. Fisheries		2,143,374		2,076,962
4. Enforcement		2,410,772		2,417,200
5. Wildlife		2,555,788		2,588,111
6. Parks and Recreation	492,290	1,432,762	492,106	1,364,355
7. Conservation Education		721,803		738,726
8. Special Staff		198,015		199,340

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
9. Administration		174,476		177,005
Total Department of Fish, Wildlife, and Parks	492,290	12,814,462	492,106	12,615,528

Should an emergency situation arise, the department may adjust the allocations between divisions only after notifying the budget office of the governor and the legislative finance committee.

The appropriation authorizes 33.31 new FTE's in fiscal year 1980 and 28.17 in fiscal year 1981. Only 6.91 FTE's shall be considered permanent staff. The remaining new positions result from grants and contracts the department has received and shall be eliminated at the end of the contract period or June 30, 1981, whichever occurs first.

Department expenditures for out-of-state travel are not to exceed $30,000 each year of the biennium.

Funds for an additional staff attorney are included in the centralized services budget. It is the intent of the legislature that the department utilize this position for regular legal advice and normal trial responsibilities. Funds are also included for contracting legal services in cases requiring a specialist.

The department is authorized to establish a core environmental impact statement team. Expenditures of earmarked funds for support of the team shall be used only when federal and private funds are not available.

Forty thousand dollars is appropriated each year in addition to normal inflationary increases to insure full operation of all fish hatcheries.

The appropriation is to be allocated among revenue sources as follows:

Fish, Wildlife, and Parks ERA 02131	8,227,503	8,336,509
Fish, Wildlife, and Parks FPRA 04522	3,066,174	2,846,415
Snowmobile Fuel Tax ERA 02017	188,114	193,123
Coal Tax Acquisition and Operation ERA 02036	80,908	79,089
State Parks Misc. 02204	216,742	219,016
State Parks ERA 02205	386,920	399,195

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
Motorboat Certificate ERA 02206		36,161		36,258
Snowmobile Registration ERA 02207		40,000		40,000
Fishing Access Site Acquisition and Operation ERA 02305		75,778		80,467
State Parks FPRA 04186		105,345		107,376
Motorboat Safety FPRA 04820		45,804		26,913
Disaster Assistance 04941		100,000		
Montana Outdoors		245,013		251,167
General Fund	492,290		492,106	
Total Department of Fish, Wildlife, and Parks	492,290	12,814,462	492,106	12,615,528
DEPARTMENT OF STATE LANDS				
1. Central Management	572,018	350,273	579,547	54,922
2. Reclamation	390,075	5,245,096	389,803	6,234,013
3. Land Administration	193,282		196,393	
4. Resource Development		422,016		422,328
Total Department of State Lands	1,155,375	6,017,385	1,165,743	6,711,263

The inventory of state lands having recreation potential will be completed and terminated by June 30, 1981.

DEPARTMENT OF LIVESTOCK				
1. Central Services	51,755	207,023	52,234	208,938
2. Disease Control		598,224		585,696
3. Diagnostic Laboratory	228,163	228,163	231,904	231,904
4. Milk and Egg	135,519	13,000	136,141	13,000
5. Inspection and Control		1,234,032		1,262,027
6. Predator Control		192,912		196,709

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
7. Rabies and Rodent Control	47,446	15,000	48,063	15,000
Total Department of Livestock	462,883	2,488,354	468,342	2,513,274

Funding for one FTE and related expenses to automate record systems for the disease control and inspection and control programs may not be considered as an ongoing expense beyond the 1980-1981 biennium. General fund support for the diagnostic laboratory may not exceed 50% of total expenses unless the services directly affecting public health are significantly increased.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION				
1. Centralized Services	948,497	222,016	968,520	227,369
2. Conservation District Supervision	175,714	119,500	176,476	120,000
3. Oil and Gas Regulation		455,891		460,342
4. Water Resources and Planning	1,617,769	1,348,902	1,627,245	2,569,661
5. Forest Resources	1,895,745	1,992,803	1,937,229	1,987,943
6. Energy Planning	325,108	1,971,513	328,151	2,049,918
Total Department of Natural Resources and Conservation	4,962,833	6,110,625	5,037,621	7,415,233

The departments of natural resources and conservation, state lands, and fish, wildlife, and parks shall consult with the legislative water resources oversight committee in expending any funds to implement the requirements of Senate Bill 76, 46th legislature.

Included in other appropriated funds in the biennium in item 4 is $1,430,000 from water rights adjudication fees and $100,000 from the renewable resource funds allocation under provisions of 15-35-108(g), notwithstanding any other provisions of law.

Two full-time positions are added in centralized services to administer and audit federal pass-through funds. These positions will be eliminated when federal funds supporting the positions cease.

The conservation district supervision program is appropriated $38,000 each year of the biennium to conduct a water quality nonpoint pollution study in cooperation with the health department and conservation districts. No positions are to be added by the department with these funds.

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

The forest resources program is appropriated $60,000 each year of the biennium for forest fire suppression. The department is authorized to incur expenses for fire suppression beyond the $60,000 appropriation and request funds for reimbursement by a supplemental request in the event of a serious fire season.

All positions in the energy program authorized to administer and develop the Montana Energy Conservation Plan shall continue only so long as federal funds supporting the positions are available. The energy division may not expend general fund money for development of energy demand projections or estimates.

It is the intention of the legislature that the state's share to implement the schools and hospitals program of the Energy Conservation Policy Act of 1978 be financed from the interest derived from the resource indemnity trust account.

PUBLIC SERVICE COMMISSION				
1. General Operations	890,415	18,900	880,528	19,310
2. Special Audit	200,000			
Total Public Service Commission	1,090,415	18,900	880,528	19,310

The appropriation in item 2 funds the audit ordered by the commission in Docket No. 6348, order No. 4220C, order paragraph No. 4. The appropriation may be spent only for determining the original cost of Montana Power Company's hydroelectric properties.

As vacancies occur in the transportation division, the positions shall be transferred to the utility division for utility rate analysis if possible.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING		
1. Centralized Services	116,921	118,652
2. Architects	14,813	15,299
3. Athletics	1,852	1,978
4. Barbers	19,956	20,109
5. Chiropractors	6,819	7,030
6. Cosmetologists	70,308	70,724
7. Dentists	25,573	26,032

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
8. Electricians		45,866		46,205
9. Engineers and Surveyors		63,458		66,827
10. Hearing Aid Dispensers		2,996		3,001
11. Horse Racing		113,226		120,242
12. Landscape Architects		5,953		6,254
13. Massage Therapists		2,594		2,619
14. Medical Examiners		110,108		113,003
15. Morticians		9,191		9,102
16. Nursing		115,342		112,439
17. Nursing Home Administrators		14,857		15,078
18. Optometrists		9,370		9,544
19. Osteopaths		629		638
20. Pharmacists		63,896		65,211
21. Plumbers		44,238		44,978
22. Private Investigators		2,863		2,906
23. Podiatrists		1,018		1,064
24. Psychologists		4,545		4,774
25. Public Accountants		52,412		54,042
26. Radiologic Technologists		7,665		7,627
27. Real Estate		177,728		182,000
28. Sanitarians		2,033		2,080
29. Speech Pathologists and Audiologists		6,079		6,179
30. Veterinarians		13,235		12,867

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
31. Water Well Contractors		12,039		11,863
32. Physical Therapists		5,213		5,357
Total Department of Professional and Occupational Licensing		1,142,796		1,165,724
TOTAL NATURAL RESOURCES AND BUSINESS REGULATION	9,817,341	30,824,744	9,694,188	32,538,271

D. DEPARTMENT OF INSTITUTIONS

CENTRAL OFFICE				
1. Director's Staff	216,077		217,794	
2. Management Services Division	751,627	64,328	775,053	64,416
3. Alcohol and Drug Abuse Division				
a. Alcohol — Central Office Administration		560,053		560,053
b. Alcohol and Drug Abuse — Alcohol and Drug Programs		738,942		768,087
c. Southwestern Montana Drug Program	143,082	318,423	147,220	327,683
4. Mental Health Division				
a. Central Office Administration	167,244	255,453	168,245	261,474
b. Mental Health Community Programs	3,270,291	148,191	3,499,211	163,191
5. Corrections Division	2,420,848	70,940	2,460,206	73,657
6. Prison Industries Program		77,214		44,514
7. Additional Correctional Needs	2,339,606	1,660,394		
Total Central Office	9,308,775	3,893,938	7,267,729	2,263,075

The funds listed below, generated under provision of 16-1-404 are included within the appropriation in items 3a and b.

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
Department of Justice	84,379		71,936	
Corrections Substance Abuse Project	31,756		51,387	
Alcohol Discretionary Allocation	382,661		404,618	
Alcohol Central Office Administration	81,880		81,880	
Total	580,676		609,821	

There may be no net increase in number of community alcohol programs funded by funds allocated to the department of institutions under 16-1-404 without specific legislative approval.

The appropriations in item 7 are for the biennium. Other appropriated funds in item 7 consist of $1,000,000 from account number 06142, bond proceeds and insurance fund, and $660,394 of the renewable resource funds allocation under provisions of 15-35-108(g), notwithstanding any other provision of law. It is the intent of the legislature that these moneys be spent as follows, provided that budget amendments may be made to transfer between line items:

1. Additional 118 beds, state prison		437,182
2. Halfway home contract, 20 beds		219,000
3. Establish work forest camp, Stillwater state forest, 80 beds:		
a. Operations	75,674	
b. Equipment	250,923	
c. Construction	2,156,738	
		2,483,335
4. Transfer to department of natural resources for equipment and operational costs of the Stillwater camp		551,394
5. Contingency for 40 temporary beds in institutional or community setting		309,089
Total additional correctional needs		4,000,000

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Fiscal Year 1980		Fiscal Year 1981	
General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

The department shall prepare a detailed plan for the expenditure of the appropriation in item 7 which shall be approved by the budget director prior to the expenditure of any funds. All construction plans shall be approved by the department of administration in the same manner as projects appropriated under provisions of House Bill 417, 46th legislature. The department shall advise and consult with the legislative finance committee at least quarterly on the status of these projects.

The general fund appropriation in item 3c shall be used to match federal funds from the national institute on drug abuse. The appropriation in fiscal year 1981 is contingent on the following:

a. the department receiving written notice that the federal match will remain at least 60%;

b. the department receiving written notice that the federal funds can be used to expand services to other geographic areas of the state without additional general fund support; and

c. the department developing a plan for expanded drug services through existing alcohol programs without increasing general fund support.

If these conditions are not met, the department shall phase out the operation of the southwestern Montana drug program by June 30, 1981.

Included in item 4a are general funds to support six permanent full-time equivalent positions. Nine full-time positions, to be maintained only for the duration of the community support project and the manpower federal grant, are provided within other appropriated funds.

The department of institutions shall assure that the mental health centers are reporting all financial transactions through a uniform accounting system including a single chart of accounts and accounting manual. The mental health centers shall provide the same detailed financial information required of all state agencies in support of budget requests of the 1981 legislature.

No money appropriated to the department for mental health services may be disbursed to the centers unless the director of the department of institutions certifies to the legislative finance committee that the mental health centers are recording and reporting financial information uniformly.

At any time during the biennium, if the director of the department of institutions determines that a mental health center is not reporting in a manner consistent with the uniform accounting system, he shall suspend allocation of state funds until the center is in total compliance.

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

The department may transfer general fund appropriations from the 45-day juvenile evaluation program in Great Falls to Mountain View School to operate a 45-day evaluation program.

The department shall implement a realistic rental policy to the end that housing rentals reflect increasing costs to the state.

Item 6 is a revolving fund for operating an industry program at the state prison.

BOULDER RIVER SCHOOL AND HOSPITAL	7,580,715	143,437	7,297,603	137,129

The appropriation is adequate to provide one full-time equivalent direct care staff per patient. Direct care staff includes registered nurses, licensed practical nurses, cottage life supervisors, nurses' aides, and habilitation aides. It is the intent of the legislature that units three and five be permanently closed by June 30, 1981.

CENTER FOR THE AGED	1,476,781	3,000	1,493,765	3,000

Included within the appropriation is $10,100 each year for the biennium for automated data systems which do not include word processing or on-line inquiry to the state accounting system.

EASTMONT TRAINING CENTER	1,242,936	45,830	1,241,086	45,961
GALEN STATE HOSPITAL	3,374,976	1,220,021	3,520,723	1,249,433

The alcohol program shall be evaluated by the end of fiscal year 1980.

Included in other appropriations are $1,219,021 in fiscal year 1980 and $1,248,433 in fiscal year 1981 generated under provisions of 16-1-404. Funds in the amount of economies realized in the operation of the alcohol program may be transferred into community alcohol programs.

MOUNTAIN VIEW SCHOOL	1,058,310	84,421	1,089,947	70,764

The legislature is aware of additional federal per diem payments and school lunch money that may become available to the school. The general fund appropriation is reduced in the amount such other funds from these sources become available in excess of $76,419 in the biennium.

PINE HILLS SCHOOL				
1. Personal Services	1,733,476		1,741,015	
2. Operating and Equipment	159,950	203,526	189,998	203,526

	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
Total Pine Hills School	1,893,426	203,526	1,931,013	203,526
STATE PRISON				
1. General Operations	5,381,565	477,026	5,266,327	477,026
2. Kitchen Equipment	44,000			
3. Ranch		980,626		1,013,780
Total State Prison	5,425,565	1,457,652	5,266,327	1,490,806

The intent of the legislature is to continue operation of the prison ranch on a probationary basis through the 1981 biennium. Capital expenditures for minor replacement only are appropriated. The proposed irrigation system is not funded. The department shall develop an accounting system for the ranch by July 1, 1979, which accurately portrays the revenues, costs, profits, and losses of each operating component of the ranch. Any funds generated from reducing the livestock inventory shall be held in reserve. Unless the ranch operation clearly demonstrates that it can operate profitably, the operation should be terminated and the land leased.

The department shall present a plan to provide work opportunities for prison inmates to the 1981 legislature.

The department shall immediately deposit all money received in connection with oil and gas exploration and drilling activities and timber sales in the general fund.

SWAN RIVER YOUTH FOREST CAMP	541,254	31,600	544,379	31,600
VETERANS' HOME	126,624	664,655	106,893	697,915
WARM SPRINGS STATE HOSPITAL	9,415,133	236,028	9,155,433	236,028
BOARD OF PARDONS	78,970		78,982	

Board members shall receive $150 per month compensation.

MENTAL DISABILITIES BOARD OF VISITORS	38,837		39,165	
TOTAL DEPARTMENT OF INSTITUTIONS	41,562,302	7,984,108	39,033,045	6,429,237

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
E. OTHER EDUCATION				
BOARD OF PUBLIC EDUCATION				
Office — Administration	65,475		65,949	
Fire Service Training Academy	123,679	3,750	123,858	
Total Board of Public Education	189,154	3,750	189,807	

The board of public education shall be provided office space free of charge in the building leased by the state and paid from the appropriation to the commissioner of higher education. The fire service training school shall be provided office, classroom, and storage space in the Great Falls vocational-technical center at no charge.

SUPERINTENDENT OF PUBLIC INSTRUCTION, VOCATIONAL-TECHNICAL CENTERS				
1. Billings Center				
a. Personal Services	392,422	405,112	396,582	452,650
b. Operations	146,777	151,523	134,162	153,129
c. Capital Expenditures	12,966	13,386	12,953	14,786
2. Butte Center				
a. Personal Services	471,393	300,397	503,622	315,752
b. Operations	49,587	31,599	53,339	33,441
c. Capital Expenditures	12,413	7,911	13,397	8,399
3. Great Falls Center				
a. Personal Services	453,167	322,085	483,584	342,698
b. Operations	84,348	59,949	90,269	63,971
c. Capital Expenditures	12,797	9,097	13,738	9,735
4. Helena Center				
a. Personal Services	768,289	377,803	825,977	392,095
b. Operations	174,798	85,957	188,466	89,465
c. Capital Expenditures	22,609	11,118	24,633	11,693
5. Missoula Center				

	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
a. Personal Services	768,501	477,924	817,247	507,687
b. Operations	200,583	124,741	214,078	132,989
c. Capital Expenditures	23,246	14,457	25,084	15,582
Total Vocational-Technical Centers	3,593,896	2,393,059	3,797,131	2,544,072

The superintendent of public instruction may transfer funds between operations and capital within each vocational education center or between vocational education centers. No funds appropriated herein for operations and capital expenditures at the vocational education centers may be transferred to personal services. Personal services include salaries, wages, and employee benefits.

As of July 1, 1980 all funds received by the vocational education centers shall be deposited in the state treasury and accounted for on the statewide budgeting and accounting system (SBAS) established pursuant to 17-1-102 and personal service expenditures shall be processed through central payroll system established pursuant to 2-18-401.

SUPERINTENDENT OF PUBLIC INSTRUCTION				
1. Chief State School Officer	1,587,590	2,717,628	1,609,364	2,809,355
2. School Lunch	665,400		729,600	
3. School Transportation	3,557,000		3,852,000	
4. Adult Basic Education	106,000	———	112,000	———
Total Superintendent of Public Instruction	5,915,990	2,717,628	6,302,964	2,809,355

Other appropriated funds in item 1 contain $284,263 in fiscal year 1980 and $344,376 in fiscal year 1981 for internal transfers of indirect costs. In the amount indirect costs in excess of these amounts are recovered, general fund money shall revert.

All revenues received in the state traffic education account under provisions of 20-7-504 are appropriated to be distributed as provided in 20-7-506.

PUBLIC SCHOOL SUPPORT				
1. Foundation Support	24,276,875		25,156,875	
2. Permissive Support	13,320,000	8,500,000	14,550,000	8,500,000

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
3. Special Education Emergency Contingency	500,000		500,000	
Total Public School Support	38,096,875	8,500,000	40,206,875	8,500,000

All revenues received under provisions of 20-9-343 for state equalization aid are appropriated.

Within the appropriations in items 1 and 2 and funds received under provisions of 20-9-343 there are $25,470,000 in fiscal year 1980 and $21,790,000 in fiscal year 1981 to support the maximum-budget-without-a-vote for special education. For the fiscal year 1980 allowable costs for the special education portion of administration including salaries, benefits, supplies and other expenses, salaries of principals and clerical personnel, library, student body activities, school food services, operation, maintenance, insurance, building, rental costs and other expenses as prescribed by 20-7-431, subsections (1)(a), (b)(i), (b)(iii), (b)(iv), (c), (d), (d)(iii), (e), (f), (g), (h), (i), (i)(i), (i)(ii), (i)(iii), (j), (j)(i), and (j)(v), may not exceed 107 percent of those costs for fiscal year 1979. The appropriation in item 3 is for emergencies that may arise in special education programs at local districts. A district's board of trustees may apply for an allocation from these funds by presenting a child study team report and an individual educational plan for each child relating to the unforeseen expense and a current listing of programs, caseloads, and related costs to the superintendent of public instruction. The appropriation in item 3 is for the biennium and the specific amounts may be transferred between fiscal years.

Notwithstanding other provisions of law, the superintendent may not approve a maximum-budget-without-a-vote for special education which, in the aggregate, exceeds $48,260,000 in the 1981 biennium.

The appropriation in item 2 is made to the permissive levy account and notwithstanding 20-9-352 shall be used to offset a permissive levy deficiency.

Other appropriated funds in item 2 is revenue received by the state under provisions of P.L. 94-488, the federal Revenue Sharing Extension Act. Revenue sharing received by the state in excess of the amounts appropriated may be spent only to reduce levies authorized under provisions of 20-9-351 and 20-9-352.

The appropriations in items 1 and 2 include $15,000 a year which may be used for the special olympics and $685,108 in fiscal year 1980 and $714,308 in fiscal year 1981 which may be used by the office of superintendent of public instruction for purchase of audiological services.

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

Federal funds to support special education programs in excess of $5.95 million during the 1981 biennium shall be placed in a reserve and not spent until appropriated by the 1981 legislature.

ADVISORY COUNCIL FOR VOCATIONAL EDUCATION		75,000		75,000
STATE LIBRARY COMMISSION	317,000	267,284	317,000	275,470

Pay raises shall be paid with 54% general fund and 46% federal funds. LSCA Title I and Title III funds received in excess of other appropriated funds and in excess of federal funds needed to meet 46% of employee pay raises shall be passed through as grants to local libraries.

All funds appropriated under 15-35-108, section 2, from the coal severance tax shall be used for general statewide library services and not the operational costs of the state library.

MONTANA HISTORICAL SOCIETY				
1. Administration, Library, Archives, and Museum Program	407,129	108,352	398,409	110,217
2. Historic Sites Program	45,819	45,819	46,025	46,025
3. Magazine Program	13,059	121,110	4,539	133,221
4. Merchandising Program		84,268		84,761
a. Goods Purchased for Resale		126,000		132,300
Total Montana Historical Society	466,007	485,549	448,973	506,524

Of other appropriated funds for the museum program, $20,000 is restricted each year to contract artifact and painting conservation.

Appropriation authority for goods purchased for resale must be expended only for that purpose.

The office of budget and program planning shall monitor all expenditures for compliance with the appropriation.

SCHOOL FOR THE DEAF AND BLIND	1,010,700	602,702	1,059,633	573,317

Notwithstanding 20-10-142, transportation costs for students who reside outside Cascade County who attend the school for the deaf and blind shall be paid only by the school for the deaf and blind.

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
MONTANA ARTS COUNCIL				
1. General Operations	51,838	186,269	51,505	193,142
2. Local Community Grants	19,198		20,275	
Total Montana Arts Council	71,036	186,269	71,780	193,142

Administrative operating costs of the council and its staff shall be supported equally between federal funds and state general fund.

The general fund grant money is to be used for helping local communities match federal grant funds.

TOTAL OTHER EDUCATION	49,660,658	15,231,241	52,394,163	15,476,880

F. HIGHER EDUCATION

For units of the university system other than the office of the commissioner of higher education, the appropriations made under the column heading "Other Appropriated Funds" are from funds within current unrestricted funds unless otherwise indicated.

All funds, other than plant funds and those specifically appropriated herein, may be spent and are appropriated contingent upon approval by the board of regents by July 1 of each year of a comprehensive program budget containing a detail of revenues and expenditures and anticipated fund balances of current funds, loan funds, and endowment funds. All movement of funds between the current unrestricted subfund and the designated subfund accounting entities shall be clearly identified in the state budgeting and accounting system.

Programs for the university budgets include instruction, organized research, public service, academic support, student services, institutional support and operation and maintenance of plant.

Included within other appropriated funds to the six institutions is the sum of $9,915,528 in fiscal year 1980 and $10,393,944 in fiscal year 1981 from revenues generated under the provisions of House Bill 191, 46th legislature.

Unit	Student-Faculty Ratio	Average Faculty Salary and Health Insurance Fiscal 1980	Fiscal 1981
Montana State University	19:1	21,130	22,457
University of Montana	19:1	21,130	22,457
Eastern Montana College	18.5:1	19,017	20,211

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
Western Montana College	16.6:1		19,017	20,211
Northern Montana College	16:1		19,017	20,211
Montana College of Mineral Science and Technology	16:1		19,968	21,222

The student-faculty ratios and average faculty salaries, including $480 in fiscal 1980 and $600 in fiscal 1981 for health insurance, shown above are used in determining appropriations to the respective units. The board of regents is authorized to transfer the appropriations for personal services between the six universities and colleges in order to maintain the intended faculty salaries and student-faculty ratios.

BOARD OF REGENTS	20,127		20,225	

The legislature intends to provide only one out-of-state trip, except in extraordinary circumstances, for one regent member during each fiscal year.

COMMISSIONER OF HIGHER EDUCATION				
1. Office Administration	534,787	41,500	567,385	41,900
2. WAMI	1,268,866		1,351,114	
3. WICHE-Student Assistance Program	778,582	641,918	844,082	641,918
4. WICHE-Administrative Dues	39,000		39,000	
5. University of Minnesota Rural Dentistry	164,900		164,800	
6. Federal Incentive Matching Money	150,297	299,703	150,297	399,703
7. NDSL	100,000		100,000	
Total Commissioner of Higher Education	3,036,432	983,121	3,216,678	1,083,521

The above appropriations may be spent only for the purposes specified.

Other appropriated funds in item 3 are generated under provisions of 90-6-211.

COMMUNITY COLLEGES				
1. Miles Community College	512,350		551,907	

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
2. Dawson Community College	516,345		553,311	
3. Flathead Community College	911,395		975,530	
Total Community Colleges	1,940,090		2,080,748	

Funds generated from student fees and mandatory mill levies in excess of the funds necessary to provide 35% of the respective college's operating budget shall be used to reduce the following year's mandatory mill levy provided in 20-15-303(1)(b).

The above appropriations provide 65% of the respective operating budgets that shall be approved by the board of regents pursuant to 20-15-302 and 20-15-303. The remaining 35% of the operating budget shall be financed from student tuition and fees and a mandatory mill levy as provided in 20-15-303. The board of trustees of a community college district may elect to adopt an operating budget in excess of 100% of the general fund budget specified herein, only with the approval of an additional mill levy proposition as provided in 20-15-306 or upon receipt of federal, private or other funds not included in the general fund budget. General fund budget as used herein includes only state appropriations, student fees, and the mandatory mill levy, levied under the provisions of 20-15-303(1)(b).

MONTANA STATE UNIVERSITY				
1. Personal Services	11,592,253	8,730,818	12,705,541	9,035,439
2. Operating Expense	2,112,378	1,535,989	2,272,325	1,561,030
3. Capital	626,229	472,419	680,107	484,460
4. Scholarships and Fellowships	315,828	212,592	320,559	207,861
Total Current Unrestricted Subfund	14,646,688	10,951,818	15,978,532	11,288,790
5. Designated Subfund				
a. Service Shop		1,438,639		1,534,225
b. Motor Pool		152,830		162,194
c. Computing Center		736,621		787,027
Total Current Designated Subfund		2,328,090		2,483,446

Federal nursing capitation of $109,431 in fiscal year 1980 and $116,517 in fiscal year 1981 is included above in other appropriated funds.

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
UNIVERSITY OF MONTANA				
1. Personal Services	9,836,515	6,634,001	10,834,933	6,826,481
2. Operating Expense	2,434,761	1,641,939	2,610,490	1,651,988
3. Capital	556,892	369,243	604,949	376,550
4. Scholarships and Fellowships	333,779	220,594	343,220	211,153
5. Faculty transition	191,146			
Total Current Unrestricted Subfund	13,353,093	8,865,777	14,393,592	9,066,172

Included within the appropriations to the university of Montana are $273,534 and $337,771 in the respective fiscal years which may be used only for expenses related to organized research and may not be used to supplement the instructional budget. The university shall account for these amounts with a unique budget and appropriation number in the state accounting system.

The appropriation in item 5 is for the biennium and is restricted to faculty salary and benefits. A unique budget and appropriation number will be established in the state accounting system for item 5.

There is $260,000 reappropriated to the university of Montana for the biennium ending June 30, 1981 from the appropriation in H.B. 145, 45th legislature for the purpose of paying faculty salary contract settlements for fiscal 1979.

6. Designated Subfund				
a. Service Center		919,447		981,201
b. Computing Center		800,796		846,799
c. Office Stores		190,375		202,431
d. Motor Pool		160,290		170,699
Total Current Designated Subfund		2,070,908		2,201,130
FORESTRY AND CONSERVATION EXPERIMENT STATION				
1. Personal Services	216,467		231,217	
2. Operations	53,964		56,446	

	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
3. Capital	2,778		2,945	
Total Forestry and Conservation Experiment Station	273,209		290,608	
EASTERN MONTANA COLLEGE				
1. Personal Services	3,746,278	1,970,318	4,067,166	2,047,429
2. Operating Expense	1,175,974	633,216	1,274,226	656,420
3. Capital	165,188	88,948	177,794	91,591
4. Scholarships and Fellowships	72,095	108,517	107,534	73,078
Total Current Unrestricted Subfund	5,159,535	2,800,999	5,626,720	2,868,518
5. Designated Subfund				
a. Service Center		500,622		536,147
b. Computing Center		371,908		396,205
c. Motor Pool		22,779		24,146
d. Stores		70,401		74,729
Total Current Designated Subfund		965,710		1,031,227
MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY				
1. Personal Services	1,666,850	1,085,049	1,816,814	1,133,209
2. Operating Expense	409,460	209,906	438,707	216,373
3. Capital	10,960	123,165	25,639	116,533
4. Scholarships and Fellowships	56,986	37,991	56,986	37,991
5. Supplemental	80,922		80,922	
Total Current Unrestricted Subfund	2,225,178	1,456,111	2,419,068	1,504,106
6. Designated Subfund				

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
a. Motor Pool		34,000		34,000
b. Computing Center		60,289		66,022
Total Current Designated Subfund		94,289		100,022
NORTHERN MONTANA COLLEGE				
1. Personal Services	1,875,099	767,103	2,033,752	792,133
2. Operating Expense	413,233	150,160	445,743	154,407
3. Capital	88,090	35,980	94,691	36,824
4. Scholarships and Fellowships	63,598	44,602	67,805	40,395
Total Current Unrestricted Subfund	2,440,020	997,845	2,641,991	1,023,759
5. Designated Subfund				
a. Service Shop		156,703		167,431
b. Computing Center		84,242		89,921
c. Motor Pool		12,597		19,091
Total Current Designated Subfund		253,542		276,443
WESTERN MONTANA COLLEGE				
1. Personal Services	1,134,537	513,780	1,230,054	529,679
2. Operating Expense	204,784	86,851	221,537	89,463
3. Capital	28,792	13,039	30,994	13,347
4. Scholarships and Fellowships	26,533	12,095	27,454	11,174
Total Current Unrestricted Subfund	1,394,646	625,765	1,510,039	643,663
BUREAU OF MINES				
1. Personal Services	475,004	58,708	505,256	68,899

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
2. Operating Expense	155,813	19,258	159,781	21,788
3. Capital	38,254	4,728	40,094	5,467
4. Water Analyzer	105,057			
5. Transfer to MCMST	156,716	33,788	181,607	20,328
6. Groundwater and Aquifer Study		55,000		55,000
Total Bureau of Mines	930,844	171,482	886,738	171,482

The appropriations in item 6 are from the renewable resource funds allocation under provisions of 15-35-108(g), notwithstanding any other provisions of law.

COOPERATIVE EXTENSION SERVICE				
1. Personal Services	1,016,119	1,510,153	1,167,356	1,534,357
2. Operating Expense	187,186	280,779	204,044	270,476
3. Capital	3,163	29,457	18,000	15,556
Total Current Unrestricted Subfund	1,206,468	1,820,389	1,389,400	1,820,389
4. Designated Subfund				
a. Multilith		195,491		209,743

Any Smith-Lever and Title V rural development funds received in excess of $1,820,389 annually shall cause an equal amount of general fund money to revert. All Smith-Lever and Title V rural development funds available to the cooperative extension service are to be expended each fiscal year.

AGRICULTURE EXPERIMENT STATION				
1. Personal Services	2,249,403	1,817,103	2,625,911	1,750,607
2. Operating Expense	657,182	536,058	758,110	505,406
3. Capital	98,487	75,184	96,645	87,454
4. United States Range Station		707,227		759,835
5. Hanson Property Payments	27,349			

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	Fiscal Year 1980		Fiscal Year 1981	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
Total Agricultural Experiment Station	3,032,421	3,135,572	3,480,666	3,103,302

Any Hatch and regional research funds received that, when added together, exceed $1,253,737 annually shall cause an equal amount of general fund money to revert. All Hatch and regional research funds available to the agriculture experiment station are to be expended each fiscal year. All interest earned on earmarked revenue belongs to the state general fund. All earmarked revenue funds over $100,000 ending fund balance on June 30, 1981, shall revert to the state general fund.

The designated cattle replacement fund expenditures may be used only to replace cattle and to transfer funds to the United States range station current unrestricted subfund.

TOTAL HIGHER EDUCATION	49,658,751	37,716,909	53,935,005	38,875,713
GRAND TOTAL	221,404,194	379,814,427	228,578,884	399,251,447

Approved May 14, 1979.

HOUSE BILL NO. 537

AN ACT TO PROVIDE ADDITIONAL FUNDING FOR SECONDARY VOCATIONAL AND INDUSTRIAL ARTS PROGRAMS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $1,500,000 to the office of superintendent of public instruction for the purpose of providing additional funding for secondary vocational education. The appropriation shall be allocated under rules promulgated by the office which shall require each recipient school district to certify that expenditures for secondary vocational programs in that district will increase by the amount granted from this appropriation.

Section 2. **Accounting.** A school district receiving funds from this

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appropriation shall account for all secondary vocational and industrial arts programs in a subfund of the general fund of the school district.

Approved May 7, 1979.

HOUSE BILL NO. 556

AN ACT TO APPROPRIATE $145,200 TO MAKOSHIKA STATE PARK LOCATED SOUTH OF GLENDIVE FOR EMERGENCY ROAD REPAIR AND MAINTENANCE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $145,200 from the coal tax state parks earmarked revenue account and the state parks federal and private revenue account to the Department of Fish and Game for emergency road repair and maintenance in Makoshika State Park, located south of Glendive. The money shall be appropriated from the designated accounts as follows:

State Parks Federal and Private Revenue Account	$72,600
Coal Tax State Parks Earmarked Revenue Account	$72,600

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 9, 1979.

HOUSE BILL NO. 754

AN ACT TO APPROPRIATE $35,000 TO THE MONTANA ARTS COUNCIL, MONTANA FOLKLORE PROGRAM, FOR THE BIENNIUM ENDING JUNE 30, 1981, FROM COAL SEVERANCE TAX REVENUE ALLOCATED UNDER SECTION 15-35-108(2)(h), MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $35,000 to the Montana Arts Council, Montana Folklore Program, for the biennium ending June 30, 1981, from revenues allocated under 15-35-108(2)(h).

Approved May 8, 1979.

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HOUSE BILL NO. 807

AN ACT TO APPROPRIATE TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION THE SUM OF $320,984.05 OR SO MUCH THEREOF AS MAY BE NECESSARY TO SATISFY THE JUDGMENT ENTERED ON SEPTEMBER 21, 1976, BY THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF LEWIS AND CLARK, IN CAUSE NO. 38155.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the general fund to the Department of Natural Resources and Conservation the sum of $320,984.05 or so much thereof as may be necessary to satisfy the judgment entered on September 21, 1976, by the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clark, in Cause No. 38155, entitled "Sornsin Construction Company, a North Dakota corporation, Plaintiff, versus The State of Montana and the Department of Natural Resources and Conservation, an administrative agency of the state of Montana, Defendants" and affirmed by the Supreme Court of Montana on December 28, 1978, in Cause No. 13699.

Section 2. **Reimbursement.** The Department of Natural Resources shall seek reimbursement from the Federal Department of Agriculture for amounts owed the state.

Section 3. **Effective date.** This appropriation is effective on passage and approval.

Approved May 8, 1979.

HOUSE BILL NO. 824

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM THE RENEWABLE RESOURCE DEVELOPMENT CLEARANCE FUND ACCOUNT FOR VARIOUS PROJECTS UNDER THE RENEWABLE RESOURCE DEVELOPMENT PROGRAM AND SPECIFYING CERTAIN CONDITIONS UPON THE APPROPRIATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following money is appropriated to the Department of Natural Resources and Conservation from the renewable resource development clearance fund account for the following projects under the renewable resource development program for the biennium ending June 30, 1981:

(1) a grant for the Agriculture Experiment Station at Corvallis for the biological weed control program: $38,200;

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(2) a grant for the Department of Fish and Game for the streambank preservation program: $100,000;

(3) a grant for the Cove Irrigation Company for irrigation system repairs: $40,000 or 5% of all funds expended on the irrigation system repairs, whichever is less;

(4) a grant of $275,000 is made to the Department of Fish and Game to restore to operation the Lewis and Clark caverns tram and railway transportation system in compliance with Montana supreme court order number 14086. These funds may not be expended if the Link versus the Department of Fish and Game case filed 2-28-79 is settled by payment as authorized in H. B. 417, 46th Legislature.

(5) a grant for Lawrence Park improvement, Kalispell: $327,680 or 25% of all funds expended for park improvement, whichever is less;

(6) a grant for the Deer Lodge South beautification project: $5,250 or 25% of all funds expended for the necessary improvements, whichever is less;

(7) a grant for the Triangle Area Conservation District for the saline seep reclamation program: $241,000;

(8) a grant for the rangeland resource loan program: $300,000;

(9) a grant for Sacajawea Park improvement, Livingston: $114,700 or 25% of all funds expended for the park improvement, whichever is less;

(10) a grant for the Glen Lake Irrigation District for irrigation system improvements: $33,750 or 5% of all funds expended for the irrigation system improvements, whichever is less;

(11) grants to the Department of Administration for Lambeth recreation area: $50,000 to be matched with $50,000 federal funds; Lost Creek state park of $87,500 to be matched with $87,500 federal funds; $46,200 for maintenance in the forestry division of the Department of Natural Resources and Conservation; $200,000 to construct nursery greenhouse, Department of Natural Resources, forestry division, Missoula;

(12) a grant of $86,500 for the Department of Natural Resources and Conservation for the purpose of performing general site, engineering, geotechnical, survey, archaeological, wildlife, feasibility, and demand studies of seven off-stream potential water storage sites and of potential water uses along the Big Hole and Jefferson Rivers, as identified in the report of the Department and submitted to the Legislature in January, 1979, entitled "Potential Off-Stream Reservoir Sites in the Big Hole River Basin";

(13) a grant for the Nevada Creek project for irrigation system improvements: $50,000 or 33 ⅓% of all funds expended for the irrigation system improvements, whichever is less;

(14) any unexpended grant funds remaining from the grant appropriated for the Boulder River project and the solid waste management project from the biennium ending June 30, 1979, are reappropriated;

(15) a loan for the Department of Health and Environmental Sciences for the solid waste management project: $2 million; this loan is authorized notwithstanding the provisions of 90-2-107(4) and 90-2-108(1). The appropriation under subsection (2) and the reappropriated funds for the Boulder

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River project are contingent upon no funds so appropriated being used for state administrative purposes and upon the development of administrative criteria for the project program by the appropriate state agencies.

Section 2. **Conditions of grants and loans.** Disbursement of funds under this act shall be made only after:

(1) the projects have been authorized by other financial sponsors, if any;

(2) initial funding from other sources, if any, has been committed for construction; and

(3) an agreement between the Department of Natural Resources and Conservation and the applicant has been executed governing the administration and disposal of funds.

Section 3. **Failure of contingency provisions.** If a contingency provision provided for in [section 1] fails to occur, the funds appropriated for the associated project revert to the renewable resource development clearance fund account.

Approved May 8, 1979.

HOUSE BILL NO. 841

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONTRACT FOR GEOTECHNICAL AND ECONOMIC STUDIES CONCERNING THE HIGH TONGUE DAM AND THE NEW TONGUE DAM.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the resource indemnity trust fund to the Department of Natural Resources and Conservation the sum of $265,000 for the biennium ending June 30, 1981, for the purpose of preparing geotechnical and economic studies concerning the proposed High Tongue Dam and economic studies concerning the New Tongue Dam, as set forth in the department's report to the Legislature dated January, 1979, and entitled "Water Development in the Tongue and Powder River Basins".

Approved May 8, 1979.

HOUSE BILL NO. 890

AN ACT TO APPROPRIATE FUNDS TO PAY FOR LEGAL COSTS INVOLVED IN DEVELOPING AND PURSUING MONTANA'S POSITION WITH REGARD TO REORGANIZATION AND BANKRUPTCY PROCEEDINGS OF THE MILWAUKEE RAILROAD.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated to the Governor's office the sum of $50,000 from the general fund for the biennium ending June 30, 1981, for the purpose of paying legal costs incurred by the Attorney General in developing Montana's position and preserving Montana's

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interest in the merger or reorganization proceedings before the Interstate Commerce Commission concerning the Milwaukee Railroad and in the bankruptcy proceedings in federal district court concerning the Milwaukee Railroad.

Approved May 8, 1979.

HOUSE BILL NO. 894

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO REHABILITATE THE COONEY DAM OF THE ROCK CREEK PROJECT LOCATED NEAR RED LODGE IN CARBON COUNTY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the resource indemnity trust fund account to the Department of Natural Resources and Conservation the sum of $591,300 for the biennium ending June 30, 1981, for the rehabilitation of Cooney Dam as set forth in a report prepared for the Department of Natural Resources and Conservation entitled "Rehabilitation of Cooney Dam Spillways" and submitted to the Legislature in January, 1979. From the above amount no more than $20,000 may be spent until $1,150,000 of federal revenue has been secured. The failure to secure such federal funding shall terminate any funding obligations herein incurred by the state of Montana and shall cause a reversion of all unexpended funds, but not less than $571,300 to the resource indemnity trust fund account.

Approved May 8, 1979.

HOUSE BILL NO. 895

AN ACT TO INCREASE AGENCY BUDGETS DURING THE BIENNIUM ENDING JUNE 30, 1979, WITH FUNDS RECEIVED THROUGH THE MONTH OF FEBRUARY, 1979, WHICH WOULD USUALLY BE ADDED BY BUDGET AMENDMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Increase in spending authority.** The following money is appropriated for the fiscal year ending June 30, 1979:

Agency and Program	Amount	Fund
DEPARTMENT OF AGRICULTURE		
Centralized Services Program	$ 22,495	Federal and Private Revenue
Environmental Management Program		

	28,844	Federal and Private Revenue
Hail Insurance Program		
	6,961	Earmarked Revenue
DEPARTMENT OF FISH AND GAME		
Capital Program		
	6,000	Earmarked Revenue
Capital Program		
	66,400	Earmarked Revenue
Capital Program		
	7,200	Federal and Private Revenue
Fish Program		
	16,051	Federal and Private Revenue
Fish Program		
	29,081	Federal and Private Revenue
Fish Program		
	19,792	Federal and Private Revenue
Parks Program		
	44,000	Federal and Private Revenue
Wildlife Program		
	12,977	Federal and Private Revenue
Wildlife Program		
	14,200	Federal and Private Revenue
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES		
Environmental Health Program		
	264,693	Federal and Private Revenue
DEPARTMENT OF HIGHWAYS		
General Operations Program		
	154,373	Earmarked and Federal and Private Revenue
General Operations Program		
	41,000	Federal and Private Revenue
Rail Planning Program		
	199,418	Earmarked and Federal and Private Revenue
HISTORICAL SOCIETY		
Library Program		
	5,000	Federal and Private Revenue
DEPARTMENT OF INSTITUTIONS		
Montana State Prison		
Care and Custody Program		
	4,500	Federal and Private Revenue
Mountain View School		
Developmental Program		
	230	Federal and Private Revenue

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DEPARTMENT OF LIVESTOCK		
Disease Control Program		
	3,452	Earmarked Revenue
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION		
Energy Program		
	22,304	Federal and Private Revenue
Energy Program		
	33,592	Earmarked Revenue
Resource Districts Program		
	10,622	Federal and Private Revenue
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING		
Board of Psychologists		
	3,000	Earmarked Revenue
Board of Horseracing		
	15,000	Earmarked Revenue
Board of Medical Examiners		
	15,000	Earmarked Revenue
Board of Warm Air Heating, Ventilation, and Air Conditioning		
	7,800	Earmarked Revenue
Board of Nursing		
	8,503	Earmarked Revenue
OFFICE OF PUBLIC INSTRUCTION		
Chief State School Officer Program		
	220,778	Federal and Private Revenue
DEPARTMENT OF STATE LANDS		
Reclamation Program		
	10,000	Federal and Private Revenue
Central Management Program		
	50,049	Federal and Private Revenue
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES		
	19,746	Federal and Private Revenue
Assistance Payments Program		
	47,375	Federal and Private Revenue

Section 2. **Limitations in expenditures.** The conditions set forth in sections 1 through 16 of House Bill 145 passed by the 45th Legislature apply to appropriations under this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved May 8, 1979.

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HOUSE BILL NO. 896

AN ACT TO APPROPRIATE MONEY FOR THE PURPOSE OF PROVIDING AN EXTENSION OR REENLISTMENT INCENTIVE BONUS FOR ENLISTED MEMBERS OF THE MONTANA NATIONAL GUARD.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Montana National Guard Reenlistment or Extension Act of 1979".

Section 2. **Purpose.** [This act] is intended to encourage a greater number of extensions and reenlistments in the Montana National Guard, the state's only source of organized manpower in times of emergency.

Section 3. **Definitions.** As used in [this act], the following definitions apply:

(1) "Bonus" means the extension or reenlistment incentive bonus provided by [this act].

(2) "Member" means any male or female enlisted member of the Montana Army or Air National Guard.

(3) "Extension" means the continuation of active National Guard service with the Montana National Guard.

(4) "Reenlistment" means a second or subsequent voluntary enrollment in the Montana National Guard or a reentry into the Montana National Guard of any individual who has a break in Montana National Guard service.

(5) "Secretary" means a designee of the Department of Military Affairs.

Section 4. **Bonus.** The bonus provided under [this act] is a payment of $50 for each year of service for which a member extends or reenlists. The bonus shall be paid in yearly $50 installments to each eligible member in January of the year following the successful completion of a year of service for which he extended or reenlisted. It may not be paid to anyone who fails to attend 90% of the scheduled drills or fails to attend annual training in the year for which the benefit is to be paid.

Section 5. **Eligibility.** The bonus may be granted to a person who:

(1) extends his original enlistment; or

(2) reenlists in the Montana National Guard;

(3) holds rank commensurate with unit vacancy in accordance with National Guard Bureau policy;

(4) does not have 20 years of total service; and

(5) is not in any full-time capacity with the National Guard as a civil service employee, Active Duty for Training, or Full-Time Training Duty.

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Section 6. **Administration.** (1) The secretary shall administer [this act].

(2) The secretary shall determine the eligibility of members to receive the bonus. The secretary shall maintain records and make rules necessary for the administration of [this act].

(3) The secretary shall disburse a bonus payment upon determination of a member's eligibility.

Section 7. **Appropriation.** The following money is appropriated from the general fund to the Department of Military Affairs for the purpose of providing a bonus for eligible members of the Montana National Guard:

(1) $17,500 for the fiscal year ending June 30, 1980; and

(2) $37,500 for the fiscal year ending June 30, 1981.

Approved April 21, 1979.

HOUSE BILL NO. 897

AN ACT APPROPRIATING MONEY TO THE LEGISLATIVE COUNCIL TO COMPLETE THE EDITING AND PUBLISHING OF THE 1972 CONSTITUTIONAL CONVENTION PROCEEDINGS; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the general fund to the Legislative Council $80,000 for the expenses of editing, proofing, indexing, and publishing the proceedings of the 1972 Constitutional Convention and for the expenses of the committee created by Chapter 373, Laws of 1977, to supervise such editing and publishing.

Section 2. Section 4, Chapter 373, Laws of 1977, is amended to read:

"Section 4. **Distribution of copies.** (1) The committee shall have printed and delivered to the executive director of the legislative council 1,000 hard-bound copies of the proceedings of the 1972 constitutional convention.

(2) Of these 1,000 copies, 60 copies are to be distributed by the legislative council, free of charge, in the following manner:

(a) law library — 4 copies;

(b) state library — 10 copies;

(c) office of the governor — 1 copy;

(d) office of the lieutenant governor — 1 copy;

(e) office of the secretary of state — 1 copy;

(f) office of the attorney general — 1 copy;

(g) office of the superintendent of public instruction — 1 copy;

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(h) office of the state auditor — 1 copy;

(i) supreme court — 5 copies;

(j) each state department — 1 copy;

(k) Montana historical society — 5 copies;

(l) office of the legislative council — 10 copies;

(3) *The committee shall set the sales price of the proceedings at an amount sufficient to totally recoup the amount appropriated for the proceedings, including the $130,000 appropriated by HB 160 of the 45th Legislature. Proceeds from sales of the proceedings shall be deposited in the general fund.*"

Section 3. **Effective date.** This act is effective on passage and approval.

Approved May 8, 1979.

HOUSE BILL NO. 903

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF FISH AND GAME FOR RECREATIONAL IMPROVEMENTS TO GIANT SPRINGS STATE PARK, LOCATED NEAR GREAT FALLS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $276,000 from the State Parks Federal and Private Revenue Account and the Resource Indemnity Trust Earmarked Revenue Account as authorized by Title 15, Chapter 38, MCA, to the Department of Fish and Game for recreational improvements to Giant Springs State Park, located near Great Falls. The money is appropriated from the designated accounts as follows:

Federal Bureau of Recreation Account	$138,000
Private Donations	69,000
Resource Indemnity Trust Earmarked Revenue Account	69,000

Approved May 8, 1979.

HOUSE BILL NO. 905

AN ACT TO APPROPRIATE, FOR COMMEMORATIVE WALL NICHES, $5,000 TO THE MONTANA ARTS COUNCIL FOR THE BIENNIUM ENDING JUNE 30, 1981, FROM COAL SEVERANCE TAX REVENUE ALLOCATED UNDER SECTION 15-35-108(2)(h), MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $5,000 to the Montana Arts Council for the biennium ending June 30, 1981, from revenues allocated under 15-35-108(2)(h), for the purpose of implementing the provisions of Senate Joint Resolution 13 establishing commemorative wall niches in the state capitol.

Approved May 8, 1979.

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HOUSE BILL NO. 908

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM THE RESOURCE INDEMNITY TRUST INTEREST ACCOUNT TO CONDUCT SITING, ENERGY NEED, FACILITY INTEGRATION, ENVIRONMENTAL, AND SOCIO-ECONOMIC IMPACT STUDIES FOR THE POSSIBLE CONSTRUCTION OF A MAGNETOHYDRODYNAMICS ENGINEERING TEST FACILITY IN MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Legislative findings.** The Legislature finds that utility companies in Montana are considering additional coal-fired steam electric generation plants to supply projected demands in the early 1990's. Previous Montana legislatures have formally recognized the very high potential of magnetohydrodynamics (MHD) power generation to provide electric power to Montana in a highly efficient, water conservative, and environmentally acceptable manner. Because of the extended time period required for siting a major facility power plant under Montana laws and to complete plant construction, the Legislature finds that the incorporation of an MHD engineering test facility into the next coal-fired steam power plant to be built in Montana is in the state and national interest and will most expeditiously help meet future state energy needs. The Legislature desires that the state of Montana take a leadership role in the coupling of the energy needs in Montana with the national MHD program objective. The Legislature finds that there is a possibility of coordinating these objectives to the mutual benefit of the utilities, the MHD program, and the state of Montana. Therefore, the Legislature finds there is a need to conduct siting, energy need, facility integration, environmental, and socio-economic impact studies for the possible construction of an MHD engineering test facility in Montana.

Section 2. **Appropriation.** There is appropriated from the indemnity trust interest account to the Department of Natural Resources and Conservation the sum of $500,000 for the biennium ending June 30, 1981, for the purpose of conducting siting, energy need, facility integration, environmental, and socio-economic impact studies for the possible construction of an MHD engineering test facility in Montana. The entire state shall be considered in the siting studies described herein, including those possible sites studied by the United States Department of Energy in the areas of Great Falls, Glasgow, Billings, Bozeman-Livingston, and Anaconda-Butte.

Section 3. **Conditions — reimbursement to state.** The money appropriated in Section 2 may not be spent for any capital costs related to private sector energy production. Funds appropriated under this act are primarily to be spent in Montana by Montana firms under contract with the Department. Reimbursement to the Department for deposit in the indemnity trust interest account of the funds appropriated herein will be made to the extent practical from proceeds of sale of any energy produced

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in the federally owned portion of the Montana engineering test facility, with the rate and terms of repayment to be negotiated by the parties involved with the construction and operation of the combined plant.

Approved April 19, 1979.

HOUSE BILL NO. 913

AN ACT APPROPRIATING $100,000 TO THE MONTANA HISTORICAL SOCIETY FOR THE RESTORATION AND PROTECTION OF MURALS IN THE STATE CAPITOL.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** (1) There is appropriated from the earmarked revenue fund account established under 15-35-108(h) to the Montana Historical Society the following sums:

For the fiscal year ending June 30, 1980	$50,000
For the fiscal year ending June 30, 1981	$50,000

(2) The purpose of the funds appropriated in subsection (1) is the restoration and protection of the murals in the State Capitol.

Approved May 8, 1979.

CHAPTER NO. 919

AN ACT TO APPROPRIATE MONEY FOR THE PURPOSE OF FUNDING A STATEWIDE CANCER TUMOR REGISTRY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $60,000 from the general fund to the Department of Health and Environmental Sciences for the biennium ending June 30, 1981, for the purpose of funding a statewide cancer tumor registry.

Approved May 8, 1979.

HOUSE BILL NO. 921

AN ACT TO APPROPRIATE MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1979; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Conditions.** The terms and conditions contained in House Bill 145 of the 45th Legislature pertain to the appropriations in this act.

Section 2. **Appropriations.** The following money is appropriated for the stated purposes for the fiscal year ending June 30, 1979:

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	Fiscal Year 1979	
	General Fund	Other Appropriated Funds
Boulder River School and Hospital	$1,385,011	
Galen State Hospital	154,321	
Department of Social and Rehabilitation Services	7,297,672	$179,000
State Prison		240,000
Department of Military Affairs	1,387,491	
Board of Examiners	12,000	

The appropriation is to pay the agreed settlement with Seymour Storch dated October 26, 1978.

Department of Community Affairs	122,014

The appropriation is to reimburse the department of highways $61,230 and the department of fish and game $61,774 to implement the airplane pool.

Section 3. **Reversion.** The state prison shall revert at least $123,200 of the general fund appropriation made in House Bill 145 of the 45th Legislature. In the event the costs for utilities and medical services exceed the projected cost for the same services contained in the initial supplemental request, the mandated reversion of $123,200 will be reduced by a like dollar amount, subject to approval by the Budget Director.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved May 8, 1979.

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RESOLUTIONS

ENACTED BY THE

Forty-Sixth Legislature

IN REGULAR

SESSION

STATE OF MONTANA

1979

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RESOLUTIONS

SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE TO APPOINT A SELECT COMMITTEE ON INDIAN AFFAIRS.

WHEREAS, there are seven Indian reservations and numerous landless Indians in Montana; and

WHEREAS, the various tribes have treaties with the United States; and

WHEREAS, this situation gives rise to extremely complex jurisdictional, social, and philosophical questions in virtually all subject areas including law enforcement, water rights, pollution control, natural resources, health, social services, education, and taxation which, in turn, produce tension and conflict in tribal/state and Indian/non-Indian relations; and

WHEREAS, Congress, as the ultimate authority on relations with the Indian tribes, has not acted in a decisive manner to resolve these questions and is unlikely to do so in the foreseeable future; and

WHEREAS, jurisdictional litigation on a case-by-case basis is expensive to the state, tribes, and private parties.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the President of the Senate and the Speaker of the House appoint four members of the Senate and four members of the House, equally bipartisan, to serve on a select legislative committee on Indian affairs.

BE IT FURTHER RESOLVED, that the committee seek the opinions and information of Indian tribes, state agencies, local governments, non-Indians living on or near Indian reservations, and other interested persons and agencies to gain insight into Indian problems in Montana.

BE IT FURTHER RESOLVED, that the committee study the Montana statutes relating to participation in programs and interlocal agreements by political subdivisions and seek input from all interested persons in order to determine whether it would be workable and desirable to specifically include Indian tribes within the purview of any of those statutes.

BE IT FURTHER RESOLVED, that the committee study the possibility of establishing other state legislative plans or mechanisms which would allow and encourage tribal/state or tribal/local government cooperation or otherwise go toward resolving Indian problems in Montana.

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BE IT FURTHER RESOLVED, that the Legislative Council provide staff to assist the committee.

BE IT FURTHER RESOLVED, that the committee report its activities, findings, recommendations, and any proposed legislation to the 47th Legislature.

Approved March 20, 1979.

SENATE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT JOINT RULES TO GOVERN ITS PROCEEDINGS.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following joint rules are adopted:

CHAPTER 1
Presiding Officer - Decorum, Order and Debate

1-1. The presiding officer of the Senate is the president and the presiding officer of the House of Representatives is the speaker. The presiding officer of each house shall take the chair on every legislative day at the hour to which that house adjourned at the last sitting. After call to order, prayer by the chaplain and roll call, a report on the journal for the preceding legislative day shall be given in the presence of a quorum, and each house shall proceed with the regular order of business.

1-2. The presiding officer, or any member acting as presiding officer, of each house shall preserve order and decorum, and in case of disturbance or disorderly conduct, may order the galleries or lobbies to be cleared.

1-3. The presiding officer of each house has general control and direction of the hall, chamber, rooms, passages and corridors of the house over which he presides. Reporters on assignment in either house are subject to placement by the presiding officer.

1-4. The presiding officer of each house shall decide all questions of order, subject to an appeal by any member seconded by two other members. No member may speak more than once on an appeal without the consent of a majority of the house of which he is a member.

1-5. When a member desires to speak he shall rise and address the presiding officer and, being recognized, shall speak standing in his place unless the presiding officer grants permission to speak from some other place on the floor. When two or more members rise at the same time the presiding officer shall name the member who is to speak first.

1-6. When a member has been called to order, he shall sit down until the presiding officer determines whether he is in order or not. If the

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member is called to order for words spoken in debate, the language excepted to shall be taken down in writing by the chief clerk or secretary.

1-7. Questions of privilege are: first, those affecting the collective rights, safety, dignity, and integrity of the proceedings of either house; and second, those affecting the rights, reputation and conduct of individual members of either house in their capacity as members. A question of privilege affecting either house collectively takes precedence over a question of privilege affecting an individual member.

1-8. The presiding officer of each house shall sign all subpoenas approved or issued by the house over which he presides. The presiding officer shall certify the payroll as prepared by Legislative Council staff.

1-9. (1) A communication or paper shall be addressed to the presiding officer and shall bear the name of the person submitting it. When the reading of a paper is called for and a member objects, it shall be determined by a vote of the house without debate. This subsection does not apply to bills or to communications from the governor or the other house.

(2) A paper for or against proposed legislation may not be placed on the desks of the members or circulated within the chamber unless the person responsible has signed it and has received permission from the presiding officer to distribute it in the house concerned.

1-10. When the presiding officer is a member of the house over which he is presiding he shall vote as any other member and may not vote a second time.

CHAPTER 2
Meetings, Quorums and Attendance

2-1. The hour of meeting of the Senate and House of Representatives may be as ordered by the Senate or House.

2-2. Lobbying on the floor of the Senate or House of Representatives is prohibited during the session and within one hour prior to the commencement of a session and within one-half hour after recess or adjournment.

2-3. The sessions of the legislature and of the Committee of the Whole, all committee meetings, and all hearings shall be open to the public (Montana Constitution, Art. V, Sec. 10(3)).

2-4. Neither house shall, without the consent of the other, adjourn or recess for more than three days, nor to any other place than that in which the two houses shall be sitting (Montana Constitution, Art. V, Sec. 10(5)).

2-5. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house may prescribe (Montana Constitution, Art. V, Sec. 10(2)).

2-6. Unless he is excused, a member of the House or Senate shall be present at every sitting of the house of which he is a member.

2-7. In the absence of a quorum, a majority of members present in either house may compel the attendance of absent members by ordering a call of the house of which they are members.

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2-8. If a quorum is present, five members of the Senate may order a call of the Senate, and fifteen members of the House of Representatives may order a call of the House.

2-9. On a call of either house, a member who refuses to attend may be arrested by the sergeant-at-arms or any other person, as the majority of such members present shall direct. When the attendance of an absent member is secured after a call of either house, if the house of which he is a member refuses to excuse his absence, he shall not be paid any per diem during his absence and is liable for the expenses incurred in procuring his attendance.

2-10. During a call of either house, all business of that house shall be suspended. After a call has been ordered no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote.

2-11. If either house is in session upon a given day, whether or not the other house is in session, that day shall constitute a legislative day.

CHAPTER 3
Legislative Employees

3-1. The legislature shall prescribe the compensation of the officers and employees of each house by joint resolution. Each house shall prescribe the duties of its officers and employees and no payment shall be made from the state treasury, or be in any way authorized to any such person, except to an acting officer or employee elected or appointed in pursuance of law.

3-2. The Legislative Council shall be responsible for maintaining personnel files.

3-3. The committee on legislative administration of each house shall appoint secretaries for standing or special committees on recommendation of the committee chairman, subject to the approval of the respective houses. A secretary for a standing or special committee is immediately responsible to the committee chairman, but when not occupied with the duties of a committee, shall work under the direction of the chief stenographer of each house. The Legislative Council shall hire all engrossing and enrolling typists and proofreaders who are under the direction of the bills committee.

3-4. The presiding officer and the majority and minority floor leader of each house may each appoint a private secretary.

3-5. The secretary of the Senate and chief clerk of the House of Representatives are responsible to the presiding officers of their respective houses. Their duties are:

(a) to have custody of all records, bills, documents and other papers;

(b) to supervise the making and examination of the journal and the handling of bills and resolutions;

(c) to deliver to the appropriate officers or offices, as set forth in these rules during the session or at the close of each session, the journal, bill

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books and resolution books, and all copies of introduced and engrossed bills and joint resolutions;

(d) to collect from the chairman or secretaries of all standing committees, special committees, Committees of the Whole, and conference committees, the minutes of such committees and deliver them to the state historical society.

3-6. Journal clerks, bill clerks, typists, and other employees responsible for legislative functions, except secretaries for standing or special committees, secretaries to presiding officers, and secretaries to majority and minority floor leaders, are immediately responsible to the secretary of the Senate or the chief clerk of the House, subject to the general supervision of the presiding officer.

3-7. The duties of the engrossing and enrolling clerks are:

(a) to engross or enroll all bills delivered to them within forty-eight hours after they have been received, unless further time is granted, in writing, by the presiding officer of the house in which the bill originated;

(b) to correct clerical errors, with the consent of the secretary of the Senate or chief clerk of the House of Representatives, in any bill originating in the house by which they are employed. Clerical errors such as the following may be corrected:

(i) errors in spelling

(ii) errors in numbering sections

(iii) adding or deleting underlining or lines through matter to be stricken

(iv) material copied incorrectly from the Montana Code Annotated.

The secretary of the Senate or chief clerk of the House shall obtain written permission from the principal sponsor before such corrections are made.

When a committee is the sponsor of a bill, any member thereof so designated by the chairman may be the principal sponsor for the purpose of this section.

3-8. (1) The sergeants-at-arms are responsible to the presiding officers of their respective houses. Their duties are:

(a) to maintain order under the direction of the presiding officer;

(b) to execute commands and serve all processes;

(c) to receive, distribute and have custody of supplies.

3-9. The assistant sergeant-at-arms, doorkeepers, watchmen, janitors, pages and other employees responsible for general housekeeping functions are immediately responsible to the sergeant-at-arms, subject to the general supervision of the presiding officer.

3-10. The duties of the chaplain of each house are to open each day's session with a prayer.

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3-11. A legislative aide is a person who has registered with the clerk of the House or secretary of the Senate and has been issued a distinctive identification form such as a name tag. Such identification may be issued only upon receiving written verification from a member that the person involved is serving him as an aide. A person may not represent himself to be a legislative aide unless he carries such identification. The sergeants-at-arms and doorkeepers shall enforce this rule. Legislative aides must be of legal age unless otherwise approved by the presiding officer.

No member may designate more than one aide without the approval of the Rules Committee of the house involved.

Qualifications for legislative interns are specified in Title 5, chapter 6, MCA.

3-12. An employee, legislative aide or legislative intern of either house is prohibited from lobbying as defined in Section 5-7-102(1), MCA. However, such person may testify before a committee of either house on the request of the committee. Any person violating this rule shall be discharged.

3-13. Disputes or complaints involving the competency or decorum of a legislative employee shall be referred to the committee on legislative administration of the house by which the employee is employed. The committee, in its discretion, may dismiss, suspend or retain the employee. The committee on legislative administration shall periodically review the roster of employees and shall dismiss surplus employees.

3-14. The offices of the Legislative Council shall serve both the Senate and House of Representatives as required.

The Council staff shall prepare payrolls for signature and prepare a bimonthly financial report and distribute the report to legislative leaders in each house and to members of the Senate Committee on Finance and Claims and House Committee on Appropriations.

3-15. Contracts for purchase or lease of equipment and supplies made during the legislative session shall be made on the approval of the committee on legislative administration of each house, subject to the review of the presiding officer of the respective house. Purchase orders shall be issued by Legislative Council staff and accounting records kept in that office.

CHAPTER 4
Order of Business

4-1. After prayer, roll call, and report on the journal, the order of business of the Senate and House of Representatives is as follows:

(1) Communications and petitions

(2) Reports of standing committees

(3) Reports of select committees

(4) Messages from the governor

(5) Messages from the other house

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(6) Motions

(7) First reading and commitment of bills

(8) Second reading of bills (Committee of the Whole)

(9) Third reading of bills and consent calendar bills

(10) Unfinished business

(11) Special orders of the day

(12) Announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the house involved shall revert to Order of Business No. 1 when reconvening after a recess.

CHAPTER 5
Motions

5-1. When a motion is made it shall be restated by the presiding officer, and, if requested by the presiding officer or a member, shall be reduced to writing and read aloud. A motion may be withdrawn by the member making it at any time before it is amended or voted upon.

5-2. When a question is under debate no motion may be made except the following privileged and subsidiary motions which have precedence in the order listed:

(1) to adjourn

(2) for a call of the house

(3) to recess

(4) question of privilege

(5) to lay on the table

(6) for the previous question

(7) to postpone to a certain day

(8) to refer or commit

(9) to amend

(10) to postpone indefinitely.

A question may be indefinitely postponed by a majority roll call vote of all members present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again during the biennium except upon a motion of reconsideration made pursuant to Rule 5-4.

5-3. No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment or substitute.

5-4. Any member may, on the day the vote was taken or on the next day the house in which the action was taken is in session, move to reconsider the question. A motion to reconsider may not be withdrawn after

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such next legislative day without the unanimous consent of the house concerned, and thereafter any member may call it up for consideration; however, a motion to reconsider made after the fifty-fourth day of the session shall be disposed of when made. A motion to recall a bill from the other house constitutes notice to reconsider and shall be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the other house may be made only under Order of Business No. 6, and under that order of business takes precedence over all motions except motions to recess or adjourn.

5-5. When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

5-6. (1) Except as provided in subsection (2) of this rule, the effect of moving the previous question, if adopted, is to close debate immediately, to prevent the moving of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise.

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one-half of such time to be given to the proponents and one-half to the opponents.

5-7. A call of the house is not in order after the previous question is ordered, unless it appears upon an actual count by the presiding officer that a quorum is not present.

5-8. The following motions are not debatable:

(1) to adjourn

(2) for a call of the house

(3) to recess

(4) for parliamentary inquiry

(5) for suspension of the rules

(6) to lay on the table

(7) for the previous question

(8) to limit, extend the limits of, or to close debate

(9) to amend an undebatable motion

(10) to divide a question

(11) to pass business in Committee of the Whole

(12) to take from the table

(13) a decision of the presiding officer, unless appealed or unless he submits the question to the house for advice or decision

(14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

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5-9. A member may move to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain.

5-10. No more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

CHAPTER 6
Bills and Resolutions

A. Form of Bills — Definition of Resolutions — General Provisions

6-1. The only types of instruments other than bills which may be introduced in either house of the legislature are as follows:

(1) A simple resolution is a formalized motion passed by one house only and bears the heading "House Resolution" or "Senate Resolution". It may be used to adopt or amend the rules of one house or to provide for the internal affairs of the house adopting it. It does not require three readings or a roll call vote. A member offering a simple resolution may read it in his place before introduction. When a simple resolution has been introduced, it shall be referred to a committee. Final action shall be taken on the Committee of the Whole report. The transmittal of copies of simple resolutions is the responsibility of the chief clerk or secretary of the house of origin.

A copy of every simple resolution is to be transmitted after adoption to the secretary of state by the secretary of the Senate or chief clerk of the House.

(2) A joint resolution must be adopted by both houses and is not approved by the governor. It may be used to express desire, opinion, sympathy, or request of the legislature; to adopt or amend the joint rules; to ratify or propose amendments to the United States Constitution; and to direct changes to, repeal, or direct adoption of a rule in the Montana Administrative Code. Except as otherwise provided in these rules or the Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

A copy of every joint resolution is to be transmitted after adoption to the secretary of state by the secretary of the Senate or chief clerk of the House.

6-2. Bills shall be typewritten on paper eight and one-half by eleven inches with twenty-five numbered lines, and shall be introduced in quadruplicate. Pica type and a good black ribbon must be used. Bills shall be numbered at the foot of each page (except page one) and shall have white covers of a substantial material. In sections amending existing statutes, matter to be stricken out shall be indicated with a line through the words or part to be deleted, and new matter shall be underlined. Sections of the Montana Code Annotated repealed or amended in a bill shall be stated in the title except for general appropriation bills and bills for the codification and general revision of the laws. Introduced bills will be reproduced on white paper and distributed to legislators.

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6-3. No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall contain more than one subject, which shall be clearly expressed in the title. The enacting clause of every law shall be as follows: "Be it enacted by the legislature of the state of Montana".

A bill shall be used to propose amendments to the Constitution of the State of Montana and shall not be subject to the veto of the governor (Montana Constitution, Art. VI, Sec. 10(1)).

6-4. All appropriation bills shall originate in the House of Representatives.

The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the legislative, executive and judicial branches of state government, interest on public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject (Montana Constitution, Art. V, Sec. 11(4)). Appropriation bills for the operation of the legislature shall be introduced by the chairman of the House Committee on Appropriations.

6-5. Every statute, unless a different time is prescribed therein, takes effect on the first day of July of the year of its passage and approval. Every joint resolution, unless a different time is prescribed therein, takes effect from its passage (Sections 1-2-201 and 1-2-202, MCA).

B. Introduction

6-6. Bills will be checked by the staff of the Legislative Council prior to consideration by a committee of the legislature for proper format, style, and legal form. A stamp shall be affixed to the bill cover and initialed indicating this review. If such stamp is not affixed at the time the bill is delivered to the appropriate committee chairman, the chairman shall cause the bill to be transmitted to the Council for such review. Bills will be entered on the automated bill drafting equipment and typed to facilitate a more rapid reproduction. If a bill is not so entered prior to introduction, it will not be considered by any committee until it has been reviewed and entered. This review will be made after the eighteenth day. If the sponsor is notified of a problem with a bill and does not respond to the director of the Legislative Council within two legislative days, the bill will be referred to the committee on rules in the house where the bill was introduced.

A bill may be introduced by endorsing it with the name of a member or committee and presenting it to the chief clerk or secretary in quadruplicate. Bills or joint resolutions may be sponsored jointly by Senate and House members. Bills, joint resolutions, and simple resolutions shall be numbered consecutively in each session of the legislature in separate series in the order of their receipt.

Any bill proposed by a legislative committee or introduced by request of an administrative or executive agency or department shall be so indicated following the names of the sponsors, "By Request of the ..... (Name of Agency or Committee)".

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Bills may be prefiled, numbered and preprinted prior to a legislative session. This will be the responsibility of the staff of the Legislative Council. Actual signatures may appear on the face of the prefiled bill or signatures may be obtained on a consent form from the Legislative Council. Additional sponsors may be added at the time of introduction on the first legislative day, on motion of the chief sponsor. These names will be forwarded to the Legislative Council to be included on the face of the bill following standing committee approval.

All prefiled bills will be made available to the public.

6-7. Bills may be introduced until 5 p.m. on the eighteenth legislative day, except revenue bills, committee bills approved by the rules committee of the house in which the committee bill originated, and appropriation bills.

All bill drafting requests must be submitted to the Legislative Council staff by 5 p.m. on the fourteenth legislative day. A sponsor of a bill drafted pursuant to a timely request, but which is not delivered by the eighteenth day by the Legislative Council, shall have two legislative days after delivery to introduce the bill. No other bills except revenue and appropriation bills may be introduced after 5 p.m. on the eighteenth legislative day.

Revenue bills must be introduced by 5 p.m. on the twenty-first legislative day. Committee bills approved by the rules committee of the house in which the committee bill originated may be introduced by the fortieth legislative day. There is no time limit for introduction of appropriation bills.

Joint Resolutions affecting rules adopted in the Montana Administrative Code may be introduced and transmitted at any time during a session.

Requests for interim studies may be made by joint resolution only and may be introduced and transmitted at any time during a session.

[TO BE EFFECTIVE if these rules are adopted as temporary rules of the 47th Legislature:

6-7. Bills may be introduced until 5 p.m. on the fourteenth legislative day, except revenue bills, committee bills approved by the rules committee of the house in which the committee bill originated, and appropriation bills.

All bill drafting requests must be submitted to the Legislative Council staff by 5 p.m. on the tenth legislative day. A sponsor of a bill drafted pursuant to a timely request, but which is not delivered by the fourteenth day by the Legislative Council, shall have two legislative days after delivery to introduce the bill. No other bills except revenue and appropriation bills may be introduced after 5 p.m. on the fourteenth legislative day.

Revenue bills must be introduced by 5 p.m. on the twenty-first legislative day. Committee bills approved by the rules committee of the house in which the committee bill originated may be introduced by the fortieth legislative day. There is no time limit for introduction of appropriation bills.

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Joint Resolutions affecting rules adopted in the Montana Administrative Code may be introduced and transmitted at any time during a session.

Requests for interim studies may be made by joint resolution only and may be introduced and transmitted at any time during a session.]

6-8. No bill may be introduced or received in a house after that house has finally rejected a bill during that session designed to accomplish the same purpose save upon approval by the rules committee of the house in which the bill is offered for introduction or reception.

Failure to override a veto does not constitute final rejection.

6-9. At least three-fourths of a standing committee must consent to the introduction of a committee bill. Bill drafting requests for committee-sponsored bills must be received by the Legislative Council staff by 5 p.m. on the thirty-eighth legislative day and require three-fourths vote by the committee.

C. First Reading and Commitment

6-10. No motion affecting a bill is in order on its first reading except as provided in Joint Rule 6-6.

Upon introduction or reception of a bill, the chief clerk of the House or the secretary of the Senate shall publicly post upon a listing that bill by a summary of its title in the house of origin and by a summary of its title and by its history in the second house, together with a notation of the committee to which it has been assigned, and such posting shall constitute the first reading of the bill.

6-11. No bill shall be considered or become a law unless referred to a committee and returned therefrom.

6-12. Upon introduction or reception of a bill, it shall be referred to a committee by the presiding officer.

6-13. A bill may be recommitted at any time before its passage.

D. Amendments and Substitute Bills

6-14. No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be reenacted and published at length.

6-15. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

6-16. A committee may recommend that every clause in a bill be changed and that entirely new matter be substituted so long as the new matter is relevant to the title and subject of the original bill. A substitute bill shall be considered as an amendment and not as a new bill.

6-17. The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the bill following the enacting clause and to substitute the new bill, recommending also any necessary changes in the title. If a committee report recommending a substitute for

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a bill originating in the other house is adopted, the substitute bill shall be printed.

6-18. Amendments to a bill by the second house shall not be further amended by the house in which the bill originated, but must either be accepted or rejected. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated.

6-19. If a majority of a house adopts a recommendation for the passage of a bill originating in that house after it has been returned from a committee with amendments, not less than six hundred copies of the bill shall be printed on yellow paper with all amendments incorporated into the printed copies. If the bill has been returned from a committee without amendments, only the first sheet shall be printed on yellow paper, and the remainder of the text incorporated by reference to the preceding printed version of the entire bill. Bills referred to the bills committee of the house of origin for printing must be reported within three days unless further time is granted by that house.

E. Engrossing and Enrolling

6-20. When a bill has been reported favorably by Committee of the Whole of the house of origin and the report has been adopted, the bill shall be engrossed under the direction of the bills committee, and when reported correctly engrossed by the committee shall be placed on the calendar for third reading on the succeeding legislative day. Committee of the Whole amendments shall be included in the engrossed bill. Copies of the engrossed bill to be distributed to legislators will be reproduced on blue paper. If a bill is unamended by the Committee of the Whole, contains no clerical errors, and is neatly written, it may be engrossed without retyping, and only the first sheet shall be printed on blue paper with the remainder of the text incorporated by reference to the preceding printed version of the entire bill.

If a bill is amended by the standing committee or Committee of the Whole in the second house, the amendments will be included in a reference bill and distributed in the second house for third reading consideration. The amendments will also be reproduced and attached to the reference bill. If the bill passes on third reading, copies of the reference bill and second house amendments will be distributed in the original house.

6-21. When a bill has passed both houses it shall be enrolled under the direction of the bills committee of the house of origin. An original and two duplicate typewritten copies of the bill shall be enrolled, free from all corrections and errors, with a margin of two inches at the top and one inch on each side, with twenty-five unnumbered lines to the page. In sections amending existing statutes new matter shall be underlined, and matter stricken with a line through it shall be omitted. The typewriting shall be done with a black record ribbon, pica type, on paper eight and one-half inches wide and eleven inches long. The original and two copies of the bill shall be red lined. The history of the bill shall also be enrolled and placed in back of the bill in a white manuscript cover, upon which is written the number of the bill and the title.

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When the enrolling has been completed, the bill shall be examined by the author and the bills committee and reported correctly enrolled.

The correctly enrolled bill shall be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall announce from the rostrum, the announcement to be entered in the journal, the specific bills to be signed by him and shall designate a time when such bill shall be signed, and he shall sign the original and two copies of each bill delivered to him not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day in which event it shall be signed that day. The fact of signing shall be entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies his desire to examine the bill, he shall be permitted to do so. The bill shall then be transmitted to the other house where the same procedure shall be followed.

The original and two copies signed by the presiding officer of each house shall be presented by the bills committee to the governor. The bills committee shall take a receipt from the governor and shall report to the house the day and hour of such presentation, which shall be entered in the journal. The original shall be filed with the secretary of state. Signed copies with chapter numbers assigned pursuant to Section 5-11-204, shall be filed with the clerk of the supreme court and the Legislative Council.

F. Second Reading — Committee of the Whole

6-22. All bills, except consent calendar bills, which have been reported by a committee, accepted by the house concerned and printed, shall be posted on the calendar for consideration by Committee of the Whole. The sergeants-at-arms of the respective houses shall record the time each bill is received and the time the bill is placed on members' desks. Until the fiftieth legislative day, one day must elapse between the time a committee approved bill is placed on the members' desks and consideration by Committee of the Whole. Bills shall be arranged on the calendar in numerical order unless they are companion bills or are otherwise ordered by the house or Committee of the Whole of the house concerned.

6-23. Every bill considered in Committee of the Whole shall be read by a summary of its title and considered section by section.

All Committee of the Whole amendments shall be prepared and delivered to the clerk for reading before the amendment is voted on. The amendment form will include the date and time of the amendment.

6-24. Prior to adoption of a Committee of the Whole report, a member may move to segregate a bill. If the motion prevails, the bill remains on second reading.

6-25. When a Committee of the Whole report on a bill is rejected the bill shall remain on second reading.

6-26. Either house may resolve itself into a Committee of the Whole by approval of a motion for that purpose. So far as may be applicable, the rules governing each house shall be observed when that house resolves itself into a Committee of the Whole, except as follows:

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(1) The only motions in order are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) indefinitely postpone;

(e) pass consideration;

(f) rise;

(g) rise and report; or

(i) rise and report progress and ask leave to sit again.

(2) The committee may not appoint subcommittees.

(3) The committee may not punish its members for misconduct, but may report disorder to the house concerned.

(4) Unless otherwise prescribed by either house before going into Committee of the Whole, a member may speak as often as he is recognized and for as long each time as is allowed in debate in the particular house.

6-27. After a Committee of the Whole has been formed, the presiding officer shall appoint a chairman to preside. Upon resuming the chair, the presiding officer shall receive the report of the chairman of the committee and the house shall take action on the report.

G. Third Reading — Consent Calendar — Governor's Veto

6-28. No bill shall become a law except by vote of a majority of all the members present in each house, nor unless on its final passage the vote be taken by ayes and noes, and the names of those voting be entered on the journal (Montana Constitution, Art. V, Sec. 11(1) and (2)).

Any vote in one house on a bill proposing an amendment to the Montana State Constitution where the mathematical possibility exists of obtaining the necessary two-thirds vote of the legislature will cause the bill to progress as though it had received the majority vote.

6-29. Except for consent calendar bills, every bill shall be read three times prior to passage, either by title or by summary of title as provided in these rules. The first reading shall be as prescribed in Joint Rule 6-10; the second prior to debate in Committee of the Whole; and the third, which shall be by complete title, prior to final passage. No bill shall receive more than one reading on the same day except on the last legislative day. No amendment may be offered on the third reading.

6-30. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, and referendum measures of the legislature, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within twenty-five days

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if the legislature is adjourned, it shall become a law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members present approve the bill, it shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons therefor to the legislature as provided by law. The legislature may reconvene to reconsider any bill so vetoed.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

6-31. Upon receipt of a veto message the presiding officer shall read the message. After the reading a member may move that the governor's veto shall be overridden. A vote on the motion shall be determined by roll call. If two-thirds of the members present vote "aye" the veto is overridden. If two-thirds of the members present do not vote "aye" the veto is sustained.

6-32. If the governor returns a bill to the originating house with his recommendations for amendment, such house shall reconsider the bill under its rules relating to amendment offered in Committee of the Whole. The bill is then subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the Whole, the bill and the originating house's approval or disapproval of the governor's recommendations.

(b) If both houses approve the governor's recommendations the bill shall be returned to the governor for his reconsideration.

(c) If both houses disapprove the governor's recommendations the bill shall be returned to the governor for his reconsideration.

(d) If one house disapproves the governor's recommendations and the other house approves, then either house may request a conference committee which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report shall be returned to the governor for his reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses the governor's recommendations shall be considered not approved and the bill shall be returned to the governor for further consideration.

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H. Transmittal of Bills

6-33. Each house shall transmit to the other with any bill all relevant papers. When a house bill is transmitted from the House of Representatives to the Senate, the secretary of the Senate shall give a dated receipt for the bill to the chief clerk of the House. When a Senate bill is transmitted to the House of Representatives, the chief clerk of the House shall give a dated receipt to the secretary of the Senate.

6-34. No bills, except for appropriation bills, revenue bills and amendments considered by joint committee need to be acted upon (save for reference to a committee by the presiding officer) if transmitted from one house to the other after the forty-fifth legislative day, but shall be held pending in the house to which it is transmitted unless two-thirds of the members present and voting shall determine that the bill shall be acted upon. Amendments, except to appropriation bills and revenue bills, shall likewise be deferred for consideration if transmitted after the seventieth legislative day thereof.

A revenue bill is one which would either increase or decrease tax collections.

Appropriation and revenue bills shall be transmitted from the original house on or before the sixtieth day unless two-thirds of the members present and voting in the receiving house shall determine that the bill may be transmitted after the sixtieth day.

6-35. When a bill has received its third reading or has been rejected, the house that considered the bill shall immediately transmit it to the other house with notice of its action.

6-36. All bills reported out of a committee of the legislature having an effect on the revenues, expenditures, or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. The Legislative Council staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction, based on the Legislative Council staff recommendation.

The state budget director, in cooperation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note and shall return the same within six days, unless further time is granted by the presiding officer or committee making the request based upon a written statement from the budget director that additional time is necessary to properly prepare the note.

A completed fiscal note shall be submitted by the budget director to the presiding officer who requested it, who shall refer it to the committee considering the bill. All fiscal notes shall be printed and placed on the members' desks.

Fiscal notes shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be

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absorbed without additional funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.

A fiscal note also may be requested on a bill and on an amendment by:

(1) a committee considering the bill, or

(2) a majority of the members of the house in which the bill is to be considered, at the time of second reading, or

(3) the chief sponsor through the presiding officer.

The budget director shall make available on request to any member of the legislature all background information used in developing a fiscal note (Title 5, chapter 4, part 2, MCA).

CHAPTER 7
Committees

7-1. The committee on legislative administration of each house shall consider all matters concerned with seating, mileage and per diem, legislative employees, the control of the legislative property, and the budgeting for and expenditure of appropriations for the operation of the legislature, in cooperation with the Legislative Council staff.

7-2. A standing committee shall submit a written report in triplicate on all bills or matters referred to it within seven days after reference, unless at the request of the committee and for good cause shown, further time is granted by the house concerned.

7-3. If the members of a committee cannot agree on a report, the majority and minority of the committee present at a committee meeting may submit separate reports. Only one minority report may be submitted. Such reports shall be entered at length on the journal, unless otherwise ordered by the house concerned.

7-4. All committees and subcommittees shall keep minutes of their meetings and, at the close of the session, shall make five complete copies and shall turn the original of the minutes over to the chief clerk of the House or secretary of the Senate for delivery to the historical society. The majority and minority leader of each house and the Legislative Council shall each be given one copy of the minutes.

7-5. The committee on bills and journal, the rules committee, and conference committees may report at any time, except during a call of the house or when a vote is being taken. Reports from the bills and journal committee shall stand approved without formal action.

7-6. All bills providing for an appropriation of public money may first be considered by a joint committee composed of the members of the Senate Committee on Finance and Claims and the House Committee on Appropriations, and then by each separately. Meetings of the joint committee shall be held upon call of the chairman of the House Committee on Appropriations who shall be chairman of the joint committee.

7-7. The chairman of each committee has general control and direction of the hall and committee room of the committee over which he presides,

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subject to the control of the presiding officer under Rule 1-3. Except as provided in Joint Rule 7-6, the chairman of the Senate committee shall be chairman of all joint committees.

7-8. If either house requests a conference and appoints a committee for the purpose of discussing an amendment on which the Senate and the House of Representatives cannot agree, the other house shall appoint a committee consisting of the same number of members. The time and place of all conference committee meetings shall be agreed upon by their chairman and be announced from the rostrum. This announcement is in order at any time. Failure to make this announcement shall not affect the validity of the legislation. The conference committees, having conferred, shall report to their respective houses the result of their conference. A conference committee shall confine itself to the disputed amendment.

If either house requests a free conference committee and the other house concurs, appointments will be made the same as above. A free conference committee may discuss a bill in its entirety and is not confined to a particular amendment.

7-9. In joint committees other than conference committees, members vote individually and not by houses. Because conference committees are joint meetings of separate committees, in conference committees the committees from each house vote separately, and a majority of each committee must agree before any action may be taken.

7-10. Conference committee reports must give clerical instructions for enrolling by referring to the reference bill version.

When a conference committee report is filed with the secretary or clerk the same shall be read under Order of Business No. 3, select committees, and placed on the calendar for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day. On the final legislative day a conference committee report shall be placed on the calendar for immediate consideration on second reading and shall be further considered on third reading the same legislative day.

7-11. Accredited press representatives may not be excluded from any public legislative meeting or hearing and may not be prohibited from taking photographs, televising, or recording the committee or house hearings, subject to the discretion of the presiding officer in all matters of decorum and order.

7-12. A committee block scheduling system will be implemented in the Senate and House of Representatives. The schedule will be coordinated between houses and will be adjusted according to the legislature's work load.

CHAPTER 8
Rules and Journal

8-1. Each house shall keep a journal of its proceedings, and may, in its discretion, from time to time, publish the same, and the ayes and noes on any question shall, at the request of any two members, be entered on the journal.

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8-2. The proceedings of each house which shall be entered on its journal include:

(1) the number of each bill when it is introduced and subsequently considered; the title of each bill shall be printed in the index of the permanent journals.

(2) every motion and the name of the member making it;

(3) proposed constitutional amendments which have been voted for by two-thirds of the members (Montana Constitution, Art. XIV, Sec. 8);

(4) committee reports;

(5) roll call votes;

(6) messages from the governor and the other house;

(7) an entry of the oath taken by the members (Sec. 5-2-214, MCA).

8-3. The bills and journal committee of each house shall supply the Legislative Council with the contents of the daily journal to be programmed on automated equipment, examine its journal, distribute a daily journal to all legislators, correct any errors, and report each legislative day immediately after roll call.

8-4. The journal of the Senate must be authenticated by the signature of the president, and the journal of the House of Representatives by the signature of the speaker. The distribution of the completed journals shall be made by the Legislative Council (Sec. 5-11-201 through 5-11-203, MCA).

8-5. (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any rules committee report recommending a change in joint rules shall be referred to the other house for concurrent action. Any new rule or any change in the rules of either house shall be transmitted to the other house for informational purposes.

8-6. Mason's Manual of Legislative Procedure governs the proceedings of the Senate and House of Representatives in all cases not covered by these rules.

8-7. The Legislative Council shall codify and publish in one volume the rules of the Senate, the rules of the House of Representatives and the joint rules of the Senate and House of Representatives. Upon adoption, the secretary of the Senate and the chief clerk of the House of Representatives shall provide the office of the Legislative Council with one copy of all motions or resolutions amending Senate, House or joint rules, and with copies of all minutes and reports of the rules committees. After the rules have been published, the Legislative Council shall distribute copies as directed by the Senate and House of Representatives.

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8-8. Pursuant to the authority established in Sections 5-11-211 through 5-11-214, the following fee schedule is established for the legislative proceedings:

One complete set of the proceedings of any regular session, $240; an additional $150 is required for mailing.

One complete set of the proceedings of any special session, $25.

Single copies of bills, resolutions, amendments, status sheets, or other documents may be purchased according to the length of the document as follows:

1-5 pages	$ .25
6-15 pages	$ .50
16-40 pages	$1.00
41-100 pages	$1.50
101-200 pages	$2.00
Over 200 pages	$4.00
Copies of enacted bills	cost of reproduction.

CHAPTER 9
Voting Procedure

9-1. Except as provided in Joint Rule 9-2, every member present when a question is put shall vote unless the house of which he is a member excuses him.

9-2. A member who has a personal or private interest in any measure or bill proposed or pending before the legislature shall disclose the fact to the house of which he is a member.

9-3. Amendments to the constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members of the legislature, the amendment shall be deemed approved by the legislature (Montana Constitution, Art. XIV, Sec. 8).

9-4. When a measure requiring the concurrence of two-thirds of the members is under consideration, a majority vote is sufficient to decide any question relating to the measure short of third reading.

9-5. A roll call vote shall be taken on the request of two members, if the request occurs before the vote is taken.

9-6. On a roll call vote the names of the members shall be called alphabetically, unless an electrical voting system is used. A member may not vote or change his vote after the decision is announced from the chair. A member may not explain his vote until after the decision is announced from the chair.

9-7. (1) On third reading the question shall be stated as follows: "Senate (or House) bill number..... having been read three several times, the question is, shall the bill pass (or be concurred in)."

(2) If an electrical voting system is used the presiding officer shall ring the bell after stating the question and then state "Those in favor vote yea and those opposed vote no." After a reasonable pause the presiding officer

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asks "Has every member voted?" (reasonable pause) "Does any member wish to change his or her vote?" (reasonable pause) "The clerk (secretary) will now record the vote."

9-8. Two members may pair on a measure that will be determined by a majority vote. On a measure requiring a two-thirds vote for adoption three members may pair, with two members for the measure and one member against. Pairing is permitted only when one of the paired members is absent when the vote is taken.

9-9. An agreement to pair must be in writing and dated and signed by the members agreeing to be bound, and must specify the duration of the pair. When an agreement to pair is filed with the secretary of the Senate or chief clerk of the House of Representatives, it shall bind the members signing until the expiration of time for which it was signed, unless the paired members sooner appear and ask that the agreement be cancelled.

9-10. Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in Committee of the Whole shall be recorded and made public. On final passage of any bill or joint resolution the vote shall be taken by ayes and noes and the names entered on the journal. A roll call vote shall be taken on nonsubstantive questions on the request of two members, who may likewise on any vote, request that the ayes and noes be spread upon the journal. Roll call votes and other votes which are to be made public but are not specifically required to be spread upon the journal shall be entered in the minutes of the appropriate committee or of the appropriate house and a copy of such minutes shall be filed with the Montana state historical society (Montana Constitution, Art. V, Sec. 11(2)).

CHAPTER 10
Consent Calendar

10-1. Noncontroversial bills and simple and joint resolutions qualifying for the consent calendar may be processed by a standing committee according to the following provisions:

(1) To be eligible for the consent calendar, the legislation must receive unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. No appropriation or revenue bills may be recommended for the consent calendar.

(2) The legislation is then sent to printing to be prepared as a third reading version and specifically marked as a "consent calendar" item.

(3) Legislation shall be immediately posted (as soon as it is received from printing) on the consent calendar and must remain there for one legislative day before consideration under Order of Business No. 11, Special Orders of the Day. At that time, the presiding officer will announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate will be allowed.

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(4) Any three members may submit written objections and the legislation must then be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be voted on following third reading.

(6) Legislation on the consent calendar will be voted on individually with the roll call vote printed in the journal as the final vote on those bills and resolutions.

(7) Legislation passed on the consent calendar will then be transmitted to the second house.

CHAPTER 11
Statement of Legislative Intent

11-1. Definition. For the purpose of compliance with the Legislative History Act (Title 5, chapter 4, part 4, MCA), a statement of legislative intent regarding a bill is an expression of common understanding on the part of a group of members who constitute a formal component of the legislature and who sit together in consideration of the bill, e.g., a standing committee, a Committee of the Whole, or a conference committee. This statement differs from a purpose clause which is a section of the bill and, if enacted, reflects the assent of a majority of each house. In general, a purpose clause is used to describe the broad overall objectives of a bill while a statement of intent is used to guide the details of interpretation by those charged with implementation of the bill and is phrased in terms of contingencies, examples, or other matter inappropriate for expression as statutory language.

11-2. Limitation. A statement of intent may not be construed as reflecting the intent of any member other than the members of the component preparing the statement, unless the statement accompanies the bill as provided in Joint Rule 11-3.

11-3. Statement of intent to accompany bill — when — how. When a component of the legislature desires to write a statement of intent for the consideration of the rest of the legislature, the statement shall accompany the bill as follows:

(1) A standing committee in the house of origin, having considered the bill and recommending that it do pass, may write a statement of intent and file it with the standing committee report. The statement shall be printed on gray paper and attached to the second reading copy and all subsequent printings of the bill, or shall be separately duplicated and placed on the desks of all members of the house of origin prior to second reading consideration and thereafter printed on gray paper attached to the bill.

(2) The Committee of the Whole in the house of origin may adopt by motion a statement of intent on any bill before it. The statement shall be printed on gray paper and attached to the third reading copy and all subsequent printings of the bill.

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(3) A standing committee or the Committee of the Whole in the second house considering a bill may adopt by motion a statement of intent. A statement by a standing committee shall be printed on a pink or green committee report sheet, whether or not the committee proposes amendments to the bill, and shall accompany the bill in that form during second reading consideration in the second house. A statement so adopted by a standing committee, or a statement adopted by the Committee of the Whole, shall thereafter be printed on gray paper and attached to the reference bill following third reading passage in the second house.

(4) A free or regular joint conference committee may write a statement of intent on a bill before it and file the same with its report, to be duplicated and placed upon the desks of all members prior to voting on the conference report.

11-4. Modification of statement of intent. A statement of intent printed on gray paper to accompany a bill shall be numbered by page and line. The text shall not be subject to amendment by deletion or insertion, but any provision thereof is subject to being superseded by a later statement of intent. The form of such modifying statement of intent is substantially as follows:

Paragraph ... of the statement of intent of the ... Committee on ..., at page ..., lines ... through ... on the legislative intent sheets, is superseded by the following:

(text)

(Component)
(e.g., Committee on....)

11-5. Conference committee on intent only. When the second house concurs in a bill without amendments but adopts or modifies a statement of intent on the bill, the bill may not be enrolled until the house of origin has accepted such statement of intent by majority vote on Order of Business No. 5. A regular conference committee may be appointed solely to resolve differences of intent if the second house's statement of intent is not so accepted.

Approved January 16, 1979.

SENATE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF INVESTMENTS TO PARTICIPATE WITH THE FARMERS HOME ADMINISTRATION IN FARM OWNERSHIP LOANS.

WHEREAS, agriculture is the backbone of Montana's economy and a vital element of the state's political and social well-being; and

WHEREAS, many Montanans desiring to begin a ranching or farming operation are prevented by the rapidly accelerating costs of agricultural

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land and equipment and by the lack of capital for farm ownership loans and the high interest thereon; and

WHEREAS, the Farmers Home Administration is an important source of farm ownership loans for Montanans entering agriculture; and

WHEREAS, the Farmers Home Administration is limited, by its lack of funds, in the number of farm ownership loans it can make and Montana applicants must wait up to 2 years for loans; and

WHEREAS, the Farmers Home Administration seeks state agencies to participate in making farm ownership loans; and

WHEREAS, these participation loans are very secure in that the participating agency holds the first mortgage; and

WHEREAS, these participation loans are a trouble-free investment because Farmers Home Administration staff evaluates and services the loan; and

WHEREAS, these loans offer an interest rate equal to many investments currently held by the Board of Investments; and

WHEREAS, Montana statutes allow the Board of Investments to invest most state funds under its management in first mortgages and participations in first mortgages on unencumbered real property; and

WHEREAS, the Board of Investments currently invests state funds in mortgages on residential property but not in mortgages on agricultural land.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature urges the Board of Investments to actively seek participation agreements with the Farmers Home Administration and invest part of the state funds under its management in farm ownership loans that will give the state a first lien on the real estate.

BE IT FURTHER RESOLVED, that the Legislature urges the Board of Investments to expedite its review of such investments in view of their secure nature.

BE IT FURTHER RESOLVED, that the Legislature requests the Board of Investments to report annually to the Legislature on the number and amount of participation loans for farm ownership it has made during the preceding year.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Governor and the members of the Board of Investments.

Approved April 18, 1979.

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SENATE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF INVESTMENTS TO PURCHASE MORE SMALL BUSINESS ADMINISTRATION AND FARMERS HOME ADMINISTRATION GUARANTEED LOANS.

WHEREAS, Small Business Administration and Farmers Home Administration loans offer important assistance to Montana citizens starting or expanding their businesses and farms and ranches; and

WHEREAS, small businesses strengthen Montana's economy by providing new jobs, increased tax base, and new life in communities; and

WHEREAS, small businesses afford Montana citizens an opportunity to use initiative, creativity, and hard work in creating an independent way of life; and

WHEREAS, the number of Small Business Administration and Farmers Home Administration loans made in Montana can be increased by the ready availability of a secondary market for the guaranteed portion of the loan; and

WHEREAS, Montana law allows the Board of Investments to invest all state funds in securities fully guaranteed by the Small Business Administration and Farmers Home Administration; and

WHEREAS, loans guaranteed by the Small Business Administration and Farmers Home Administration are risk free and offer a high rate of return; and

WHEREAS, Montana financial institutions sell most of their Small Business Administration and Farmers Home Administration guaranteed loans to out-of-state firms; and

WHEREAS, these financial institutions are reluctant to offer Small Business Administration and Farmers Home Administration guaranteed loans to the Board of Investments because of its cumbersome and time-consuming policies.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature urges the Board of Investments to modify its policies in regard to the purchase of Small Business Administration and Farmers Home Administration guaranteed loans so that:

(1) the board will no longer investigate the credit worthiness of Small Business Administration and Farmers Home Administration loans, since their repayment is fully guaranteed by the federal government;

(2) the board will simplify its procedures for purchasing Small Business Administration and Farmers Home Administration guaranteed loans; and

(3) the board will actively seek out and purchase more Small Business Administration and Farmers Home Administration guaranteed loans,

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including short-term Small Business Administration loans not secured by real property, with the state funds under its management.

BE IT FURTHER RESOLVED, that the Legislature requests the board to report to the Legislature prior to each session on the number and amount of Small Business Administration and Farmers Home Administration guaranteed loans purchased during the preceding year.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Governor and the members of the Board of Investments.

Approved April 20, 1979.

SENATE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE COMPLETION OF THE REREGULATING DAM ON THE KOOTENAI RIVER.

WHEREAS, construction of the reregulating dam on the Kootenai River below Libby Dam will enhance the recreational and fishery values of the Kootenai River; and

WHEREAS, the Legislature during the 1977 session passed Senate Joint Resolution No. 20 urging that the reregulating dam be designed and built to regulate river flows; and

WHEREAS, a considerable economic commitment to construction of the reregulating dam has already been made.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Senate and the House of Representatives of the state of Montana request the Army Corps of Engineers and other affected federal agencies to expedite the construction of the reregulating dam and urge that the design be based on regulation of river flows so as to enhance the recreational and fishery values of the Kootenai River, provided the construction is permitted by the federal courts.

Approved April 6, 1979.

SENATE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF LABOR AND INDUSTRY, EMPLOYMENT SECURITY DIVISION, TO PROVIDE THE LEGISLATIVE AUDITOR WITH QUARTERLY REPORTS ON THE NUMBER OF CASES AND RESULTS OF REVIEWS AND INVESTIGATIONS OF UNEMPLOYMENT COMPENSATION CLAIMS.

WHEREAS, the Unemployment Compensation Fraud Detection Program has undergone recent internal changes in claims review and investigation processes; and

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WHEREAS, these changes have resulted in a commendable number of cases being recommended for prosecution to county attorneys; and

WHEREAS, this level represents a sharp contrast with previous levels of referrals for prosecution, which contrast has caused some concern among legislators and others as to the need for monitoring the fraud detection program; and

WHEREAS, the Legislature feels the fraud detection program is sufficiently important as to require continued monitoring.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature requests the Employment Security Division to report to the Legislative Auditor concerning the number of cases being reviewed, investigated, or referred for prosecution on a quarterly basis.

Approved March 15, 1979.

SENATE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE UNITED STATES CONGRESS TO PROVIDE FOR A SPECIAL EXEMPTION FROM EMISSION REQUIREMENTS FOR VEHICLES USED PREDOMINANTLY IN FIRE-PRONE AREAS.

WHEREAS, stricter air pollution requirements will apply to light-duty pickup trucks and vans in the 1979 model year; and

WHEREAS, such vehicles must be equipped with catalytic converters in order to economically meet these stricter emission standards; and

WHEREAS, catalytic converters operate at very high temperatures and have the potential to cause fires when in contact with dry vegetation; and

WHEREAS, many trucks and vans sold in the Western States are used in locations, including grasslands, brushlands, and forest areas, which are subject to fire danger; and

WHEREAS, such fire hazard represents a threat to valuable grazing and forest areas of the United States.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Congress is strongly and most emphatically urged to provide for a special exemption from emission requirements for vehicles used predominantly in fire-prone areas.

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BE IT FURTHER RESOLVED, that this body finds that an exemptive action is necessary to safeguard valuable natural resources from fire danger.

BE IT FURTHER RESOLVED, that the Secretary of State shall send a copy of this resolution to the Montana Congressional Delegation.

Approved March 23, 1979.

SENATE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA GRANTING AUTHORITY TO THE DEPARTMENT OF LABOR AND INDUSTRY, DIVISION OF WORKERS' COMPENSATION, TO CONSTRUCT AN OFFICE BUILDING FOR THE USE OF THE DEPARTMENT OF LABOR AND INDUSTRY.

WHEREAS, the Department of Labor and Industry presently consists of six divisions with six different locations, five of which are in five different rental facilities; and

WHEREAS, the scattering of the department's responsibilities in these separate locations creates many management problems and inefficiencies which can be resolved with a combined facility; and

WHEREAS, the Division of Workers' Compensation completed a study to determine the feasibility of utilizing a portion of state compensation insurance fund trust money to be placed in the investment of a building using funds that are now invested in corporate bonds and other securities and has found that such a long term investment is prudent, reasonable, meets with the approval of the state fund's consulting actuarial firm, and would provide an adequate return to the state fund; and

WHEREAS, using a present value economic analysis, it was determined that substantial savings could be realized by the five divisions now in rental facilities, and the construction of a new facility is cost effective when compared to continual leases; and

WHEREAS, in the study it was concluded that, in addition to a sound monetary investment, such a building would provide efficient and effective public access to department programs and personnel; energy conservation through modern efficient heating and cooling systems; the discontinuance of the need to transfer records between five rental facilities; the opportunity to consolidate certain in-house services including mail facilities, receptionists, telephone systems, accounting, and purchasing; improved department communications and personnel procedures; and a better utilization of personnel.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Labor and Industry, Division of Workers' Compensation, is given legislative approval if the board of investments, in

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upholding its duties under 17-6-201, concurs, under the supervision and review of the Department of Administration pursuant to Section 18-2-103, MCA, to construct a consolidated facility in Helena, Montana, utilizing state compensation insurance fund trust money, to be used to house all Department of Labor and Industry divisions, except the Employment Security Division.

Approved April 25, 1979.

SENATE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE MONTANA ARTS COUNCIL TO INITIATE A PROGRAM OF COMMEMORATIVE WALL NICHES IN THE STATE CAPITOL.

WHEREAS, there are 14 wall niches in the State Capitol on the second floor; and

WHEREAS, these niches are perfect places to pay tribute to outstanding Montanans; and

WHEREAS, we could place into these niches photographs of outstanding Montanans, together with a resume of their accomplishments.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Montana Arts Council act as a committee to select the persons to be commemorated in these niches.

(2) That the Montana Arts Council be appropriated sufficient funds for the necessary lighting, photographs, frames, and administration of the program.

(3) That the Montana Arts Council may change its initial selection from time to time.

(4) That the Montana Arts Council coordinate their decisions with the plans of the Long-Range Planning Committee.

Approved March 13, 1979.

SENATE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING PRESIDENT CARTER AND THE UNITED STATES CONGRESS TO RAISE COMMODITY LOAN AND TARGET PRICES TO PARITY LEVELS.

WHEREAS, the United States is currently faced with the serious problems of inflation, unemployment, balance of payment deficit, and the sinking value of the dollar; and

WHEREAS, every dollar earned from agricultural production accounts for $7 added to the gross national product as it changes hands from the farmer to the retailer to the wholesaler to the manufacturer to labor, etc.; and

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WHEREAS, a prosperous nation must constantly extract new wealth from the earth to provide the basic necessities of food, clothing, and housing; and

WHEREAS, every time a raw agricultural product is sold for 50% of parity, the USGNP gains only half as much purchasing power as it should gain; and

WHEREAS, since 1950, the last time agriculture received 100% of parity for any extended period of time, the people of the United States have chosen to go into debt rather than reduce their standard of living to match the available money; and

WHEREAS, we have kept unemployment from rising to disastrous levels by the injection of credit and expanded public and private debt; and

WHEREAS, dollars supplied to the economy by increasing the federal debt are not as beneficial as dollars supplied by the sale of raw materials due to the fact that raw material dollars provide cash to pay debts, and deficit dollars are a debt in and of themselves commanding ever higher interest rates.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That President Carter and the United States Congress are urged to examine the reasons for our present economic distress and move to alleviate our dollar shortage by requiring adequate compensation for the harvest of new wealth from the earth rather than relying on a system of ever-increasing debt expansion.

(2) That President Carter and the United States Congress are urged to immediately raise commodity loan and target prices to near parity levels, as they were during and following World War II, as a result of the Steagall Amendment.

BE IT FURTHER RESOLVED, that copies of this Resolution be sent to the President of the United States, the United States Secretary of Agriculture, and Montana's Congressional Delegation.

Approved March 29, 1979.

SENATE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THAT THE FINANCIAL PLIGHT OF LINCOLN SCHOOL DISTRICT IN LEWIS AND CLARK COUNTY BE EVALUATED BY CERTAIN PUBLIC INTEREST GROUPS, THE STATE OF MONTANA, AND THE FEDERAL GOVERNMENT AND A SATISFACTORY SOLUTION BE ACHIEVED IN ORDER TO PROVIDE THE EDUCATIONAL FACILITIES FOR SUCH SCHOOL DISTRICT NECESSITATED BY DESTRUCTION BY FIRE OF FORMER FACILITIES AND TO PROVIDE FUTURE ASSISTANCE TO SIMILARLY SITUATED SCHOOL DISTRICTS.

WHEREAS, Lincoln School District in Lewis and Clark County is deeply in need of educational facilities as a result of destruction by fire of the former facilities utilized for educational purposes; and

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WHEREAS, the cost of construction of replacement facilities may exceed $500,000; and

WHEREAS, the tax base of the school district is such that only $380,000 could be generated under the school district's borrowing capacity because of the following factors:

(1) Lincoln School District contains 669 square miles of land, of which 82% is owned by the federal, state, or local governments, and the remaining 18% is owned by the private sector;

(2) the assessment value of all private property in Lincoln School District is $1,323,081, which provides a borrowing capacity of $384,693, including the existing indebtedness of $4,000; and

(3) the school district share of United States Forest Service funds generated by timber sales, grazing fees, land-use fees, recreation charges, utility fees, mineral revenues, and admission and user fees on National Forest Service land is negligible, as evidenced by the school district receipt of $500 out of a recent $49,000 United States Forest Service payment to Lewis and Clark County; and

WHEREAS, the population of the school district greatly warrants educational facilities within the school district, there being 759 permanent residents, including 186 children who are 18 years of age or younger, in 1977; and

WHEREAS, the degree of isolation of Lincoln School District from adjacent school districts with adequate educational facilities necessitates construction of educational facilities within Lincoln School District.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the financial plight of Lincoln School District in Lewis and Clark County be evaluated by the state of Montana and the federal government and a satisfactory solution be achieved in order to provide replacement facilities for the educational facilities destroyed by fire in Lincoln School District and to provide future assistance to similarly situated school districts which, because of inadequate tax bases, are incapable of independently financing needed educational facilities.

BE IT FURTHER RESOLVED, that the citizens of this state be urged to offer assistance through monetary contribution to Lincoln School District.

BE IT FURTHER RESOLVED, that public interest groups and citizens that benefit from the preservation of the scenic beauty of the Lincoln area recognize the burden imposed upon the residents of Lincoln School District in the preservation of that beauty by suffering limited revenue from resources available in abundance upon the federal lands within the district and that such public interest groups and citizens be urged to contribute monetarily to defray the expense of maintaining the natural scenic beauty of the land in Lincoln School District.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the publisher of each newspaper in the state, the

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United States Congressional Delegation from Montana, the United States Congress, the Secretary of the Department of Health, Education, and Welfare, the Secretary of the Interior, and the Regional Chairman of the Federal Regional Council for Region VIII.

Approved March 10, 1979.

SENATE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE CONGRESS OF THE UNITED STATES TO ACT IMMEDIATELY TO RESOLVE THE UNCERTAINTIES SURROUNDING LAND PROPOSED AS WILDERNESS, DISCOURAGE DELAY, AND TO REQUIRE AN IN-DEPTH ANALYSIS BEFORE ANY DECISION IS FINALIZED.

WHEREAS, wilderness studies are now being conducted on over 300 million acres of public land in Alaska and the lower 48 states by Congress, the United States Forest Service, Bureau of Land Management, Fish and Wildlife Service, and National Park Service; and

WHEREAS, those lands being studied for wilderness in Montana have a direct relationship on state and private land management, community stability, and growth; and

WHEREAS, under current federal management guidelines, other resource uses will be prohibited indefinitely as long as the wilderness studies are being conducted on these lands; and

WHEREAS, in order to satisfy the needs of those sectors dependent on uses other than wilderness, unwarranted pressures will be placed on the state and private lands; and

WHEREAS, Montana's basic industries depend on multiple use of all lands in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States is requested to act immediately to:

(1) resolve the uncertainties surrounding the future of those public lands proposed for instant wilderness under RARE II and those under study for wilderness;

(2) discourage legal and administrative delays or interference regarding the appropriate agency's decision for management of those lands under their jurisdiction;

(3) require that a complete social economic analysis precede any decision to delay management of all resources during a study period longer than 1 year; and that prior to setting aside a specific area for wilderness,

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a thorough analysis of the short-term/long-term economic effects of such action be made public.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Montana Congressional Delegation and to the United States Secretaries of Agriculture and Interior.

Approved March 22, 1979.

SENATE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING THE CONGRESS OF THE UNITED STATES TO REJECT ANY LEGISLATION THAT WOULD AMEND THE McCARRAN-FERGUSON INSURANCE REGULATION ACT.

WHEREAS, the 1945 McCarran-Ferguson Insurance Regulation Act (15 U.S.C. 1011-1015) states that Congress declares that the continued regulation and taxation by the several states of the business of insurance is in the public interest; and

WHEREAS, the states have encouraged and required continued improvement in insurance coverages and the provision of insurance at reasonable rates; and

WHEREAS, the states have continually reviewed, revised, and modernized their approach to regulation in an effort to assure the availability of effective, low-cost insurance; and

WHEREAS, the insurance business is very competitive, and competition has led to a wide variety of insurance organizations that serve the diverse needs of the public; and

WHEREAS, federal regulations increase the cost of government and ultimately increase the cost of products and services that consumers purchase; and

WHEREAS, there is no conclusive evidence that federal regulation of the insurance industry will have a beneficial effect upon the industry or the public; and

WHEREAS, state regulation of the insurance industry has proven to be an effective method of control while also ensuring diverse services, competitive prices, innovation, and effective delivery of insurance services to consumers; and

WHEREAS, officials of the federal government have publicly recommended amending the McCarran-Ferguson Insurance Regulation Act so as to limit state regulation of the insurance business.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That the Legislature strongly encourages the Congress of the United States to reject any legislation that would amend the McCarran-Ferguson Insurance Regulation Act.

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded to the Secretary of the United States Senate, the Clerk of the United States House of Representatives, and to each member of Montana's Congressional Delegation.

Approved March 17, 1979.

SENATE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE GOVERNOR AND MONTANA'S CONGRESSIONAL DELEGATION TO SEEK FUNDING FOR RESEARCH CONCERNING THE INFESTATION OF FOXES AND COYOTES WITH HYDATID TAPEWORM.

WHEREAS, research by Dr. David Worley at Montana State University has identified a parasite, the hydatid tapeworm, communicable from coyotes, foxes, and other predators to human beings; and

WHEREAS, Dr. Worley's research indicates the parasite exists in approximately 35% of all foxes tested and in a vast number of coyotes; and

WHEREAS, the parasite attacks the liver of human beings and is fatal in approximately 93% of all cases; and

WHEREAS, a Minnesota man recently died from contracting the parasite; and

WHEREAS, approximately 15% of Alaskan Eskimos have contracted the dread disease from their sled dogs and approximately 40 Utahans may be infected by the parasite; and

WHEREAS, Dr. Worley's research funds do not allow an opportunity to check for the parasite in every county in Montana; and

WHEREAS, the parasite presents a clear and present danger to public health since it has been found to spread from predator to domestic animals to human beings; and

WHEREAS, Dr. Worley estimates a cost of $25,000 for a 3-year study of this problem.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That the Legislature of the state of Montana request the Governor and Montana's Congressional Delegation to seek funding for further research of the hydatid tapeworm, Dr. Worley's program being in the best interest of public health.

Approved March 22, 1979.

SENATE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CALLING UPON THE GOVERNOR AND MONTANA'S CONGRESSIONAL DELEGATION TO SEEK OUT FUNDING FOR RESEARCH AIMED AT THE ERADICATION OF WILD OATS.

WHEREAS, agriculture provides the greatest source of income to the state's economy; and

WHEREAS, agriculture provides the most consistent source of income for many Montana communities; and

WHEREAS, any problem which directly affects the productivity of Montana's agricultural industry is counter to the best interests of the state; and

WHEREAS, wild oats now affects the productive capacity of over 3 million acres in Montana, causing an annual loss of $22 million; and

WHEREAS, research by Dr. David Strobel at Montana State University indicates a possibility of eradicating wild oats in Montana and other western states; and

WHEREAS, such pathogenic development, without use of chemicals and herbicides now under restraint by the United States Environmental Protection Agency, could lead to further development of pathogenic toxins to eradicate other noxious weeds that affect the productive capacity of Montana's agricultural lands; and

WHEREAS, Dr. Strobel has indicated that his research could be completed in 3 years at a cost of $25,000.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the funding of research on wild oats eradication would be in the best interests of Montana and its agricultural community.

BE IT FURTHER RESOLVED, that the Legislature of the state of Montana requests that the Governor and the Montana Congressional Delegation seek out and provide such funding as expeditiously as possible.

Approved March 15, 1979.

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SENATE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING AN AMENDMENT TO RULE 40-3.98(6)-S9885 OF THE ADMINISTRATIVE RULES OF MONTANA TO DELETE THE REQUIREMENT THAT WHEN A FRANCHISE NAME IS USED, A REAL ESTATE BROKER/FRANCHISEE'S NAME MUST CONSTITUTE AT LEAST 50% OF THE ENTIRE COMBINED SURFACE AREA COVERED BY BOTH THE BROKER'S NAME AND THE FRANCHISE NAME OR LOGOTYPE.

WHEREAS, the Board of Real Estate has adopted a rule regulating real estate franchising; and

WHEREAS, the rule includes a requirement that when the franchise name is used, the real estate broker/franchisee's name must constitute at least 50% of the entire combined surface area covered by both the broker's name and the franchise name or logotype; and

WHEREAS, this requirement blatantly exceeds the board's statutory authority to prevent misleading advertising since the requirement is in no way reasonably necessary to effectuate that purpose; and

WHEREAS, the requirement is highly questionable under the right of free speech guaranteed by the First Amendment of the United States Constitution; and

WHEREAS, the requirement results in unreasonable costs to real estate franchisees and franchisors; and

WHEREAS, the other provisions of the rule, together with the Real Estate License Act itself, are sufficient to prevent misleading advertising.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Board of Real Estate is directed to amend ARM 40-3.98(6)-S9885, subsection 5.b, to read:

"b. incorporate in the franchise name and logotype, his own name; and"

Approved March 15, 1979.

SENATE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONCERNING IMPORTED MEATS; URGING THE UNITED STATES CONGRESS TO ADOPT LEGISLATION CONCERNING THE IMPORTATION OF MEAT FROM OUTSIDE THE UNITED STATES.

WHEREAS, presidential action to again open quotas on imported meats has created a hardship on Montana producers as well as those of other states; and

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WHEREAS, at the urging of the United States Department of Agriculture and other federal agencies, the livestock producers have trimmed their herds to an artificially low level in an attempt to maintain price stability; and

WHEREAS, the livestock producer is yet in the arduous process of regaining economic stability after 4 years of severe price depression; and

WHEREAS, importation of meats creates unfair and governmentally induced and sponsored competition between foreign producers and domestic producers.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature petitions the Congress of the United States to:

(1) cause legislation to be implemented requiring all imported meats in any form to be clearly and conspicuously labeled in large letters as being from outside the United States;

(2) cause legislation to be implemented requiring the inspection of foreign meats to insure that foreign meats are of the same standard and quality as domestic meats;

(3) cause legislation to be implemented creating countercyclical quotas and prior notification of future import levels at a reasonable time in advance of such importation.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Montana Congressional Delegation and to the United States Secretary of Agriculture and to the International Trade Commission.

Approved March 15, 1979.

SENATE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA SUPREME COURT TO APPOINT LAYMEN TO THE COMMISSION ON PRACTICE AND TO REQUIRE THE COMMISSION TO REPORT BIENNIALLY TO THE LEGISLATURE.

WHEREAS, the Legislature believes that absolute public confidence in all professions must be maintained; and

WHEREAS, the Legislature believes that public confidence in the legal profession would be improved if laymen participated in the investigation of complaints against attorneys and in disciplinary proceedings.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That the Supreme Court of the state of Montana is urged to appoint laymen to the Commission on Practice as soon as possible.

BE IT FURTHER RESOLVED, that the Supreme Court of the state of Montana is urged to require the Commission on Practice to submit a report to the Legislature each year the Legislature meets in regular session and to require that the report contain the following information:

(1) identification of each complaint received by the commission during the preceding biennium by a separate number that in no way reveals the identity of the attorney complained against;

(2) the date each such complaint was filed;

(3) the general nature of each such complaint;

(4) whether there have been previous complaints against the same attorney and, if so, the general nature of the previous complaints;

(5) the present status of all complaints filed with or pending before the commission during the preceding biennium; and

(6) whenever a final disposition of a complaint has been made during the preceding biennium, the nature of the disposition, the commission's recommendation to the Supreme Court, and the action taken by the Supreme Court.

BE IT FURTHER RESOLVED, that the Secretary of State shall send a copy of this resolution to each Justice of the Montana Supreme Court and to the President of the State Bar of Montana.

Approved March 29, 1979.

SENATE JOINT RESOLUTION NO. 28

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO INVOLVE THE CITIZENRY OF MONTANA IN PROGRAMS ADMINISTERED BY THE DEPARTMENT RELATED TO THE RESEARCH, DEVELOPMENT, AND DEMONSTRATION OF FUELS MANUFACTURED FROM AGRICULTURAL PRODUCTS AND RESIDUES.

WHEREAS, the Department of Natural Resources and Conservation administers programs related to the research, development, and demonstration of all forms of renewable energy, including agriculturally derived fuels; and

WHEREAS, the citizenry of Montana have expressed a growing awareness and interest for the need to be involved in the research, development, and demonstration of fuels from agricultural products and residues.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That the director of the Department of Natural Resources and Conservation is requested to appoint a citizens advisory council, pursuant to 2-15-122, or an ad hoc citizens committee to assist and cooperate with the Department in implementing a program pursuant to Title 90, chapter 4, part 1, to research, develop, and demonstrate the means to use agricultural products and residues for the production of fuel. The committee shall attempt to identify and determine the most feasible technologies for producing such fuels, new crops which may increase fuel production, the legal and institutional barriers to the wide-scale use of such fuels, the most appropriate sites for any fuel production facilities, the most appropriate allocation of grant funds available, and the best means to make the produced fuels or byproducts available to the Montana consumer.

Approved March 24, 1979.

SENATE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE FISH AND GAME COMMISSION TO ADOPT A RULE LIMITING THE SIZE OF HOLE AN ICE FISHERMAN MAY CUT IN THE ICE.

WHEREAS, excessively large holes cut in the ice by ice fishermen may weaken the ice surrounding the holes, thus presenting an unreasonable danger to the person and property of others using the ice for recreational or other purposes; and

WHEREAS, overlarge ice fishing holes unreasonably and unnecessarily increase the danger of children, adults, and personal property falling through the hole itself, particularly when snow cover renders the hole a hidden danger; and

WHEREAS, the Fish and Game Commission has the authority to adopt a rule limiting the size of ice fishing holes, such authority being contained in 87-1-301(2) and 87-1-303(2).

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Fish and Game Commission is directed to adopt a rule limiting the size of hole that may be cut for fishing purposes in ice over waters under its jurisdiction to 144 square inches. The rule shall provide that this limitation does not apply to holes cut for purposes of fishing with a spear or gig when such method is authorized by rule of the Commission or Department of Fish and Game.

Approved April 18, 1979.

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SENATE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ASSIGNING THE REVENUE OVERSIGHT COMMITTEE TO CONDUCT AN INTERIM STUDY OF THE VARIOUS ASPECTS OF ALCOHOLIC BEVERAGE REGULATION IN MONTANA.

WHEREAS, the Legislature has established a comprehensive system to regulate and limit the manufacture and sale of alcoholic beverages; and

WHEREAS, the amount of revenue received from sales in state liquor stores and from taxes on alcoholic beverages and license fees is significant to state and local governments; and

WHEREAS, the public interest demands that the Legislature take responsible action to alter certain aspects of the system to meet today's marketing conditions; and

WHEREAS, there have been increasing efforts in the Legislature evidenced by the many bills introduced to alter laws governing the marketing of alcoholic beverages and the licensing of retail outlets; and

WHEREAS, the people have recently adopted by initiative a law altering the marketing system for table wine; and

WHEREAS, piecemeal changes in this system may have unexpected repercussions damaging to consumers, wholesalers, retailers, and the state; and

WHEREAS, responsible legislation can be more effectively developed through study and deliberate consideration by the Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Revenue Oversight Committee is assigned to study all aspects of alcoholic beverages regulation, including marketing, licensing, and quotas and the probable effects of changes that have been proposed. The Committee shall make its recommendations no later than September 15, 1980, and submit its report and recommendations together with implementing legislation to the 47th Legislature.

Approved April 17, 1979.

SENATE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE LABORATORY NEEDS OF THE LIVESTOCK INDUSTRY OF MONTANA.

WHEREAS, the livestock industry is a significant sector of the economy of Montana; and

WHEREAS, losses due to disease in livestock are significant and costly and can be ameliorated by an effective laboratory system.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Committee on Priorities is requested to assign to an interim committee the task of studying the laboratory needs of the livestock industry in Montana. The committee shall consist of the following, jointly appointed by the President of the Senate and the Speaker of the House:

(a) the chairman of the Board of Livestock;

(b) the president of Montana State University or a person designated by him;

(c) two Senators and two Representatives. One of the Legislators shall be appointed chairman of the interim committee.

(2) That the mileage and per diem shall be paid in accordance with standard fees paid to members of state boards, with one-half of the cost to come out of the travel funds of the Department of Livestock and one-half of the cost to come from travel funds of Montana State University.

BE IT FURTHER RESOLVED, that this committee is directed to carefully and thoroughly analyze the laboratory needs of the livestock industry in Montana as to regulatory and diagnostic procedures, applied research, and basic research functions and determine how these needs can best be met. The committee is to consider if consolidation of the animal diagnostic laboratory and veterinary research laboratory would be feasible and in the best interest of the livestock industry.

BE IT FURTHER RESOLVED, that if the committee recommends any form of consolidation it also offer suggestions on the proper method of financing the laboratory needs of the livestock industry and how the division of property between the Department of Livestock and Montana State University should be accomplished, if required.

BE IT FURTHER RESOLVED, that the committee shall invite public input and shall prepare tentative results by January 1, 1980, to present to the livestock industry and its representative groups. A final report including proposed legislation, if necessary, shall be prepared by November 1, 1980, and presented to the 47th Legislature. The Legislative Council shall be responsible for printing and disseminating the report upon its completion. Staff support for the committee shall be provided at the expense of each organization by the Department of Livestock and Montana State University.

Approved April 7, 1979.

SENATE JOINT RESOLUTION NO. 35

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE COMMITTEE ON PRIORITIES ASSIGN A JOINT COMMITTEE TO STUDY THE CHILD LABOR LAWS OF MONTANA.

WHEREAS, the Legislature recognizes that the children of Montana are Montana's most valuable resource and that all children must be protected from possible abuses in relation to child labor; and

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WHEREAS, severe abuses can result when the state does not give proper protection to children who may work in the labor market; and

WHEREAS, the present Montana child labor laws were originally passed in 1907; and

WHEREAS, there have been substantial changes in Montana's industrial society since the passage of the present Montana labor laws in 1907 and there has been substantial technical progress since that time; and

WHEREAS, the present child labor laws do not reflect the changes that have occurred in the labor market since 1907 and cannot be adequately applied to the present work environment; and

WHEREAS, the present child labor laws have limited application, exclude a substantial portion of the employers in Montana, and can lead to abuses because of these exclusions; and

WHEREAS, there are substantial conflicts and inconsistencies between the present Montana child labor laws and federal laws concerning child labor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign a joint committee to study Montana's child labor laws in relation to the present work environment and in relation to federal child labor laws and to report its findings and recommendations on proposed legislation to update and modernize the child labor laws of Montana to the 47th Legislature.

BE IT FURTHER RESOLVED, that copies of this resolution shall be sent to the Secretary of State and the Commissioner of Labor and Industry.

Approved April 12, 1979.

SENATE JOINT RESOLUTION NO. 37

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ESTABLISH AN INTERIM LEGISLATIVE IMPROVEMENT COMMITTEE TO STUDY THE FEASIBILITY OF REVISING THE LEGISLATIVE COMMITTEE STRUCTURE, ASSIGNING CERTAIN OVERSIGHT FUNCTIONS TO THE COMMITTEES, AND LIMITING THE NUMBER OF BILLS WHICH MAY BE INTRODUCED AFTER THE BEGINNING OF THE LEGISLATIVE SESSION.

WHEREAS, there has been a significant increase in the volume of legislation considered by each succeeding Legislature in the past decade, with more than 2,000 legislative drafting requests being made in the 46th Legislature; and

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WHEREAS, the Legislature finds it necessary to streamline certain current procedures in order to more effectively consider such proposed legislation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an interim legislative improvement committee be appointed to study:

(a) the committee structure in each house of Legislature to determine the feasibility of realigning general areas of responsibilities and assigning legislative oversight responsibilities to the committees;

(b) methods of limiting the number of bills requested to be drafted and requiring the drafting of legislation prior to the commencement of the legislative session.

(2) That the committee shall use House Joint Resolution No. 46 introduced in the 46th Legislature as a basis for its study.

(3) That the committee be composed of two senators appointed by the President of the Senate, two senators appointed by the Senate Minority Floor Leader, two representatives appointed by the Speaker of the House of Representatives, and two representatives appointed by the House Minority Floor Leader.

(4) That the committee may meet not more than three times during the interim preceding the 1981 legislative session. Necessary travel expenses of the committee shall be paid from the appropriation contained in House Bill No. 1 of the 46th Legislature to the Legislative Council for legislative travel, after approval as provided therein.

(5) That the committee shall present its recommendations to the pre-1981 session caucus, together with a draft of any proposed rules or amendments to joint rules necessary to implement the recommendations. It is intended that the rules committees appointed at or following the presession caucuses meet jointly prior to the convening of the 1981 session to consider the recommendations and to present such proposed rules or amendments as they approve to the 47th Legislature upon commencement for adoption on the first legislative day, along with other rules proposed for temporary adoption.

Approved April 25, 1979.

SENATE JOINT RESOLUTION NO. 38

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING ASSIGNMENT OF A STUDY OF PROBLEMS OF STATE COMPENSATION TO LOCAL GOVERNMENTS FOR STATE-OWNED PROPERTY AND TO BEGIN TO IDENTIFY STATE MANDATES TO LOCAL GOVERNMENT.

WHEREAS, the problems associated with the provision of various services by local government that benefit state-owned property has concerned local government officials over the years; and

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WHEREAS, similarly the Legislature and local governments have grappled with the problem of state services mandates to local government; and

WHEREAS, the National Conference of State Legislatures is sponsoring a State/Local Finance Project designed to assist state legislatures to deal with such questions; and

WHEREAS, should a study committee be assigned to deal with these questions, both financial and technical assistance could be available through the National Conference of State Legislatures; and

WHEREAS, model legislation is available from which to begin considering a legislative approach to these problems should that be found desirable.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an interim committee be assigned to study the problems related to state compensation for state-owned property and state mandates to local government.

(2) That the committee shall undertake the following major tasks:

(a) determine a specific outline and time frame for the project;

(b) select a representative area to sample for a state-owned property inventory;

(c) develop a method for identifying and cataloging state mandates;

(d) identify specific areas where technical assistance from the NCSL project and in-house staff can work together;

(e) conduct three meetings to outline the project, consider preliminary results, and formulate final recommendations.

(3) That the committee participate in the NCSL State/Local Finance Project.

Approved April 20, 1979.

HOUSE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA PLACING LEGISLATIVE EMPLOYEES AND ATTACHES UNDER THE DIRECTION OF THE RESPECTIVE LEGISLATIVE ADMINISTRATION COMMITTEES USING THE STATEWIDE PAY PLAN AS A GUIDE.

WHEREAS, it is necessary to establish an orderly pay plan for legislative employees and attaches which recognizes the need to compensate those employees on a similar basis to other state employees.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the following positions are classified in the grades indicated:

Grade 20
Chief Clerk of the House
Secretary of the Senate

Grade 17
Sergeant-at-arms

Grade 14
Chaplain

Grade 12
Assistant to Secretary of Senate
Assistant to Chief Clerk of House
Researcher II

Grade 11
Chief Stenographer
Bills Clerk
Journal Clerk
Senate Business Manager
Assistant Sergeant-at-arms
Assistant Senate Business Manager

Grade 10
Bills Coordinator
Assistant Chief Stenographer
Assistant Journal Clerk
Assistant Bills Clerk
Secretary
Bills Distributor
Amendments Coordinator

Grade 9
Assistant Bills Coordinator
Researcher I
Assistant Bills Distributor

Grade 8
Reading Clerk
Assistant Amendments Coordinator

Grade 7
Stenographer/Status Input Technician
Stenographer
Supply Clerk
Posting Clerk

Grade 6
Typist
Proofreader
Clerk-Typist
Status Clerk

Grade 5
Parking Attendant
Doorman

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Security Guards
Page Supervisor in the House

Grade 1 - Step 6
Page

(2) That the personal aide to Representative Gould shall be paid a salary of $900 per month;

(3) That the chief clerk of the house, secretary of the senate and sergeants-at-arms shall develop job descriptions for the positions listed which shall contain the minimum qualifications for each position. The descriptions shall be approved by the respective legislative administration committees;

(4) That the grades, steps and salaries authorized thereto are those contained in the fiscal year 1979 pay schedule approved by the 1977 legislature in House Bill 834;

(5) That all positions classified below grade 17 shall receive compensation for time worked beyond 40 hours per week at the rate of time and a half. Such overtime shall be approved by the respective legislative administration committees or their designated representatives before the overtime is worked;

(6) That positions classified at grade 17 and above shall receive a salary for 40 hours per week regardless of the number of hours worked;

(7) That the respective legislative administration committees shall determine, using the statewide pay plan as a guide, the appropriate compensation for each employee based on previous experience;

(8) That no additional benefits such as sick pay, vacation pay, state health insurance contribution or longevity allowances are authorized, and 2-18-617(2) does not apply to legislative employees;

(9) That public employees retirement system benefits shall be available at the option of the employee provided the employee pays the full employer and employee contribution;

(10) That the distinction between researcher I and II is that the higher position requires a college degree and one year of research experience;

(11) That the chaplains shall be paid for two hours per legislative day served.

Approved January 13, 1979.

HOUSE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION REQUIRING THAT PETITIONS FOR HABEAS CORPUS RELIEF IN A CRIMINAL CASE BE CONSOLIDATED INTO ONE APPEAL.

WHEREAS, each year thousands of persons are sentenced by state courts to prison for the commission of crimes; and

WHEREAS, the current law on habeas corpus actions in federal court allows each defendant to demand an individual reexamination of each

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issue in a case and there is no requirement that all such issues be raised in one appellate action; and

WHEREAS, the court system of this country is deluged with thousands of cases on appeal; and

WHEREAS, the backlog of cases causes hardships on victims and defendants alike; and

WHEREAS, excessive appeals result in the expenditure of millions of dollars in legal, investigative, and court costs and tend to thwart and defeat justice.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That we urge the Congress of the United States to give its most earnest consideration to the prompt enactment of legislation requiring that petitions for habeas corpus relief in a criminal case be consolidated into one appeal whenever the petitioner is represented by counsel or has effectively waived the right to counsel.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of Montana's Congressional Delegation.

Approved February 8, 1979.

HOUSE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE PRESIDENT OF THE UNITED STATES, THE UNITED STATES CONGRESS, AND OTHERS IN THE FEDERAL GOVERNMENT TO REFRAIN FROM FURTHER DESIGNATING WILDERNESS AREAS WITHOUT THE APPROVAL OF THE STATE AFFECTED AND REQUESTING THAT LANDS UNDER STUDY FOR WILDERNESS DESIGNATION BE RETURNED TO MULTIPLE-USE MANAGEMENT.

WHEREAS, additional acreage in the Western States is being considered for inclusion in the National Wilderness Preservation System; and

WHEREAS, the designation of large areas of the Western States as federal wilderness restricts or eliminates access by the great majority of Americans; prohibits the harvesting of mature and overmature timber essential for the building of America's homes and businesses; prevents the development of needed mineral resources and makes difficult the improvement of rangeland by the reseeding of grasses and the eradication of undesirable vegetation; interferes with the control of forest fires, insect damage, and diseases and the development of water resources, thereby

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limiting the national food supply and timber harvest and decreasing the value of wildlife habitat; and

WHEREAS, the federal government has advanced a wide variety of other programs which affect land, water, and other natural resource management decisions of the several states, including, in addition to wilderness, roadless and essentially roadless study areas, primitive, wild, and scenic rivers, and other administrative and statutory designations for areas managed in a highly restrictive manner resulting in de facto wilderness; and

WHEREAS, each of these programs and others create an allocation of the natural resources within the states without regard to state policy decisions, state objectives, or economic well-being; and

WHEREAS, these federal program decisions, in which input by state policymakers is limited, work to reduce the ability of the states and their citizens to govern themselves and work to reduce employment opportunities in the private sector; and

WHEREAS, the Roadless Area Review Evaluation II Study (RARE II) apparently has, as its purpose, the expansion of the wilderness system by the inclusion of additional large tracts of western lands, which is to be accomplished without sufficient responsiveness to or consultation, communication, or involvement with the state and local governments affected; and

WHEREAS, while federal lands belong to the entire citizenry of the nation and should be managed under multiple-use concepts consistent with the Multiple-Use Sustained-Yield Act of 1960 for the benefit of all, state interests should be of the highest priority, followed by regional and national interests, except in cases of national security.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Congress and federal land administration agencies are urged to adopt a federal policy governing all programs to manage and allocate the resources within the states to involve local decision makers. Specifically, the Legislature urges that no additional lands, waters, or other resources be set aside or withdrawn without the specific review of the governor and the legislature of the affected states.

BE IT FURTHER RESOLVED, that those lands presently inventoried for study as to wilderness suitability and that are not presently designated wilderness shall be immediately returned to multiple-use management consistent with the Multiple-Use Sustained-Yield Act of 1960; and

BE IT FURTHER RESOLVED, that the Secretary of State shall forward copies of this joint resolution to the Honorable President of the United States, Jimmy Carter, the Honorable Secretary of the Interior, Cecil D. Andrus, the Honorable Secretary of Agriculture, Robert S. Bergland, the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States, and the Montana Congressional Delegation.

Approved March 30, 1979.

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HOUSE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN THE APPROPRIATE STANDING COMMITTEE TO STUDY THE FEASIBILITY OF ESTABLISHING AN EDUCATION SERVICE AGENCY STRUCTURE FOR THE STATE OF MONTANA.

WHEREAS, there are 563 operating school districts in the State of Montana, most of which operate with a minimal administrative and support staff; and

WHEREAS, this diversity results in duplication of administrative and supportive services; and

WHEREAS, in the smaller districts supplementary services cannot be efficiently and effectively provided; and

WHEREAS, all students in Montana are guaranteed by the Montana Constitution both equality of educational opportunity and a system of education which will develop the full educational potential of each person; and

WHEREAS, other rural states have successfully implemented education service agency structures while maintaining local elected control of both the local districts and the education service agencies; and

WHEREAS, education service agencies can efficiently and effectively provide services such as guidance and counseling, remedial instruction, health services, adult education, and special education services as well as enable districts to expand their instructional programs in basic programs and the arts and humanities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign the appropriate standing committee to study the feasibility of establishing an education service agency structure for the State of Montana and to report its findings and recommendations to the regular session of the 47th Legislature.

Approved March 21, 1979.

HOUSE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOMMENDING THAT THE PUBLIC SERVICE COMMISSION ADOPT THE VOLUNTARY STANDARDS OF THE PRESIDENT'S COUNCIL ON WAGE AND PRICE STABILITY IN APPROVING UTILITY RATE INCREASES.

BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That in order to conform with the voluntary standards promulgated by the President's Council on Wage and Price Stability, it is recommended

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that the Public Service Commission limit all utility rate increases to keep within the guidelines as adopted in their policy statement of December 21, 1978.

Approved March 16, 1979.

HOUSE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO ALLOW AN INCOME TAX DEDUCTION FOR RENT CONSTITUTING PROPERTY TAX PAID.

WHEREAS, federal law allows homeowners to deduct property taxes paid on their residences in calculating their income tax liabilities; and

WHEREAS, people renting houses and apartments are not allowed to deduct that portion of their rent which their landlord uses to pay property taxes on the property; and

WHEREAS, this anomaly increases income taxes for young families, low-income persons, and all others who cannot afford homes; and

WHEREAS, the number of families who cannot afford homes is growing, making the income tax deduction of property tax on homes a privilege available only to a few.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Congress is urged to enact a law allowing renters to deduct from their adjusted gross income, as calculated for federal income tax purposes, that portion of their rent constituting property tax paid on the rental property.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to Senators Max Baucus and John Melcher and Congressmen Pat Williams and Ron Marlenee.

Approved March 10, 1979.

HOUSE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE GOVERNOR'S OFFICE TO CONDUCT A STUDY OF THE METHOD OF ESTABLISHING PER DIEM RATES AND THE METHOD OF ASSESSING PATIENT CHARGES FOR WARM SPRINGS STATE HOSPITAL AND BOULDER RIVER SCHOOL AND HOSPITAL.

WHEREAS, some Montana citizens find themselves either temporarily or permanently in need of intensive psychiatric services or are developmentally disabled; and

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WHEREAS, many such persons are confined at Warm Springs State Hospital or at Boulder River School and Hospital; and

WHEREAS, the cost of confinement at any medical facility is currently greater than the average citizen can bear; and

WHEREAS, most private health insurance policies and public medical assistance programs do not cover the cost of treatment for mental illness or developmental disabilities; and

WHEREAS, the per diem rates charged by Warm Springs State Hospital and Boulder River School and Hospital seem far higher than comparable private facilities' rates; and

WHEREAS, these already high rates do not include ancillary costs such as medicines, supplies, etc., for which the patient is charged extra; and

WHEREAS, the current method of assessing charges by dividing the gross daily cost by the full-time equivalent patient load does not seem to provide an adequate measure of the cost of the services actually received by individual patients.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Governor's Office of Budget and Program Planning be requested to undertake an in-depth study of the method of establishing per diem rates and the method of assessing patient charges at Warm Springs State Hospital and Boulder River School and Hospital.

Approved April 3, 1979.

HOUSE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THAT THE NORTHERN TIER PIPELINE BE APPROVED BY NECESSARY STATE AND FEDERAL JURISDICTIONS.

WHEREAS, there is a compelling need for development of additional energy supplies and for action by regulatory bodies and environmental protection agencies which will aid and not delay needed major projects such as industrial development, pipelines, and many other activities; and

WHEREAS, there is a need to accelerate actions which will produce jobs and enhance the economy compatible with strict environmental protection; and

WHEREAS, the United States faces a bulk oil supply shortage at the present time because of many factors, including Canada's policy regarding export of its bulk oil, political restraints put on transportation, and

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because supplies are not available in the continental United States, and because of federal policies which are contrary to market forces; and

WHEREAS, the Montana House of Representatives and Senate support a proposed Northern Tier Pipeline planned for transportation of crude oil from a location at or near Port Angeles, Washington, then eastward through Washington, Idaho, Montana, North Dakota, and terminating in or near Clearbrook, Minnesota; and

WHEREAS, the Northern Tier Pipeline will add an important economic and resource asset to the states and communities through which it extends; and

WHEREAS, the pipeline will contribute to petroleum products for agricultural needs at strategic points along its route, provide bulk crude oil to existing refineries which have been or will be impacted by domestic shortfalls and Canadian policies, and will open up economic opportunities in those states and communities through which it passes; and

WHEREAS, the Northern Tier Pipeline project will provide needed jobs in: construction, transportation, equipment sales, and many other fields in areas through which it extends, including Montana; and

WHEREAS, the Northern Tier Pipeline can be built in an environmentally sound manner; and

WHEREAS, the planned Northern Tier Pipeline will be primarily along existing rights-of-way, which will enhance safety and environmental protection.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Senate and House of Representatives urge that the Northern Tier Pipeline be approved by necessary federal and state jurisdictions and that the construction commence at the earliest possible date; and

BE IT FURTHER RESOLVED, that upon passage and approval of this Joint Resolution, copies of it be sent by the Montana Secretary of State to the President of the United States; the Governors and U.S. Congressional Delegates from Washington, Idaho, Montana, North Dakota, and Minnesota; the Secretary of the Interior; the Secretary of the Department of Energy; the President of the Northern Tier Pipeline; the Chairman of the Energy Resources Council of the federal government; and the heads of the following federal entities: the Federal Energy Regulatory Commission, the Materials Transportation Bureau, the National Transportation Safety Board, the Environmental Protection Agency, the Department of Energy, and the Interstate Commerce Commission.

Approved February 21, 1979.

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HOUSE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE PROMULGATION OF RULES BY THE DEPARTMENT OF ADMINISTRATION GRANTING RECOGNITION TO THE CERTIFIED PROFESSIONAL SECRETARY PROGRAM AND OTHER STATE EMPLOYEES WHO HAVE DEMONSTRATED SUPERIOR JOB PERFORMANCE AND PROVIDING OPPORTUNITY FOR ADVANCEMENT AND SALARY INCREASES.

WHEREAS, to encourage incentive, advancement, and professionalism in the secretarial profession, it is appropriate for the state of Montana to grant recognition to the Certified Professional Secretary (CPS) program; and

WHEREAS, the CPS rating requires certain education and background experience plus the completion of a comprehensive 2-day examination on Environmental Relations, Business Law and Public Policy, Economics and Management, Financial Analysis and Business Mathematics, Communications and Decisionmaking, and Office Procedures; and

WHEREAS, many colleges and universities give 2 years' credit for the CPS rating; and

WHEREAS, to encourage incentive, advancement, and professionalism in all occupations in state government, it is appropriate for the State of Montana to grant recognition to state employees who have demonstrated superior job performance, capacity, ability, and quality and length of service, and such recognition should include salary advancements in the form of step increases for state employees; and

WHEREAS, a system to identify and recognize meritorious service is needed to reward state employees, and it would be appropriate for the State of Montana to develop a uniform evaluation system that would reward state employees fairly and equitably.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That, under authority of Sections 2-18-102(3) and 2-18-301, MCA, the Department of Administration is directed to initiate proceedings to adopt rules to accomplish the following:

(1) provide opportunity for merit pay or productivity bonuses, based upon demonstrated superior job performance; and

(2) implement a uniform system of performance-based evaluation through periodic supervisor/employee conferences. The system shall be designed to improve job performance, enhance supervisor/employee communications, and determine appropriate action concerning employee retention, advancement, and merit recognition. The system should encourage employee initiative in gaining increased relevant job knowledge such as demonstrated by professional certification.

Approved March 27, 1979.

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HOUSE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION TO PROVIDE FOR CERTAIN PAYMENTS TO BE MADE TO LOCAL GOVERNMENTS BY THE SECRETARY OF THE INTERIOR BASED UPON THE AMOUNT OF INDIAN LANDS WITHIN THE BOUNDARY OF SUCH LOCALITY.

WHEREAS, Public Law 94-565 provides for payments to local governments by the Secretary of the Interior based upon the amount of certain public lands within the boundaries of such locality; and

WHEREAS, the payments offset the loss in tax revenue to local governments resulting from the exempt status of such public lands; and

WHEREAS, Public Law 94-565 does not provide for payments based on lands held by or for Indians; and

WHEREAS, Indian land lies within the boundaries of units of local government but is exempt from the taxing power of such governments; and

WHEREAS, H.R. 13961 has been introduced in the 95th Congress to amend Public Law 94-565 to provide for similar payments to local governments based on land held by or for Indians.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States is urged to amend Public Law 94-565 to include lands held by or for Indians as public lands for which a federal payment will be made.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Secretary of State, to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Montana Congressional Delegation.

Approved March 27, 1979.

HOUSE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ENCOURAGE PRESIDENT CARTER TO REQUEST ADEQUATE FUNDING FOR SUBSIDIZED HOUSING PROGRAMS UNDER THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

WHEREAS, it is the national goal for all United States citizens to have decent, safe, and sanitary housing, as stated in the Housing Act of 1949; and

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WHEREAS, more than 6,000,000 people nationwide do not have decent, safe, and sanitary housing because of low income; and

WHEREAS, more than 50,000 Montanans are in need of government assistance because their homes are physically substandard or overcrowded; and

WHEREAS, the state of Montana recognizes the need for federal housing subsidies and has taken aggressive action to help alleviate the problem by establishing programs coordinated with federal subsidies; and

WHEREAS, the federal and state programs will not function fully on behalf of the poor in Montana unless adequate funding is available; and

WHEREAS, President Carter is proposing to drastically cut federal funding by approximately 100,000 units nationally; and

WHEREAS, the proposed federal funding reductions will have a disastrous effect on Montana's economy because the major industry in Western Montana is lumber.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That President Carter is strongly encouraged to seek adequate funding for federally subsidized housing programs under the Department of Housing and Urban Development so that poor citizens of Montana may attain the national goal of decent, safe, and sanitary housing.

Approved March 10, 1979.

HOUSE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN A JOINT COMMITTEE TO CONDUCT AN INTERIM STUDY OF THE NEED FOR ENERGY FORECASTING IN THE STATE BY AN AGENCY OR AGENCIES OF THE STATE OF MONTANA.

WHEREAS, the determination of the future availability of and demand for all forms of energy, including but not limited to electricity, natural gas, crude oil, propane, heating oil, coal, and diesel fuel, is a matter of utmost concern to all citizens of the state of Montana; and

WHEREAS, an analysis of the end uses of all forms of energy is an essential part of determining the future availability of and demand for energy; and

WHEREAS, the Montana Major Facility Siting Act requires the Board of Natural Resources and Conservation to determine that a need exists for a facility before it may issue a certificate of environmental compatibility and public need; and

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WHEREAS, such a need determination must, in order to avoid placing an undue burden on interstate commerce, be based upon both existing and projected energy demands in Montana and its surrounding regions; and

WHEREAS, any determination of future energy demands must rely upon the highly technical practice of energy load forecasting, of which there are numerous methods; and

WHEREAS, energy load forecasts of future Montana and regional energy demands are constantly prepared and updated by public utilities, rural electric cooperatives, and federal governmental agencies, such as the Bureau of Reclamation and the Bonneville Power Administration, involved in the supply of energy and a variety of organizations concerned with assuring an adequate future supply of energy at the lowest possible rates; and

WHEREAS, discussion has developed in recent months concerning the desirability of an agency or agencies of the state of Montana being funded to perform an independent energy load forecasting function; and

WHEREAS, such an independent forecasting capability would be costly to develop and maintain, and the forecasts developed would be used only sporadically such as for cases involving generating facilities before the Board of Natural Resources and Conservation; and

WHEREAS, such an independent forecasting capability may duplicate a function which might be adequately performed at the present by private enterprise, federal governmental agencies, and various organizations of energy suppliers.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to give high priority to the appointment of a bipartisan joint interim committee to study the adequacy of existing energy load forecasts and the necessity and desirability of developing a state energy load forecasting capability. In particular the study shall include an evaluation of the provisions of the National Energy Act relating to energy forecasting in order to coordinate federal and state requirements and to take advantage of any funds that may be available through the National Energy Act. The study shall also include an evaluation of the methodologies of conducting an independent forecast, the potential cost of and funding sources for a forecasting program, and an evaluation of the capabilities of various state agencies that might conduct the independent forecast.

BE IT FURTHER RESOLVED, that the Committee shall report its findings and recommendations to the 47th Legislature.

Approved March 13, 1979.

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HOUSE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING AND EXPRESSING APPRECIATION FOR THE EFFORTS OF CHAMPION INTERNATIONAL CORPORATION IN THE CONSERVATION OF MONTANA'S SCENIC AND RECREATIONAL RESOURCES AND IN MAKING THESE RESOURCES AVAILABLE AND ACCESSIBLE TO THE PEOPLE.

WHEREAS, the people of Montana have directed the legislature to provide for acquisition, restoration, enhancement, preservation, and administration of recreational areas and sites; and

WHEREAS, the legislature has vested in the Montana State Department of Fish and Game powers and duties necessary to conserve recreational resources and to provide for their use and enjoyment; and

WHEREAS, among the powers and duties vested in the Montana State Department of Fish and Game is the discretion to accept gifts, grants, bequests, and contributions of money or other property; and

WHEREAS, Champion International Corporation has maintained 680,000 acres of its land in western Montana under multiple use management practices which include and thereby enhance recreational opportunities; and

WHEREAS, Champion International Corporation has cooperated with other landowners, Missoula County, and the Montana State Department of Fish and Game in formulation and implementation of the Blackfoot River master plan thereby assuring that this magnificent free-flowing stretch of river will remain open to the people for river floating, picnicking, camping, fishing, and other recreational activities; and

WHEREAS, the formulation and implementation of the Blackfoot River master plan is an innovation and experiment of national significance in the mutual public and private management of river resources for recreation; and

WHEREAS, Champion International Corporation has donated to the Montana State Department of Fish and Game a lease on lands known as Johnsrud Park, an important recreation site on the Blackfoot River; and

WHEREAS, Champion International Corporation generously donated equipment and material for the enhancement and provision of facilities at Johnsrud Park; and

WHEREAS, Champion International Corporation has generously donated lands valued in excess of $550,000 for the purpose of the provision of state recreation uses at Salmon and Placid Lakes, Missoula County, Montana; and

WHEREAS, the donation of land at Salmon and Placid Lakes permitted the state to obtain federal Land and Water Conservation Funds in an

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amount matching the value of the donation and thereby to use the matching money to provide facilities at Salmon and Placid Lakes; and

WHEREAS, the management and staff of Champion International Corporation have consistently demonstrated a willingness to work closely with officials of the state of Montana to protect and enhance the quality of Montana's environment and the provision of goods and services to the people.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the people of Montana recognize and appreciate the superb efforts of Champion International Corporation in conserving and providing for outdoor recreation resources in Montana.

BE IT FURTHER RESOLVED, that the people of Montana commend the staff and management of Champion International for the spirit of civic and social responsibility in which they have approached the management of land resources in Montana.

BE IT FURTHER RESOLVED, that the executive agencies of Montana continue to seek solutions to environmental problems by cooperation with private enterprise and industry.

Approved March 15, 1979.

HOUSE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE DEPARTMENT OF COMMUNITY AFFAIRS EMPLOY ITS STAFF PERSONNEL AND RESOURCES TO UNDERTAKE A THOROUGH STUDY OF THE PROBLEMS AFFECTING THE CITIZENS OF MONTANA WHO ARE OF HISPANIC HERITAGE AND THAT THE DEPARTMENT BE ASSISTED IN THIS STUDY BY AN ADVISORY BOARD MADE UP OF MEMBERS OF ESTABLISHED HISPANIC AMERICAN ORGANIZATIONS IN THE STATE OF MONTANA.

WHEREAS, the situation confronting Americans of Hispanic heritage in Montana is multifaceted and complex; and

WHEREAS, an average Hispanic heritage family in Montana is confronted not only with problems associated with being a distinctive cultural minority but also those conditions that hinder and retard economic development — underemployment, unemployment, and lack of educational and employment opportunities; and

WHEREAS, there is a need for a mechanism to allow both government and the private sector to become aware of the above conditions; and

WHEREAS, the problems are perpetuated because there has been no concerted effort to eliminate the factors that contribute to undesirable social and economic conditions.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Community Affairs is requested to employ its staff personnel and resources to undertake a thorough study of the problems affecting the citizens of the state of Montana who are of Hispanic heritage and that the Department be assisted in this study by an advisory board made up of members of established Hispanic American organizations in the state of Montana. The Department of Community Affairs is authorized to seek funding from federal, state, local, and private sources.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to Harold Fryslie, Director of the Department of Community Affairs of the state of Montana.

BE IT FURTHER RESOLVED, that the Department of Community Affairs shall report its findings to the 47th Legislature and make recommendations for draft legislation prior to October 30, 1980.

Approved April 12, 1979.

HOUSE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE ENVIRONMENTAL QUALITY COUNCIL TO STUDY THE BEST MEANS OF PROMOTING AND DEVELOPING INDUSTRIES THAT WILL USE MONTANA'S RESOURCES WITHIN THE STATE WHILE PRESERVING OUR ENVIRONMENT AND TO PRESENT RECOMMENDED LEGISLATION TO THE 47TH LEGISLATURE.

WHEREAS, Montana is blessed with abundant natural resources, including minerals, timber, water, and agricultural land, and with industrious citizens; and

WHEREAS, these valuable resources are often exported from the state for manufacturing, refining, or processing elsewhere; and

WHEREAS, this exportation causes severe economic loss to the state, hampers the development of a stable economy, and forces Montana's citizens to seek out-of-state employment; and

WHEREAS, a long-standing controversy has existed as to the reasons for the continued exportation of Montana's economic and human resources, without the availability of creditable, unbiased, factual information; and

WHEREAS, gathering and assembling all available facts relative to Montana's past, present, and future economic and social position concerning such controversy and the unbiased deliberative study of such facts may well afford the public and private sectors of Montana a basis for better

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management of our existing capabilities and for new and innovative means of future improvement of such capabilities; and

WHEREAS, Montana's natural beauty is unparalleled in this country and the quality of life here is excellent; and

WHEREAS, the most important task facing Montana today is developing industries to use its natural resources within the state while maintaining and preserving the excellence of Montana's environment.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Environmental Quality Council is requested to conduct an interim study of the best means of promoting and developing industries that will:

(1) use Montana's natural resources within its borders, allowing its citizens to benefit from their use rather than be impoverished by their export;

(2) encourage pride in individual human industry and initiative by employing Montana labor in meaningful labor and aiding Montana citizens to form their own businesses; and

(3) preserve Montana's excellent environment;

(4) provide a creditable, unbiased fact base for the encouragement of new and innovative means, as well as improvement of existing capabilities, in the private and public sectors to improve Montana's economic and social future.

To further the purposes of this study, the Environmental Quality Council may accept funds from any public or private source.

BE IT FURTHER RESOLVED, that all state agencies, the units of the Montana University System, the office of the Governor, and the staff of the Legislative Council make all their resources available to the Environmental Quality Council for use in this study.

BE IT FURTHER RESOLVED, that the Environmental Quality Council recommend positive legislation for these purposes to the 47th Legislature.

Approved April 4, 1979.

HOUSE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMENDING THE GOVERNOR AND THE DEPARTMENT OF FISH AND GAME FOR ESTABLISHMENT OF THE LANDOWNER RELATIONS/SPORTSMEN ACCESS ADVISORY COUNCIL AND URGING CONTINUED SUPPORT.

WHEREAS, there have been and continue to be significant problems arising from confrontations between landowners and sportsmen in Montana caused by differing points of view regarding access to land by sportsmen; and

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WHEREAS, confrontations between landowners and sportsmen are aggravated by limited communication; and

WHEREAS, a joint forum for the open discussion and solution of such problems is necessary and timely; and

WHEREAS, a Landowner Relations/Sportsmen Access Advisory Council has been formed.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature does hereby congratulate and commend Governor Thomas L. Judge and the Department of Fish and Game upon the formation and establishment of the Landowner Relations/Sportsmen Access Advisory Council.

BE IT FURTHER RESOLVED, that the Montana Legislature urges and recommends full and continuing support of the Landowner Relations/Sportsmen Access Advisory Council and its individual members in all attempts at mediation and resolution of any conflicts with full public participation.

BE IT FURTHER RESOLVED, that the Secretary of State is directed to mail copies of this resolution to Governor Thomas L. Judge, Robert F. Wambach, the members of the Fish and Game Commission, and the members of the Landowner Relations/Sportsmen Access Advisory Council.

Approved March 12, 1979.

HOUSE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE COMMITTEE ON PRIORITIES GIVE HIGH PRIORITY TO A STUDY AND REVISION OF THE LAWS RELATING TO SCHOOL ELECTIONS IN THE STATE OF MONTANA.

WHEREAS, House Joint Resolution No. 14 adopted by the 45th Legislature recognized the need to create a uniform system for all elections in Montana; and

WHEREAS, the interim legislative committee on election laws created pursuant to House Joint Resolution No. 14 to prepare the extensive revision of Montana election laws identified problems relating to the administration of school elections; and

WHEREAS, unifying school elections with other elections would require extensive study and revision of the existing school laws; and

WHEREAS, unifying school elections with other elections may cause less confusion for the voters and may increase voter participation in school elections; and

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WHEREAS, the Superintendent of Public Instruction is, among many other duties, the chief state election official for all school elections; and

WHEREAS, the clerk of the district is the local election administrator for all school elections; and

WHEREAS, the knowledge of modern and efficient election administration procedures is not the primary interest of current school election officials; and

WHEREAS, some school election procedures may contribute to the disenfranchisement of voters, delays in counting of ballots, deterioration of voter confidence in the electoral process, and increased costs for the conduct of school elections; and

WHEREAS, the central administration of all elections regardless of the political jurisdiction may prove to be the most efficient and effective manner of conducting error-free elections; and

WHEREAS, electing school district trustees at the same time as other local officials would enable voters to consider all local problems at the same time.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is hereby requested to give high priority to a study of all laws pertaining to school elections in the state of Montana and to the preparation of legislation that would coordinate school elections with other elections and would allow for the central administration of all elections, including school elections, by a single local election administrator.

BE IT FURTHER RESOLVED, that the study committee request the assistance of state, local, and school election officials in conducting its study.

Approved March 12, 1979.

HOUSE JOINT RESOLUTION NO. 34

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE CONGRESS OF THE UNITED STATES KEEP BOTH AMTRAK LINES OPERATING IN MONTANA AND PROVIDE ADEQUATE FUNDING FOR PASSENGER SERVICE IN MONTANA.

WHEREAS, both the nation and the state face serious energy shortages, especially in the area of automobile fuels; and

WHEREAS, a fuel shortage is especially critical in a state such as Montana because of the large distances between population centers; and

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WHEREAS, transport by rail is a more efficient means of moving individuals; and

WHEREAS, existing AMTRAK service in Montana is inadequate to meet the needs of the citizens of the state; and

WHEREAS, the criteria for abandonment of rail passenger service in more densely populated and smaller geographical areas than Montana are inappropriate to the situation in Montana and result in undue hardship for the citizens of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States is urged to continue in operation both lines of AMTRAK service in Montana and not approve the proposed abandonment of the southern AMTRAK route in Montana.

BE IT FURTHER RESOLVED, that the Congress of the United States is urged to provide adequate funding for AMTRAK operations in Montana and other sparsely settled western states to meet the needs of the citizens of these states.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the following:

John Melcher, U. S. Senator
Senate Office Building
Washington, D. C. 20510

Max S. Baucus, U. S. Senator
Senate Office Building
Washington, D. C. 20510

Pat Williams, U. S. Congressman
House Office Building
Washington, D. C. 20510

Ron Marlenee, U. S. Congressman
House Office Building
Washington, D. C. 20510

Senator Howard W. Cannon, Chairman
Senate Committee of Commerce, Science
and Transportation
Room 2599 - Russell Senate Office Building
Washington, D. C. 20510

Congressman Harley O. Staggers, Chairman
House Interstate and Foreign Commerce Committee
Room 2366 - Rayburn House Building
Washington, D. C. 20515

Brock Adams, Secretary
Department of Transportation
400 7th Street S.W.
Washington, D. C. 20590

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Allen S. Boyd, President
National Railroad Passenger Corp.
400 Capital Street N.W. 200
Washington, D. C. 20590

Approved March 27, 1979.

HOUSE JOINT RESOLUTION NO. 37

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA OUTLINING TO THE CONGRESS OF THE UNITED STATES AND THE LEGISLATURES OF WASHINGTON, OREGON, AND IDAHO THE MONTANA LEGISLATURE'S POSITION WITH REGARD TO THE PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT.

WHEREAS, the Pacific Northwest has a unique electrical generating system which has in the past been dependent upon private and public hydroelectric facilities; and

WHEREAS, implementation of a comprehensive energy conservation program combined with generation of expensive thermal electric power will both be required to insure adequate energy in the future; and

WHEREAS, the region's power facilities are linked in a delivery system administered primarily by the Bonneville Power Administration, the United States Army Corps of Engineers, and the Bureau of Reclamation; and

WHEREAS, Congress has considered and will consider several bills dealing with regional energy planning in the Pacific Northwest, including the Pacific Northwest Electric Power Planning and Conservation Act, which will be introduced in the current session of Congress; and

WHEREAS, some of the proposals, including the Act, would grant significant powers to the Bonneville Power Administration in the areas of regional power planning and resource acquisition; and

WHEREAS, because of Montana's abundant energy resources and its inclusion in the Bonneville Power Administration marketing area, Montana will be significantly affected by any regional energy plan which is implemented; and

WHEREAS, Montana has enacted numerous statutes enabling its citizens through their legislature to control energy and resource development in this state, including the Montana Major Facilities Siting Act, the Montana Strip Mine and Underground Mine Reclamation Act, and the Strip and Underground Mine Siting Act, among others; and

WHEREAS, the legislature, the citizens, and the Congressional delegation of the state of Montana desire to insure that federal legislation relating to Pacific Northwest Regional Energy Planning will not preempt the

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Montana Major Facility Siting Act and environmental laws relating to electric utilities or the ratemaking power of the Montana Public Service Commission; and

WHEREAS, Montana reaffirmed its commitment to control energy development when its citizens overwhelmingly approved a ballot initiative requiring public approval on the siting of nuclear facilities; and

WHEREAS, the Administration and the Congressional delegation of the state of Montana, as reflected in the testimony of the Governor on the Pacific Northwest Electric Power Planning and Conservation Act, are concerned that some of the proposals for Pacific Northwest regional energy planning, including the Act, may preempt those statutes and the ratemaking power of the Montana Public Service Commission; and

WHEREAS, Montana state government representatives and Montana citizens in testimony on this legislation have reaffirmed Montana's commitment to energy conservation and have stated their concern that those ultimately responsible for regional energy are accountable to the public; and

WHEREAS, similar programs for citizen control of development of resources, of energy conservation, and of ratemaking exist in the other Pacific Northwest states; and

WHEREAS, the coordination of regional energy policy is a major concern of the Pacific Northwest states and the federal government, and will require that decisions about the region's energy policy be reached collectively; and

WHEREAS, the proposed legislation should permit the unique use of Bonneville Power Administration power revenues to finance cost-effective investments in energy conservation and renewable energy sources and should establish a more open planning process.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the state of Montana call upon the United States Congress to consider the following if the Pacific Northwest Electric Power Planning and Conservation Act or any act regarding regional energy policy in the Pacific Northwest is considered or enacted:

(1) the development of guidelines by the Bonneville Power Administration for forecasting regional needs and resources. Individual states should be allowed to determine their own needs and this will become an integral part of the regional forecast. However, should the states be incapable of providing such a forecast, the Bonneville Power Administration should offer this service.

(2) provisions allowing states to keep their rights in power plant siting and retail ratemaking;

(3) a reaffirmation of the priority of Montana in the allocation of power under the Hungry Horse authorization and preference act and the authorizations and appropriations for the Libby dam project;

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(4) a mechanism to allocate federal power within the Pacific Northwest that would clarify the intent of the preference clause of the Bonneville Project Act, 16 U.S.C. 832, to give preference to legitimate public utilities while minimizing the electrical price difference between consumers of the region.

BE IT FURTHER RESOLVED, that Montana call upon the United States Congress to pass legislation regarding Pacific Northwest regional energy policy only if such proposed legislation has the support of the Governors and Congressional delegations of Montana, Washington, Oregon, and Idaho and the ad hoc committee that the Western Conference of the Council of State Governments has established.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, the Chairmen of the United States House and Senate Energy Committees, the Chairman of the United States House Interior and Insular Affairs Committee, the Secretary of Energy, the Congressional delegations of Washington, Idaho, Oregon, and Montana, and the legislative assemblies of Washington, Idaho, and Oregon.

Approved April 6, 1979.

HOUSE JOINT RESOLUTION NO. 38

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMENDING THE OFFICE OF THE ATTORNEY GENERAL FOR ITS ACTIVITIES IN CONNECTION WITH THE MILWAUKEE ROAD AND URGING CONTINUED ACTION IN LEGAL AND ADMINISTRATIVE PROCEEDINGS INVOLVING THE RAILROAD.

WHEREAS, continued operation of the Chicago, Milwaukee, St. Paul and Pacific Railroad, commonly known as the Milwaukee Road, is vital to the economic well-being of the citizens of Montana; and

WHEREAS, the bankruptcy proceeding involving the Milwaukee Road will have significant ramifications in Montana; and

WHEREAS, the Northern Lines merger case also has great significance for rail service to Montana; and

WHEREAS, the Attorney General is the state's chief legal officer.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature commends the Attorney General for intervening in the Milwaukee Road bankruptcy proceeding (Cause No. 77 B 8999, In the Matter of the Chicago, Milwaukee, St. Paul and Pacific Railroad) and encourages the Attorney General to play an active role in such proceeding so that the vital interest of Montana in the outcome is well represented.

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BE IT FURTHER RESOLVED, that the Attorney General is requested to encourage intervention by the Milwaukee Road in the Northern Lines merger case and the Attorney General is requested to intervene in behalf of Montana in the Northern Lines merger case.

BE IT FURTHER RESOLVED, that the Attorney General take whatever action is necessary to preserve the mainline of the Milwaukee Road.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the Attorney General.

Approved March 21, 1979.

HOUSE JOINT RESOLUTION NO. 39

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AUTHORIZING THE DEPARTMENT OF HIGHWAYS TO SEEK A SUPPLEMENTAL APPROPRIATION TO SECURE CERTAIN FEDERAL FUNDS FOR RAIL PLANNING AND DEVELOPMENT.

WHEREAS, there are federal funds available to the state for rail planning and implementation of rail planning under the Railroad Revitalization and Regulatory Reform Act of 1976; and

WHEREAS, developing a state rail plan is necessary to improve and update the rail transportation system of Montana; and

WHEREAS, the Department of Highways has been designated as the state agency responsible for rail planning.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Highways is authorized to seek a supplemental appropriation in order to secure federal funds under the Railroad Revitalization and Regulatory Reform Act of 1976 to implement the state rail plan.

Approved April 19, 1979.

HOUSE JOINT RESOLUTION NO. 40

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COMMITTEE ON PRIORITIES TO APPOINT AN APPROPRIATE STANDING COMMITTEE TO CONDUCT AN INTERIM STUDY OF POSSIBLE CONSOLIDATION, FUNDING ALTERNATIVES, AND THE EFFECTS OF INFLATION ON STATE RETIREMENT SYSTEMS.

WHEREAS, all Montanans have the right to a decent standard of living; and

WHEREAS, older Montanans who have given their state many years of dedicated service deserve a retirement that assures dignity and a decent standard of living; and

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WHEREAS, Montana families in which the head of the household is over 65 years of age have 37% less purchasing power than the general population; and

WHEREAS, Montanans over 65 years of age who live alone have 72% less purchasing power than the general population; and

WHEREAS, inflation has seriously eroded the purchasing power of retired public employees and has hit retired teachers especially hard; and

WHEREAS, to be effective and equitable, a public retirement system must make adjustments for inflationary forces.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Committee on Priorities is requested to appoint an appropriate standing committee to conduct an interim study and present recommendations and proposed legislation to the 47th Legislature concerning the effects of inflation on public retirement systems and especially the Teachers' Retirement System. The study committee shall present proposed changes to current statutes that would promote efficiency, effectiveness, stability, and fairness in public retirement systems.

Approved March 29, 1979.

HOUSE JOINT RESOLUTION NO. 42

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE COMMITTEE ON PRIORITIES TO ASSIGN TO AN INTERIM JOINT LEGISLATIVE SUBCOMMITTEE THE STUDY OF MONTANA'S GREENBELT LAW.

WHEREAS, the 1973 Legislature enacted Montana's Greenbelt Law, Title 15, chapter 7, part 2, for the purpose of classifying and assessing bona fide farm properties at a value exclusive of values attributed to urban influences or speculative purposes; and

WHEREAS, the Greenbelt Law as currently implemented has been largely ineffective in accomplishing these purposes and may, in fact, be contributing to the spread of urban sprawl; and

WHEREAS, recent legislatures, especially the 46th Legislature, have seen a proliferation of bills amending or repealing the Greenbelt Law in an attempt to improve its implementation; and

WHEREAS, none of these bills has been successful in accomplishing this purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is urged to assign an appropriate committee, consisting of equal representation of both houses and both parties,

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to study Montana's Greenbelt Law for the purpose of generally clarifying, updating, supplementing, and revising that law in order to insure that its original purpose will be accomplished. The committee shall report its findings and recommendations to the regular session of the 47th Legislature.

Approved April 18, 1979.

HOUSE JOINT RESOLUTION NO. 43

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONTINUATION OF THE RAIL SERVICE PROVIDED BY THE MILWAUKEE ROAD.

WHEREAS, rail transportation is critically important to agriculture and the entire economy of Montana, and agriculture and industry in Montana are vitally in need of adequate and efficient rail transportation; and

WHEREAS, the current bankruptcy proceeding involving the Chicago, Milwaukee, St. Paul and Pacific Railroad, commonly known as the Milwaukee Road, is of great concern to Montana; and

WHEREAS, the proposed abandonment of rail lines serving Montana will work a significant hardship on the citizens of the state; and

WHEREAS, the Milwaukee Road employs about 750 persons in Montana, serves 23 counties, and contributes approximately $750,000 a year in property taxes; and

WHEREAS, the Milwaukee Road is a major component of the state transportation system, serving over 150 stations and providing both direct service and connections with other lines; and

WHEREAS, the Milwaukee Road serves 31 public warehouse and grain dealer facilities, and these facilities have a storage capacity of 4,332,000 bushels and would be without rail service in the event the Milwaukee line is abandoned; and

WHEREAS, the maintenance of a balanced transportation system is desirable to foster competition; and

WHEREAS, if abandonment occurs, Montana will lose jobs, shipping capacity, local tax revenues, and the advantages of competition; and

WHEREAS, numerous state agencies and officers, including the Attorney General, the Department of Agriculture, the Department of Highways, and the Public Service Commission, are actively involved in the Milwaukee Road proceedings and in developing plans to revitalize and rehabilitate rail transportation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature strongly supports those actions designed to minimize the reduction of the Milwaukee Road system and encourages private

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enterprise to develop and promote plans to revitalize the rail transportation system.

BE IT FURTHER RESOLVED, that the Legislature urges the bankruptcy court in the Milwaukee Road case (Cause No. 77 B 8999, In the Matter of the Chicago, Milwaukee, St. Paul and Pacific Railroad) to direct Trustee Hillman to develop and work towards an alternative to abandonment which would allow viable and profitable operation of the Milwaukee Road.

BE IT FURTHER RESOLVED, that the Legislature supports the expansion of markets for Montana products including but not limited to agricultural and forest products and coal resources and other minerals.

BE IT FURTHER RESOLVED, that priority consideration for maintaining the Milwaukee Road is required to facilitate movement of such products and associated services.

BE IT FURTHER RESOLVED, that the Legislature commends and supports the efforts of private citizens and private groups such as SORE (Save Our Railroad Employment) to maintain the Milwaukee Road.

BE IT FURTHER RESOLVED, that the Legislature urges the Congress of the United States to continue and expand federal programs and assistance designed to revitalize and rehabilitate the nation's rail transportation system.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the President of the United States Senate, the Speaker of the United States House of Representatives, each member of Montana's Congressional Delegation, the Secretary of the Department of Transportation, the bankruptcy court in the Milwaukee Road case, and to the trustee of the Chicago, Milwaukee, St. Paul and Pacific Railroad attesting the adoption of this joint resolution by the 46th Legislature of the State of Montana.

Approved April 4, 1979.

HOUSE JOINT RESOLUTION NO. 44

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE DEPARTMENT OF REVENUE TO AMEND SECTIONS 42-2.12(1)-S1250 AND 42-2.12(1)-S1260 OF THE ADMINISTRATIVE RULES OF MONTANA GOVERNING DISTILLERY REPRESENTATIVES' ACTIVITIES SO THAT THESE RULES MORE CLOSELY PARALLEL REGULATIONS OF THE FEDERAL BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS GOVERNING THE SAME ACTIVITIES.

WHEREAS, the Department of Revenue has adopted rules under section 16-3-103, MCA, governing liquor vendors and agents; and

WHEREAS, the rules as adopted contain restrictions that extend beyond those adopted by the U.S. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms; and

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WHEREAS, the Montana rules do not coincide with federal regulations on proper business practices and the ethical promotion of merchandise.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That, under authority of section 16-3-103, MCA, the Department of Revenue is directed to immediately initiate proceedings to adopt rules amending sections 42-2.12(1)-S1250 and 42-2.12(1)-S1260, ARM, to conform those rules with regulations adopted by the United States Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, and particularly those rules concerning the distribution of advertising specialties under 27 CFR 6.27 and 27 CFR 6.28 and samples under 27 CFR 6.29.

(2) That a proposed rule amending section 42-2.12(1)-S1250, ARM, contain provisions defining a sample as a container of liquor presented by a vendor or agent for inspection or demonstration of the quality of the product and which is purchased by the employer or brokerage of the vendor or agent.

(3) That a proposed rule amending section 42-2.12(1)-S1250, ARM, clearly indicate that a sample may be of any size so long as the sample size is in conformance with the applicable federal regulations.

(4) That a proposed rule amending section 42-2.12(1)-S1250, ARM, clarify the requirements for maintenance of sample logs, specifying that such logs must contain exact information as to all sample purchases, including the date and location of each purchase and the disposition of each sample and the name of each recipient and the date he received the sample. This rule must also contain provisions:

(a) to limit a vendor to use as samples not more than 24 cases of liquor during any calendar year: this allotment includes all brands of liquor manufactured, produced, or sold by the vendor; and

(b) requiring that any samples distributed to any licensee be reported to the Department of Revenue Investigation Division on a monthly basis.

(5) That a proposed rule amending section 42-2.12(1)-S1260, ARM, allow the vendor or agent to distribute retail advertising specialties to the extent allowed by applicable federal regulations.

(6) That the Department adopt such rules as may be required from time to time to conform with regulations adopted by the United States Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms.

Approved April 17, 1979.

HOUSE JOINT RESOLUTION NO. 45

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES INTERSTATE COMMERCE COMMISSION TO REVISE RAIL FREIGHT RATES SO AS NOT TO DISCRIMINATE AGAINST RECYCLED MATERIALS.

WHEREAS, the recycling of solid waste materials, including glass, metal cans, paper, and other reusable products, is an essential part of any resource and energy conservation policy; and

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WHEREAS, recycling has many potential benefits to the state of Montana, including the providing of a high-quality source of domestic materials for local and national industry, the stimulation of new employment opportunities, and the reduction of the cost of solid waste management that now averages $35 a ton for disposal of waste materials; and

WHEREAS, Montana's recycling industry is unable to develop to its fullest potential because the United States Interstate Commerce Commission has set artificially high barriers in the form of rail freight rates for recycled materials; and

WHEREAS, these rail freight rates for recycled materials are three to five times greater than rates for competing and similar raw materials; and

WHEREAS, these artificially high rail freight rates especially discriminate against large rural states like Montana where large distances must be covered to ship recycled materials to urban centers for market; and

WHEREAS, the Interstate Commerce Commission has failed to respond to pleas to reform the rail freight rate structure and has failed to justify these discriminatory rates.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Interstate Commerce Commission is urged to revise its rail freight rates to end discrimination against the transportation by rail of recycled materials.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Interstate Commerce Commission with a reply requested and to the Montana Congressional Delegation.

Approved March 29, 1979.

HOUSE JOINT RESOLUTION NO. 48

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ENCOURAGE SIGNATORY STATES OF THE YELLOWSTONE RIVER COMPACT TO ABIDE BY THE PROVISIONS OF THE COMPACT AND TO LIMIT WATER DIVERSIONS TO THOSE AUTHORIZED IN MANNER AND AMOUNT BY THE COMPACT AND TO PERMIT WATER DIVERSIONS ONLY CONSISTENT WITH THE PROVISIONS OF THE COMPACT.

WHEREAS, on December 8, 1950, the states of Montana, Wyoming, and North Dakota, being moved by consideration of interstate comity and desiring to remove present and future controversies between the states respecting waters in the Yellowstone River Basin and designed further to provide an equitable division and apportionment of the waters of the Yellowstone River Basin and recognizing the great importance of water for irrigation in the signatory states, did enter into the Yellowstone River Compact, Section 85-20-101, et seq., MCA, which Yellowstone River Compact was thereafter federally approved by the Congress of the United States; and

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WHEREAS, the Yellowstone River Compact has governed water use in the Compact states of Montana, Wyoming, and North Dakota and has promoted cooperation between the states, has encouraged water conservation and development between the states, and has averted costly and time-consuming litigation between the states; and

WHEREAS, recent actions by various legislatures of the Compact states permitting diversions of Yellowstone River Basin water in methods inconsistent with the Yellowstone River Compact have been introduced and are now under consideration and may be approved by such legislatures; and

WHEREAS, these actions threaten the harmonious cooperation between the states, threaten the purposes of the Yellowstone River Compact, and threaten to involve the states in prolonged and expensive litigation before the United States Supreme Court or in other courts of competent jurisdiction involving the application of the Yellowstone River Compact, its provisions, and the legality of the proposed diversions; and

WHEREAS, such consequences can only result in actions adverse to the water users within the Compact states and adverse to the interests of the Compact states and to the continued cooperative relationship between the states.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature urges and requests the signatory states of the Yellowstone River Compact to abide by the provisions of the Yellowstone River Compact and to limit water diversions to those authorized in manner and amount by the Compact and to permit water diversions only consistent with the provisions of such Compact.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Governor of Wyoming and to the President of the Senate and Speaker of the House of the Wyoming Legislature, to the Governor of North Dakota and the President of the Senate and Speaker of the House of the North Dakota Legislature, and be further brought to the attention of appropriate members of the Montana Congressional Delegation and the appropriate congressional and executive branch leaders.

Approved March 21, 1979.

HOUSE JOINT RESOLUTION NO. 49

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE ALTERNATIVE WAYS AND EFFECTS OF AUTHORIZING BANKS, SAVINGS AND LOAN ASSOCIATIONS, AND CREDIT UNIONS TO BRANCH WITHIN THE STATE; REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE LEGISLATURE.

WHEREAS, it is apparent that a great number of Montana's citizens are interested in authorizing banks, savings and loan associations, and credit unions to establish and maintain branch facilities in the state; and

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WHEREAS, the law prohibits banks from maintaining a branch facility; and

WHEREAS, there are various alternative methods for authorizing branching; and

WHEREAS, the Legislature has not studied the need for branching in the state; and

WHEREAS, in order to best serve the public, a thorough study of all the effects and alternative ways of authorizing banks, savings and loan associations, and credit unions to branch should be made.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is hereby requested to give high priority to the appointment of an interim committee to study:

(1) the need for banks, savings and loan associations, and credit unions to branch within the state;

(2) the various alternative methods for authorizing branching; and

(3) the effects of authorizing banks, savings and loan associations, and credit unions to branch within the state.

BE IT FURTHER RESOLVED, that the Committee report the findings of the study to the 47th Legislature and, if necessary, draft legislation to implement its recommendations.

Approved March 22, 1979.

HOUSE JOINT RESOLUTION NO. 51

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ASSIGNING TO THE ENVIRONMENTAL QUALITY COUNCIL A STUDY OF THE BENEFITS AND PROBLEMS OF BENTONITE DEVELOPMENT IN MONTANA.

WHEREAS, Montana possesses a significant percentage of the world's reserve of sodium bentonite, "the clay of 1,000 uses"; and

WHEREAS, the state may be on the brink of substantial development of these bentonite deposits, with new processing plants being constructed, one of which will be the world's largest and will produce over 1 million tons a year by the mid-1980's; and

WHEREAS, the adequacy of Montana's present bentonite reclamation laws has not been studied in light of the demands of large-scale development; and

WHEREAS, Montana may have a considerably lower rate of taxation of this valuable and necessary mineral than South Dakota and Wyoming, the only other states which possess sodium bentonite deposits; and

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WHEREAS, Montana should act now to insure efficient development of this vast resource, adequate reclamation of bentonite-mined lands, and a fair return for the state from the development of its bentonite reserves.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That a study be made of the benefits and problems surrounding large-scale development of Montana's sodium bentonite reserves, with particular emphasis on reclamation of bentonite-mined lands and taxation of bentonite.

BE IT FURTHER RESOLVED, that the study shall be conducted by the bipartisan Environmental Quality Council, as its scientific and technical staff is best able to assist in conducting this study.

BE IT FURTHER RESOLVED, that the Environmental Quality Council shall report its findings together with recommendations and proposed legislation to the 47th Legislature.

Approved April 20, 1979.

HOUSE JOINT RESOLUTION NO. 53

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONCERNING A COORDINATED APPROACH BY STATE, FEDERAL, AND PRIVATE INDIVIDUALS IN THE CONTROL AND ERADICATION OF NOXIOUS WEEDS, ESPECIALLY LEAFY SPURGE.

WHEREAS, noxious weeds occur on extensive areas of Montana agricultural land and rangeland and are escalating at alarming proportions on all land regardless of ownership and use; and

WHEREAS, Leafy Spurge is a plant pest that is rapidly expanding its range throughout eastern Montana, the Dakotas, and northern Wyoming; and

WHEREAS, the ranching and farming communities are becoming desperate in their search for better control methods for Leafy Spurge; and

WHEREAS, the use of pesticides approved for Leafy Spurge control, particularly Tordon, Round-up, and 2,4-D, are limited in their control effectiveness; and

WHEREAS, biological control is a relatively new field of plant control not thoroughly researched; and

WHEREAS, there is a lack of overall coordination between state and federal government and private individuals in their research efforts on either a local, state, or regional level; and

WHEREAS, there is a "ground swell" of interest between state and federal government and private individuals in an integrated approach to the control of Leafy Spurge.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Governor appoint a steering committee, cochaired by the director of the Department of Agriculture and the Montana director of the Scientific and Education Administration of the United States Department of Agriculture, to coordinate the various research efforts taking place in Montana.

BE IT FURTHER RESOLVED, that the Governor contact the Governors of North Dakota, South Dakota, and Wyoming to explore the possibility of establishing a regional commission for the express purpose of developing an accelerated research and application program for Leafy Spurge control.

BE IT FURTHER RESOLVED, that the Congress of the United States is urged to provide adequate funding for noxious weed control in Montana.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Governor, the Montana Congressional Delegation, the President of the Senate, the Speaker of the House, and the chairmen of the House and Senate Agriculture Committees of North Dakota, South Dakota, and Wyoming.

Approved April 6, 1979.

HOUSE JOINT RESOLUTION NO. 54

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA FOR AN INTERIM STUDY OF MONTANA'S ANNEXATION LAWS.

WHEREAS, it is in the best interest of the people of Montana to allow municipal growth in an orderly and planned manner while at the same time maintaining the balance of interest existing between those living within and those living outside a municipality's boundaries; and

WHEREAS, Montana's present annexation laws were adopted piecemeal, contain contradictions, and are in need of revision; and

WHEREAS, the piecemeal approach to annexation laws has not satisfactorily met current needs and has directly contributed to greater confusion over workable annexation procedures and processes in numerous Montana communities; and

WHEREAS, in many of Montana's communities existing annexation laws are causing or contributing to indiscriminate and disorderly growth patterns; and

WHEREAS, in many cases Montana's annexation laws may be forcing citizens of municipalities to be annexed without the provision of adequate municipal services extended and provided to them; and

WHEREAS, in other communities annexation is being frustrated by a confusing tangle of laws that are contradictory or unworkable; and

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WHEREAS, the status of fire districts in the event of annexation should be closely scrutinized, being a particularly difficult problem related to annexation; and

WHEREAS, many communities are facing the problem of uncontrolled urban sprawl with many people residing on the perimeter of the municipality not within the corporate boundaries but deriving many benefits from the municipality without paying their fair share for these services; and

WHEREAS, the numerous annexation-related bills introduced in the 46th Legislature indicate a statewide concern for the inadequacies of Montana's present annexation laws.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Committee on Priorities assign to an appropriate interim committee a study of all laws relating to annexation to identify conflicts, duplications, and inadequacies and to prepare appropriate legislation for the 47th Legislature that will provide Montana with a statutory framework which insures a comprehensive and workable approach to annexation.

(2) That the committee consult with the Department of Community Affairs, local governmental officials, and interested citizens during the course of the study.

(3) That the committee study various methods for resolving identified problems and examine alternatives used in other states for reasonable annexation procedures.

(4) That the committee report its findings, recommendations, and appropriate remedial legislation to the 47th Legislature.

Approved April 2, 1979.

HOUSE JOINT RESOLUTION NO. 56

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING ASSIGNMENT OF AN INTERIM COMMITTEE TO STUDY THE PROBLEM OF CONTROLLING THE USE, DISPOSAL, AND RECYCLING OF BEVERAGE AND FOOD CONTAINERS.

WHEREAS, there has been significant legislative interest in problems associated with the use, disposal, and recycling of food and beverage containers; and

WHEREAS, there is broad disagreement as to the proper role for the state to play in mitigating these problems; and

WHEREAS, a variety of programs have been initiated by the public and private sectors in neighboring states; and

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WHEREAS, a study of the programs in these states by a legislative committee would assist in resolving disagreements over the nature of the problems and the possible effects to be expected from alternative solutions; and

WHEREAS, the existence of an interim legislative committee would facilitate communications among the several groups of persons in Montana with an interest in the problem.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an interim committee be assigned to conduct a study of the problems of controlling food and beverage containers.

(2) That the study include at least the following:

(a) an evaluation of the State Solid Waste Management Strategy Report (1976) prepared for the state of Montana by the Department of Health and Environmental Sciences;

(b) an evaluation of various methods for controlling food and beverage containers used in neighboring states, including Idaho's voluntary recycling program, Oregon's beverage container deposit law, Washington's model litter control program, and similar programs in Maine, Michigan, and Vermont;

(c) a determination of the most cost-effective means of encouraging the return for recycling or reuse of food or beverage containers; and

(d) discussions with the various Montana groups interested in these problems to identify areas of agreement and mutually acceptable solutions.

(3) That the committee prepare a final report of its findings and conclusions together with its recommendations for release to the public no later than January 1, 1980, and subsequent submission to the 47th Legislature.

(4) That the committee may, no later than October 1, 1980, prepare and release to the public an amended report as a supplement to its final report.

Approved April 18, 1979.

HOUSE JOINT RESOLUTION NO. 57

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMENDING MEMBERS OF THE MONTANA ARMY NATIONAL GUARD AND MONTANA AIR NATIONAL GUARD FOR THEIR EXEMPLARY EFFORTS TO ASSIST IN THE CARE AND CUSTODY OF PERSONS FOR WHOM THE STATE HAS RESPONSIBILITY AT BOULDER RIVER SCHOOL AND HOSPITAL, GALEN STATE HOSPITAL, AND MONTANA STATE PRISON.

WHEREAS, many members of every unit of the Montana Army and Air National Guard responded to a recent call to state active duty to assist in providing the necessary care and custody for persons residing at Boulder

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River School and Hospital, Galen State Hospital, and Montana State Prison; and

WHEREAS, these Guard members were required to sacrifice much, leaving the comforts of home and family and job in the dead of winter to work long hours performing unfamiliar tasks in strange surroundings; and

WHEREAS, supervisory personnel at the several institutions have praised Guard members for their outstanding performance; and

WHEREAS, it is fitting and proper for the Legislature of the state of Montana to record its special appreciation for the efforts of these members.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the members of the Montana Army National Guard and Montana Air National Guard who served on state active duty at Boulder River School and Hospital, Galen State Hospital, or Montana State Prison are commended for their exemplary efforts to serve the state and the persons residing in these institutions.

(2) That the Legislature expresses its special appreciation for the sacrifices these members, their families, and their employers made in this time of state need.

(3) That the example of service set by these Guard personnel is worthy of emulation by all of this state's young people.

(4) That a copy of this resolution be forwarded by the Secretary of State to the Adjutant General of the Montana National Guard to be transmitted by him to the Commanding Officer of each unit to be brought to the attention of those who served.

Approved April 2, 1979.

HOUSE JOINT RESOLUTION NO. 58

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COMMITTEE ON PRIORITIES TO APPOINT A JOINT COMMITTEE TO CONDUCT AN INTERIM STUDY ON THE FUNDING OF THE MONTANA UNIVERSITY SYSTEM AND COMMUNITY COLLEGE DISTRICTS.

WHEREAS, the Montana Legislature recognizes the special funding problems of the Montana university system and the community college districts; and

WHEREAS, the existing formulas for funding the six units of the university system and the community college districts are in need of critical reevaluation and refinement; and

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WHEREAS, any reevaluation of funding for the university system or community college districts should involve the participation of all parties with an interest in higher education.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Committee on Priorities is requested to appoint a joint committee to conduct an interim study and present recommendations and proposed legislation to the 47th Legislature concerning changes and refinements in funding formulas that would promote efficiency and effectiveness in the Montana university system and among the community college districts.

BE IT FURTHER RESOLVED, that the Commissioner of Higher Education, the coordinator of community college districts, community college district trustees, the administration, faculty, and students of the units of the Montana university system and the community colleges, the office of the Governor, and the staff of the Legislative Fiscal Analyst are requested to make available to the study committee the resources of their respective offices.

Approved April 20, 1979.

HOUSE JOINT RESOLUTION NO. 59

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE ASSIGNMENT OF AN INTERIM STUDY OF SENTENCING IN CRIMINAL CASES.

WHEREAS, the 45th Legislature did not act on minimum sentencing legislation in expectation of receiving more information during the 1977-1978 interim; and

WHEREAS, the 46th Legislature has not been presented with such information; and

WHEREAS, the only way to ensure that the 47th Legislature receives the information is to have an interim legislative committee conduct a study; and

WHEREAS, uniformity in sentencing throughout Montana may be a highly desirable goal.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to give high priority to the appointment of an interim committee, selected from the members of the Senate and House Committees on the Judiciary and the Senate and House Committees on Public Health, Welfare, and Safety, to study sentencing of convicted criminal defendants in Montana.

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BE IT FURTHER RESOLVED, that the interim committee report its findings to the 47th Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 18, 1979.

HOUSE JOINT RESOLUTION NO. 60

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE ENVIRONMENTAL QUALITY COUNCIL TO STUDY THE LAWS RELATING TO REVIEW PROCEDURES FOR PERMITS REQUIRED FOR PROJECTS WHICH CONTEMPLATE THE USE OF THE STATE'S NATURAL RESOURCES FOR THE PURPOSE OF COORDINATING SUCH PERMIT PROCEDURES.

WHEREAS, the present procedures for obtaining approval of permits required for projects contemplating the use of the state's natural resources are frequently cumbersome and complicated for the person proposing the project, for members of the public desiring to present their views, and for the permitting authorities; and

WHEREAS, the person proposing the project would benefit from a unified permit procedure when a number of permits are required for a project in that the maze of permits confronting such person would be simplified, a greater degree of certainty of the permit requirements would be afforded, and a relatively stable timetable could be established; and

WHEREAS, coordination of permit procedures would provide members of the public an opportunity to obtain information pertaining to permit requirements more easily and greatly accommodate presentation of their views on proposed uses of natural resources and related environmental matters before the making of decisions on such uses by government agencies; and

WHEREAS, coordination of permit procedures would establish a mechanism whereby federal, state, and local government decisionmaking entities could reduce duplicative paperwork and improve communications and understanding regarding the administration of various programs and projects relating to air, water, and land resources; and

WHEREAS, a legislative study of the permit requirements for projects involving the use of the state's natural resources which would make recommendations for the coordination of such permit procedures would be useful to the Legislature and the people of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Environmental Quality Council study the statutory provisions relating to review procedures for permits required for projects which contemplate the use of the state's natural resources; to prepare recommendations for the coordination of such permit procedures for the benefit of the

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applicant, the reviewing agencies, and the members of the public; and to report its findings and recommendations to the regular session of the 47th Legislature.

Approved April 16, 1979.

HOUSE JOINT RESOLUTION NO. 61

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A STUDY OF THE FEASIBILITY OF TRANSPORTING GRAIN BY PIPELINE AND OF OTHER METHODS OF GRAIN TRANSPORTATION.

WHEREAS, rail shipments of grain in Montana steadily declined from 1974 through 1979; and

WHEREAS, Montana's farmers and ranchers are faced with an ever-increasing shortage of grain cars for transport of grain to market; and

WHEREAS, closure and abandonment in Montana of the Chicago, Milwaukee, St. Paul and Pacific Railroad, more commonly known as the Milwaukee Road, is a strong possibility; and

WHEREAS, because of late delivery, penalties are being imposed on grain buyers and being passed on to the grain producers; and

WHEREAS, certain research has been conducted by Montana State University regarding the transport of grain by pipeline using an air medium, and it has been determined that such technology now exists.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Agricultural Economics at Montana State University is requested to study the technical and economic feasibility of transporting grain by pipeline and other methods of grain transportation. The Department of Agricultural Economics at Montana State University is further requested to study the feasibility of the purchase of grain containers by farm organizations and the grain trade to be used in the transportation of grain by rail. If the pipeline method of transport is determined to be potentially advantageous, the study shall also address the feasibility and possibility of using any pipeline corridor right-of-way obtained for the pipeline transport of petroleum for both the transport of grain and petroleum by pipeline. A report concerning the conclusions reached and the proposed action, if any, to be taken by the state of Montana shall be made to the 47th Legislature.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the Governor, the Attorney General, the President of Montana State University, the Director of the Department of Agricultural Economics at Montana State University, and the Director of the Department of Agriculture of the state of Montana.

Approved April 19, 1979.

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HOUSE JOINT RESOLUTION NO. 62

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING ASSIGNMENT OF AN INTERIM COMMITTEE TO STUDY MONTANA'S PRESENT SEED CERTIFICATION LAWS AND TO PROPOSE NEEDED LEGISLATION TO THE 47TH LEGISLATURE.

WHEREAS, it is vital to the seed-growing industry in Montana that the State provide for seed certification because a Montana grower has a market only for certified seed; and

WHEREAS, Montana State University is responsible under present law for the certification of only those types of seeds that it elects to certify; and

WHEREAS, Montana State University has stated to the Board of Regents that it no longer desires the responsibility for seed certification, at least in the case of seed potatoes, except for providing services and facilities on a contract basis; and

WHEREAS, in order to develop a new method for seed certification that is practical and legally sound, it is necessary to coordinate any proposed changes in the present law with all interested parties, which include the Department of Agriculture, Montana State University, and seed growers' associations; and

WHEREAS, it is anticipated that the Board of Regents will require Montana State University to continue providing a seed certification program during the next 2 years until the 47th Legislature meets in 1981.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an interim committee be assigned to conduct a study to develop a practical and legally sound method of seed certification mutually acceptable to all of the interested parties.

(2) That the study include at least the following:

(a) the participation of the Department of Agriculture, Montana State University, the interim committee, private associations or incorporated entities presently acting as seed certification agents for Montana State University, and any other groups considered interested parties by the interim committee; and

(b) an evaluation of the methods of seed certification employed by other major seed producing states.

(3) That the committee prepare a report of its findings and conclusions together with proposed legislation for the consideration of the 47th Legislature.

Approved April 17, 1979.

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HOUSE JOINT RESOLUTION NO. 65

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING ASSIGNMENT OF AN INTERIM STUDY OF CORRECTIONS POLICY AND PRISON NEEDS.

WHEREAS, there are currently more than 300 inmates housed at the old prison facility in Deer Lodge; and

WHEREAS, it is intended that the old prison be closed upon completion of the two new medium security buildings at the new prison or as soon thereafter as practical; and

WHEREAS, it is vital that the planned closure of the old prison occur as early as reasonably practical; and

WHEREAS, an assumed limit of 718 inmates can be housed in the new facilities, using double bunking whenever possible; and

WHEREAS, the total prison population is likely to exceed 718 in the near future; and

WHEREAS, this projected prison population increase indicates a need for the construction of additional prison space and auxiliary facilities or other alternatives; and

WHEREAS, there is a need to develop a long-term policy on construction and replacement of juvenile correctional and evaluation facilities; and

WHEREAS, long-term needs for replacement of facilities at juvenile institutions must be identified; and

WHEREAS, there are alternatives to the construction of additional prison facilities such as forest work camps, making better use of available space at the new prison, making use of space at other state institutions, the possibility of contracting services with private nonprofit corporations, use of facilities such as halfway houses, and the development of prerelease centers and other community facilities; and

WHEREAS, the Legislature should relate overall corrections policy to facility needs and develop a long-range prison facilities plan to most economically meet the state's long-term prison needs.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an interim committee be assigned to study Montana's corrections policy and related prison needs.

(2) That the committee include in its study a consideration of at least the following:

(a) the prison release and furlough programs;

(b) prerelease programs and facilities;

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(c) questions about the maximum size of a prison facility that should be built in one location;

(d) the proper use of community and forest work camp programs and the relationship of such programs to prison needs;

(e) the long-term need for prison facilities in the state;

(f) the long-term needs for juvenile correction and evaluation facilities; and

(g) health care of prisoners.

(3) The department of institutions shall consult with the committee in the development of the comprehensive plan set forth in HB 483 relating to the appropriation of $3 million as set forth in item 7 of the appropriations to the department's central office.

(4) That the committee submit to the 47th Legislature a report of its findings together with recommendations for future corrections policy in Montana and recommendations for the construction of additional prison facilities, the location of such facilities, and other pertinent recommendations.

Approved April 25, 1979.

HOUSE JOINT RESOLUTION NO. 66

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE REVENUE OVERSIGHT COMMITTEE TO INVESTIGATE THE TREATMENT OF CAPITAL GAINS, INTEREST INCOME AND EXPENSES, AND DEPRECIATION DEDUCTIONS UNDER THE INCOME TAX STRUCTURE DURING A PERIOD OF SUSTAINED INFLATION; REQUESTING THE COMMITTEE TO PRESENT ITS FINDINGS TO THE 47TH LEGISLATURE.

WHEREAS, steady inflation distorts the proper determination of capital gains realized through the sale of property, interest income and expenses on investments, and depreciation of business property; and

WHEREAS, this distortion forces citizens to pay high tax on capital gains caused primarily by inflated values, to pay taxes on interest income that is less than the rate of inflation and thus represents a net loss to the investor, and to distort the value of deductions for depreciation and expenses granted in connection with investment property; and

WHEREAS, these distortions discourage Montana citizens from saving and investing funds; and

WHEREAS, many economists argue that lack of savings and capital investments are the most serious problems in our economy today; and

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WHEREAS, savings and investments in Montana are vitally necessary to increase the real income of Montana by increasing its productivity and providing new jobs.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Revenue Oversight Committee is requested to investigate the effect of the current income tax treatment of capital gains, interest income and expense, and depreciation of business property during a period of sustained rapid inflation and propose possible alternative methods of treatment of such items that would neutralize the effects of inflation.

BE IT FURTHER RESOLVED, that the Revenue Oversight Committee present its findings and recommendations to the Legislature prior to the convening of the 1981 Legislature.

Approved April 20, 1979.

HOUSE JOINT RESOLUTION NO. 67

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO THE HONORABLE CECIL ANDRUS, SECRETARY OF THE INTERIOR, THE HONORABLE JOHN MELCHER, SENATOR FROM MONTANA, THE HONORABLE MAX BAUCUS, SENATOR FROM MONTANA, THE HONORABLE PAT WILLIAMS, CONGRESSMAN FROM THE FIRST CONGRESSIONAL DISTRICT, STATE OF MONTANA, AND THE HONORABLE RON MARLENEE, CONGRESSMAN FROM THE SECOND CONGRESSIONAL DISTRICT, STATE OF MONTANA, ENCOURAGING THEM TO REEXAMINE A POLICY OF THE BUREAU OF RECLAMATION REGARDING THE FENCING OF TIBER RESERVOIR IN NORTH CENTRAL MONTANA.

WHEREAS, the Congress of the United States authorized the Department of Interior, acting by and through the Bureau of Reclamation, to construct Tiber Dam on the Marias River in North Central Montana for the purpose of impounding water in a reservoir to be used for the multiple purposes of flood control, irrigation, livestock watering and recreation; and

WHEREAS, the project has been completed for many years and the Tiber Reservoir resulting from Tiber Dam has served North Central Montana for the multiple uses of flood control, irrigation, stock watering, and recreation; and

WHEREAS, the multiple uses of the waters of the Marias River impounded in Tiber Reservoir have been for many years compatible among themselves; and

WHEREAS, the Bureau of Reclamation is now constructing a containment fence for the Tiber Reservoir that will impede and restrict the availability of reservoir waters for stock watering; and

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WHEREAS, the livestock producers operating in and near the Tiber Reservoir need and require access to the Tiber Reservoir for stock watering; and

WHEREAS, the containment fence being constructed by the Bureau of Reclamation will severely restrict the use by stockmen of the Tiber Reservoir waters and will cause unreasonable and unnecessary economic hardship to the livestock industry.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Honorable Cecil Andrus, Secretary of Interior, be advised that it is the desire and wish of the Legislature of the State of Montana that the Bureau of Reclamation under his direct control cease and desist from a fencing program at Tiber Reservoir that will deprive livestock of free and uninhibited access to the reservoir waters in the manner and in the same way as the livestock have watered at the reservoir since the project was completed by the Department of Interior.

That a copy of this resolution be forwarded by the Secretary of State to the Honorable Cecil Andrus, Secretary of Interior, the Honorable John Melcher, Senator from Montana, the Honorable Max Baucus, Senator from Montana, the Honorable Pat Williams, Congressman from Montana's first district, and the Honorable Ron Marlenee, Congressman from Montana's second congressional district.

Approved April 20, 1979.

HOUSE JOINT RESOLUTION NO. 68

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING THEIR GRATITUDE TO MRS. ISABEL HAYNES FOR HER GENEROSITY IN DONATING THE HAYNES FAMILY COLLECTION TO THE MONTANA HISTORICAL SOCIETY.

WHEREAS, Mrs. Isabel Haynes has generously contributed her family's rich collection of paintings, photographs, and artifacts to the Montana Historical Society; and

WHEREAS, Mrs. Haynes' contribution to the people of Montana represents an enormous repository of irreplaceable and priceless heirlooms which include more than 400 paintings, relics of the Custer Battle, stagecoaches, Indian artifacts, and nearly 24,000 photographs that vividly portray almost a century of the history of Montana and the West; and

WHEREAS, Mrs. Haynes' father-in-law, Frank J. Haynes (1853-1921), ranks with William H. Jackson, Stanley J. Morrow, and L. A. Huffman as one of the great photographers of the American West; and

WHEREAS, Frank J. Haynes was the official photographer for the Northern Pacific Railroad and Yellowstone National Park; and

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WHEREAS, Frank J. Haynes' photographs provide an outstanding pictorial history of the Northern Great Plains, especially of Montana; and

WHEREAS, Mrs. Haynes' late husband, Jack Ellis Haynes (1884-1962), continued his father's pioneering photography and made his own brilliant contributions in the field of photography; and

WHEREAS, the donation to the Montana Historical Society of the lifework of Frank, Jack, and Isabel Haynes has immeasurably enriched the Society's collections and significantly added to the enlightenment of all Montanans.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature, on behalf of the people of the state of Montana, express its deep sense of gratitude to Mrs. Isabel Haynes for her generosity.

BE IT FURTHER RESOLVED, that the Legislature commends the Haynes Family Collection to all Montanans to be studied and appreciated as a foremost example of their common heritage.

Approved April 20, 1979.

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA TO ADOPT RULES TO GOVERN ITS PROCEEDINGS IN ADDITION TO THE JOINT RULES.

BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following rules are adopted:

CHAPTER 1
Presiding Officer — Decorum, Order and Debate

S1-1. The senate shall choose a president from its membership who shall be the presiding officer. In case of the absence or disqualification of the president, the president pro tempore of the senate shall perform the duties of the president until the vacancy is filled or the disability removed.

S1-2. The senate shall, at the beginning of each regular session, and at such other times as may be necessary, elect one of its members president pro tempore. The senate shall choose its other officers, and shall judge of the elections, returns, and qualifications of its members.

S1-3. The president and president pro tempore, when acting as presiding officer of the senate, shall vote as any other member of the senate.

S1-4. The president may name a senator to perform the duties of the chair, when the president pro tempore is not present in the senate chamber. The senator who is so named is vested during such time with all the

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powers of the president; but he does not lose the right to vote on any question while presiding.

S1-5. No senator shall speak more than twice on any one motion or question without unanimous consent of the senate, unless he has introduced or proposed the motion or question under debate, in which case he may speak twice and also close the debate. However, a senator who has spoken shall not speak again on the same motion or question to the exclusion of a senator who has not spoken.

S1-6. On order of business No. 8 — In addition to other methods a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as such. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

S1-7. Only the following persons may be admitted to the floor of the senate during sessions: legislators, legislative officers and employees whose presence is necessary for the conduct of the business of the session, accredited members of the press, radio and television, former legislators. The rules committee shall be allowed to make exceptions for visiting dignitaries.

CHAPTER 4
Order of Business

S4-1. On order of business No. 2 (reports of standing committees), no debate shall be had on any report unless a minority report or a report without recommendation has been submitted. Any member seeking a reconsideration of the senate's action on the adoption of a committee report shall do so on order of business No. 6 by motion to reconsider. Any member may make such motion and need not have voted on the prevailing side. This rule shall apply notwithstanding any joint rule to the contrary.

A bill reported from committee without recommendation shall be ordered printed and placed on second reading.

CHAPTER 5
Motions

S5-1. All proper motions on second reading are debatable. If a motion to reconsider third reading action on a bill or resolution is carried, there shall be no further action on that bill or resolution until the succeeding legislative day.

CHAPTER 7
Committees

S7-1. The senate shall elect a committee on committees consisting of 5 members, except when the senate is evenly divided between parties, when the committee on committees shall consist of 6 members, 3 from each party. The committee on committees, with the approval of the senate, shall

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appoint standing and select committees of the senate, and senate membership on joint committees except conference committees and special committees. The president shall appoint all conference committees and special committees with the advice of the majority and minority floor leaders. The senate may change the membership of any committee on one day's notice.

The standing committees of the senate are as follows:

1. Agriculture, Livestock, and Irrigation
2. Bills and Journal
3. Business and Industry
4. Education
5. Finance and Claims
6. Highways and Transportation
7. Judiciary
8. Labor and Employment Relations
9. Legislative Administration
10. Local Government
11. Natural Resources
12. Fish and Game
13. Public Health, Welfare and Safety
14. Rules
15. State Administration
16. Taxation

S7-2. The majority floor leader shall be an ex officio member of all committees in order to establish a quorum.

S7-3. When a conference committee report is filed with the secretary, the same shall be read under order of business No. 3, Select Committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the committee of the whole, it may be considered on third reading the same legislative day.

S7-4. Pairs in committee are prohibited.

CHAPTER 8
Rules and Journal

S8-1. (1) A motion to amend or adopt a rule of the senate shall be referred to the committee on rules without debate. A rule of the senate may only be amended or adopted with the concurrence of a majority of the senate and after one day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

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S8-2. Mason's Manual of Legislative Procedure governs the proceedings of the senate in all cases not covered by these rules.

CHAPTER 10
Nominations from the Governor

S10-1. The governor shall nominate, and by and with the consent of the senate, appoint all officers whose offices are established by the constitution or which may be created by law, and whose appointment or election is not otherwise provided for. If during a recess of the senate a vacancy occurs in any such office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office.

S10-2. When nominations are sent by the governor to the senate for confirmation, they shall not be acted on before the next succeeding legislative day, except nominations sent by the governor on the last legislative day of the session, which shall be acted upon that day.

Approved January 18, 1979.

SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA DIRECTING THE DEPARTMENT OF HIGHWAYS TO CONDUCT AN INTERIM STUDY TO INVESTIGATE THE LACK OF CONSISTENCY IN WORK QUALITY AMONG THE SEVERAL HIGHWAY MAINTENANCE SECTIONS OF THE STATE DEPARTMENT OF HIGHWAYS.

WHEREAS, good highways must be well maintained to be safe for the motoring public; and

WHEREAS, routine highway maintenance functions are performed and supervised in small organizational units known as sections; and

WHEREAS, there is evidence that there is a wide variance in the quality of routine maintenance work among the several sections; and

WHEREAS, this condition indicates possible lax management or other serious management problems that require correction if public safety is to be served.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Department of Highways conduct an interim study to investigate the management problems of the Maintenance Division of the Department of Highways and report its findings and recommendations to the regular session of the 47th Legislature.

Approved February 21, 1979.

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SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA URGING AN INCREASED RATE OF HIGHWAY CONSTRUCTION IN THE STATE.

WHEREAS, public transportation in Montana is far from adequate to meet the needs of Montana residents due to the shortage of scheduled airline and railroad service; and

WHEREAS, it is necessary for the survival of Montana's economy to help its residents improve their circumstances by having access to improved transportation for people, materials, and services; and

WHEREAS, Montana ranks 47th in the nation in completed interstate highways, and one of the states ranking lower than Montana is Alaska, which for obvious reasons has no proposed interstate system; and

WHEREAS, the states surrounding Montana have completed or are in the final stages of completing their interstate highway systems; and

WHEREAS, Montana's economy depends heavily upon tourism, which amounts to approximately $60 million in income to our state, and it appears incongruous that out-of-state and in-state residents traveling for pleasure or in the conduct of business must travel over a great number of narrow and inferior highways throughout Montana; and

WHEREAS, the federal government is going to cut off all funds for interstate highways in 1986, and at the pace Montana is constructing interstate highways, we will not complete our highway system in time for the taxpayers in this state to have the advantage of federal funding for our interstate highways; and

WHEREAS, the loss of such funds would be devastating to Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate goes on record in support of a stepped-up program of highway construction which could insure that Montana taxpayers would receive their share of federal funds to complete the interstate systems in our state before the federal funds are cut off in 1986.

BE IT FURTHER RESOLVED, that the Senate encourages Governor Judge to do everything in his power to see that this resolution is carried out as a priority for the people of this great state.

Approved March 27, 1979.

SENATE RESOLUTION NO. 4

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA URGING PRESIDENT CARTER TO INCREASE THE TARGET PRICE OF CORN, WHEAT, AND BARLEY BY 10% TO REFLECT CURRENT COSTS OF PRODUCTION.

WHEREAS, the cost of production of corn, wheat, and barley has continued to rise, and this rise should rightfully be reflected in the target price of these commodities; and

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WHEREAS, an increase of 10% in the target price of corn, wheat, and barley will tend to stimulate the world-wide market for these commodities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

(1) That the President of the United States and the United States Congress are urged to increase by 10% the target price for wheat, corn, and barley.

(2) That copies of this resolution be sent to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, the Montana Congressional Delegation, and the United States Secretary of Agriculture.

Approved April 11, 1979.

SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA COMMEMORATING THE 100TH ANNIVERSARY OF THE CITY OF BUTTE.

WHEREAS, Butte as a city was formally founded upon the "Richest Hill on Earth" by the passage and approval of a bill for incorporation introduced into the 1879 Montana Territorial Legislature by Joseph A. Hyde of Deer Lodge and signed by Governor B. F. Potts; and

WHEREAS, on Saturday, April 7, 1979, the city of Butte celebrates its 100th year as a city; and

WHEREAS, the history of Butte and the history of the state of Montana are intricately bound together; and

WHEREAS, Butte has had a rich and glorious mining history that brought together people of many ethnic groups who contributed to the cultural development of Montana; and

WHEREAS, these people developed a unique pride for their fellow citizens and their city, setting an example of hospitality and friendship and proclaiming this unique pride by calling itself "Butte, America"; and

WHEREAS, the mining corporations, the copper kings, and the miners of Butte contributed to the economic, political, and character development of Montana; and

WHEREAS, the rich and varied history of Butte has seen it pass fom a boisterous frontier mining town to a mature source of raw materials building a nation at peace and defending a nation at war and now on to a community developing as the commercial crossroad of the Northern Rocky Mountains; and

WHEREAS, it is appropriate that the Senate commemorate this occasion.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

(1) That the Senate congratulates the great city of Butte on its 100th anniversary and wishes the city another 100 years of peace and prosperity.

(2) That the Senate recognizes with appreciation the contribution the people of Butte have made to the development of the state and recognizes and commends those people for the strength of character and purpose that has made Butte a city of which Montana is indeed proud.

(3) That the Secretary is directed to transmit a copy of this resolution to Governor Tom Judge to be presented to the people of Butte with the compliments of the Senate.

Approved April 10, 1979.

SENATE RESOLUTION NO. 6

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA TO THE HONORABLE CECIL ANDRUS, SECRETARY OF THE INTERIOR, THE HONORABLE JOHN MELCHER, SENATOR FROM MONTANA, THE HONORABLE MAX BAUCUS, SENATOR FROM MONTANA, THE HONORABLE RON MARLENEE, CONGRESSMAN FROM THE SECOND CONGRESSIONAL DISTRICT, AND THE HONORABLE PAT WILLIAMS, CONGRESSMAN FROM THE FIRST CONGRESSIONAL DISTRICT, STATE OF MONTANA, ENCOURAGING THEM TO REEXAMINE A POLICY OF THE BUREAU OF RECLAMATION REGARDING THE FENCING OF TIBER RESERVOIR IN NORTH CENTRAL MONTANA.

WHEREAS, the Congress of the United States authorized the Department of the Interior, acting by and through the Bureau of Reclamation, to construct Tiber Dam on the Marias River in North Central Montana for the purpose of impounding water in a reservoir to be used for the multiple purposes of flood control, irrigation, livestock watering, and recreation; and

WHEREAS, the project has been completed for many years and the Tiber Reservoir resulting from Tiber Dam has served North Central Montana for the multiple uses of flood control, irrigation, stock watering, and recreation; and

WHEREAS, the multiple uses of the waters of the Marias River impounded in Tiber Reservoir have been for many years compatible amongst themselves; and

WHEREAS, the Bureau of Reclamation is now constructing a containment fence for the Tiber Reservoir that will impede and restrict the availability of reservoir waters for stock watering; and

WHEREAS, the livestock producers operating in and near the Tiber Reservoir need and require access to the Tiber Reservoir for stock watering; and

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WHEREAS, the containment fence being constructed by the Bureau of Reclamation will severely restrict the use by stockmen of the Tiber Reservoir waters and will cause unreasonable and unnecessary economic hardship to the livestock industry.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Honorable Cecil Andrus, Secretary of the Interior, be advised that it is the desire and wish of the Senate of the state of Montana that the Bureau of Reclamation under his direct control cease and desist from a fencing program at Tiber Reservoir that will deprive livestock of free and uninhibited access to the reservoir waters in the manner and in the same way as the livestock have watered at the reservoir since the project was completed by the Department of Interior.

That a copy of this resolution be forwarded by the Secretary of the Senate to the Honorable Cecil Andrus, Secretary of the Interior, the Honorable John Melcher, Senator from Montana, the Honorable Max Baucus, Senator from Montana, the Honorable Ron Marlenee, Congressman from Montana's eastern district, and the Honorable Pat Williams, Congressman from Montana's western district.

Approved April 18, 1979.

SENATE RESOLUTION NO. 7

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA AUTHORIZING THE PRESIDENT OF THE SENATE TO APPROVE THE EMPLOYMENT OF SENATE OFFICERS AND EMPLOYEES NECESSARY TO COMPLETE THE BUSINESS OF THE REGULAR SESSION OF THE 46TH LEGISLATURE AND TO PROVIDE COMPENSATION FOR EMPLOYEES TO PREPARE ANY BUSINESS OF ANY SPECIAL SESSION OF THE 46TH LEGISLATURE.

WHEREAS, the completion of business of the regular session of the 46th Legislature encompasses the employment of certain legislative officers and employees of the Senate; and

WHEREAS, the preparation of business of any special session of the 46th Legislature encompasses the employment of certain legislative officers and employees of the Senate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the President of the Senate is authorized by the Senate Committee on Legislative Administration and the Senate of the 46th Legislature to employ and continue the employment of officers and employees necessary to complete all unfinished business incident to and consequent upon the 46th Legislature and any special session of the 46th Legislature.

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BE IT FURTHER RESOLVED, that the payrolls covering each employment shall be authenticated by the President of the Senate and the Director, Accounting Division, Legislative Council, and payment of the same shall be made separate and out of funds appropriated for the regular session of the 46th Legislature at the rate specified in House Joint Resolution No. 1 effective January 3, 1979, or from any new funds appropriated for such purposes.

BE IT FURTHER RESOLVED, that legislative officers and employees for any special session of the 46th Legislature shall be employed and compensated at the same prescribed rate as defined in House Joint Resolution No. 1.

Approved April 25, 1979.

HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT RULES TO GOVERN ITS PROCEEDINGS IN ADDITION TO JOINT RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following rules are adopted:

HOUSE RULES

CHAPTER 1
Presiding Officer — Decorum, Order and Debate

H1-1. The house of representatives shall elect one of its members speaker. The house shall choose its other officers, and shall be the judge of the elections, returns, and qualifications of its members.

H1-2. The house shall elect one of its members speaker pro tempore who shall perform all of the duties of the speaker in the absence of that officer, and on such other occasions as the speaker may request.

H1-3. No member shall speak for longer than thirty minutes in debate on any one motion or question.

H1-4. No member shall speak more than once on the same question without the unanimous consent of the house, unless he has proposed or introduced the matter under debate, in which case he may speak in reply after all members choosing to speak have spoken.

H1-6. If the motions "do pass" and "do not pass" or "indefinitely postpone" both fail on Second Reading, a motion to reconsider is in order in Committee of the Whole.

CHAPTER 7
Committees

H7-1. The standing committees of the house are as follows:

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1. Agriculture, Livestock and Irrigation
2. Appropriations
3. Business and Industry
4. Education and Cultural Resources
5. Fish and Game
6. Highways and Transportation
7. Judiciary
8. Labor and Employment Relations
9. Legislative Administration/Bills and Journal
10. Local Government
11. Natural Resources
12. Human Services
13. Rules
14. State Administration
15. Taxation

The first named member of a committee is the chairman, and in his absence the next named member, and so on.

H7-2. The committee on rules shall consist of the speaker, the majority leader, and other members of the majority party appointed by the speaker, the minority leader, and other members of the minority party designated by the minority leader and appointed by the speaker. The speaker shall appoint other standing committees, select committees, and house membership on joint committees and conference committees.

H7-3. All bills having "Do Pass" committee recommendations shall be deemed adopted and shall be placed on second reading unless they are referred to a committee by motion duly made on order of business No. 6.

If the committee report is that the bill "Do Not Pass", the bill shall be posted by the chief clerk of the house and the members of the house have 24 hours in which to indicate in writing to the chief clerk that they wish to have the bill debated. If 10 members so indicate, the bill will be placed on second reading for debate. If no such indication is made, the committee report will be voted on order of business No. 2 without debate.

CHAPTER 8
Rules

H8-1. (1) A motion to amend or adopt a rule of the house shall be referred to the committee on rules, which shall report no later than the next legislative day. Unless recommended by the committee on rules, no house rule shall be amended or adopted except by a two-thirds vote.

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(2) A house rule may be suspended temporarily for a specified purpose by unanimous consent.

H8-2. Mason's Manual of Legislative Procedure governs the proceedings of the house of representatives in all cases not covered by these rules.

Approved January 10, 1979.

HOUSE RESOLUTION NO. 2

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING AN INCREASED RATE OF HIGHWAY CONSTRUCTION IN THE STATE.

WHEREAS, public transportation in Montana is far from adequate to meet the needs of Montana residents due to the shortage of scheduled airline and railroad service; and

WHEREAS, it is necessary for the survival of Montana's economy to help its residents improve their circumstances by having access to improved transportation for people, materials, and services; and

WHEREAS, Montana ranks 47th in the nation in completed interstate highways, and one of the states ranking lower than Montana is Alaska, which for obvious reasons has no proposed interstate system; and

WHEREAS, the states surrounding Montana have completed or are in the final stages of completing their interstate highway systems; and

WHEREAS, Montana's economy depends heavily upon tourism, which amounts to approximately $60 million in income to our state, and it appears incongruous that out-of-state and in-state residents traveling for pleasure or in the conduct of business must travel over a great number of narrow and inferior highways throughout Montana; and

WHEREAS, the federal government is going to cut off all funds for interstate highways in 1986, and at the pace Montana is constructing interstate highways, we will not complete our highway system in time for the taxpayers in this state to have the advantage of federal funding for our interstate highways; and

WHEREAS, the loss of such funds would be devastating to Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the House of Representatives goes on record in support of a stepped-up program of highway construction which could insure that Montana taxpayers would receive their share of federal funds to complete the interstate systems in our state before the federal funds are cut off in 1986.

BE IT FURTHER RESOLVED, that the House of Representatives encourages Governor Judge to do everything in his power to see that this resolution is carried out as a priority for the people of this great state.

Approved March 20, 1979.

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HOUSE RESOLUTION NO. 3

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AUTHORIZING THE LEGISLATIVE ADMINISTRATION COMMITTEE TO CONDUCT AN INTERIM STUDY OF THE HOUSE ROLL CALL VOTING AND SOUND SYSTEMS AND TO AUTHORIZE THE PURCHASE AND INSTALLATION OF APPROPRIATE REPLACEMENT SYSTEMS IF FUNDS ARE APPROPRIATED FOR THAT PURPOSE.

WHEREAS, the House roll call and sound systems were installed in 1971 and are becoming increasingly vulnerable to malfunction and increasingly costly to maintain and repair; and

WHEREAS, the current roll call and sound systems utilize outdated electronic components and obsolete wired circuitry panels; and

WHEREAS, the current roll call and sound system has a short circuit somewhere in the system that maintenance men cannot locate and that occasionally renders the system inoperative or produces poor sound quality; and

WHEREAS, great advances have been made in the field of electronics since the House system was installed, including the development of "micro" and "printed" circuitry and magnetic memory units; and

WHEREAS, several new systems are available that would provide more reliability, efficiency, and greater flexibility in use of display subject matter.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Administration Committee be authorized to conduct an interim study of the various systems available, including an analysis of the systems in use by other state legislatures.

BE IT FURTHER RESOLVED, that if funds are appropriated, the Legislative Administration Committee after concluding its study is authorized, pursuant to Joint Rule 3-15, to purchase and have installed new roll call and sound systems for the House of Representatives prior to the convening of the 47th Legislature.

Approved April 11, 1979.

HOUSE RESOLUTION NO. 4

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMEMORATING THE 100TH ANNIVERSARY OF THE CITY OF BUTTE.

WHEREAS, Butte as a city was formally founded upon the "Richest Hill on Earth" by the passage and approval of a bill for incorporation introduced into the 1879 Montana Territorial Legislature by Joseph A. Hyde of Deer Lodge and signed by Governor B. F. Potts; and

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WHEREAS, on Saturday, April 7, 1979, the city of Butte celebrates its 100th year as a city; and

WHEREAS, the history of Butte and the history of the state of Montana are intricately bound together; and

WHEREAS, Butte has had a rich and glorious mining history that brought together people of many ethnic groups who contributed to the cultural development of Montana; and

WHEREAS, these people developed a unique pride for their fellow citizens and their city, setting an example of hospitality and friendship and proclaiming this unique pride by calling itself "Butte, America"; and

WHEREAS, the mining corporations, the copper kings, and the miners of Butte contributed to the economic, political, and character development of Montana; and

WHEREAS, the rich and varied history of Butte has seen it pass fom a boisterous frontier mining town to a mature source of raw materials building a nation at peace and defending a nation at war and now on to a community developing as the commercial crossroad of the Northern Rocky Mountains; and

WHEREAS, it is appropriate that the House of Representatives commemorate this occasion.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the House of Representatives congratulates the great city of Butte on its 100th anniversary and wishes the city another 100 years of peace and prosperity.

(2) That the House of Representatives recognizes with appreciation the contribution the people of Butte have made to the development of the state and recognizes and commends those people for the strength of character and purpose that has made Butte a city of which Montana is indeed proud.

(3) That the Chief Clerk is directed to transmit a copy of this resolution to Governor Tom Judge to be presented to the people of Butte with the compliments of the House.

Approved April 9, 1979.

HOUSE RESOLUTION NO. 6

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AUTHORIZING CERTAIN LEGISLATIVE OFFICERS AND EMPLOYEES TO COMPLETE THE BUSINESS OF THE REGULAR SESSION OF THE 46TH LEGISLATURE, TO PROVIDE COMPENSATION FOR EMPLOYEES TO PREPARE ANY BUSINESS OF ANY SPECIAL SESSION OF THE 46TH LEGISLATURE, AND TO PREPARE THE BUSINESS OF THE 47TH LEGISLATURE.

WHEREAS, the completion of business of the regular session of the 46th Legislature encompasses the employment of certain legislative officers and employees of the House of Representatives; and

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WHEREAS, the preparation of business of any special session of the 46th Legislature of the regular session of the 47th Legislature encompasses the employment of certain legislative officers and employees of the House of Representatives.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the officers and employees of the House of Representatives herein named are hereby employed by the House of Representatives of the regular session of the 46th Legislature of the state of Montana to complete the business of that session:

(1) Harold Gerke, Speaker of the House

(2) Ann Mary Dussault, Majority Leader

(3) John Vincent, Majority Whip

(4) Jack Ramirez, Minority Leader

(5) Bob Sivertsen, Minority Whip

(6) Martha B. McGee, Chief Clerk

(7) Tom Staples, Assist in Chief Clerk's Office

(8) Betsy Cole, Assist in Chief Clerk's Office

(9) Bobbie Murphy, Secretary/Speaker of the House

(10) Nancy Aagenes, Secretary/Majority Leader

(11) Martha Brass, Secretary/Minority Leader

(12) Pearl B. Greenblatt, Secretary/Chief Clerk

(13) Bobbie Rintala, Status Input Technician

(14) Jo Ann Owens, Journal Clerk

(15) Paula Stoll, Assistant Journal Clerk

(16) Vicki Lofthouse, Assist Chief Clerk - Authenticate Journal - Secretary of State

(17) Kay Miller, Proofreader - Journal - Secretary of State;

(18) Pat Tyanich, Bills Clerk

(19) Nina Kosmas, Assist Chief Stenographer - Close Pool;

(20) Dorothy Higgins, Assist to Close Pool

(21) Roberta Stipich, Appropriations Secretary

(22) Mary Flanagan, Assist in Appropriations

(23) Jo Lahti, Taxation Secretary

(24) Emelia Satre, Assist in Taxation

(25) Mary Ellen Connelly, Judiciary Committee Secretary

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(26) Dick Meyer, Sergeant at Arms

(27) Steve Huntington, Asst. Sergeant at Arms

(28) Clyde Neu, Asst. Sergeant at Arms

(29) Tim Flynn, Assist in Sergeant at Arms' Office

BE IT FURTHER RESOLVED, that the payrolls covering each employment shall be authenticated by the Speaker of the House of Representatives and the Chief Clerk or Sergeant at Arms, as appropriate, and the payment of the same shall be made separate and out of funds appropriated for the regular session of the 46th Legislature at the rate specified in House Joint Resolution No. 1, effective January 13, 1979, or from any new funds appropriated for such purposes.

BE IT FURTHER RESOLVED, that legislative officers and employees for any special session of the 46th Legislature or the regular session of the 47th Legislature shall be employed and compensated at the same prescribed rate as defined in House Joint Resolution No. 1 and letter of authorization addressed to Diana Dowling dated January 8, 1979, and signed by Representative Jerry Metcalf, Chairman of the House Legislative Administration/Bills and Journal Committee, until such time as the rates are changed by the House of Representatives.

BE IT FURTHER RESOLVED, that this resolution is effective upon adoption by the House of Representatives.

Approved April 20, 1979.

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APPENDIX

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APPENDIX

BALLOT ISSUES

CONSTITUTIONAL AMENDMENT NO. 4

By Chapter 459, Laws of 1977, the Legislature proposed an amendment to the Constitution of the State of Montana to allow the Legislature or the people by initiative to establish the legal age for consuming or possessing alcoholic beverages.

Chapter 459 was approved by the following vote at the General Election held November 7, 1978:

For:	208,227
Against:	64,663

The title and text of Chapter 459 follow.

An Act to Submit to the Qualified Electors of Montana an Amendment to Article II, Section 14, of the Montana Constitution to Allow the Legislature or the People by Initiative to Establish the Legal Age for Consuming or Possessing Alcoholic Beverages.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article II, section 14, of the Montana constitution is amended to read as follows:

"Section 14. Adult rights. A person 18 years of age or older is an adult for all purposes, *except that the legislature or the people by initiative may establish an age of not more than 19 as the legal age for consuming or possessing alcoholic beverages.*"

Section 2. Effective date. If approved by the electorate, this amendment shall be effective January 1, 1979.

Section 3. Submission to electors. This amendment shall be submitted to the electors of the state of Montana at the general election to be held November 7, 1978, by printing on the ballot the full title, and the following:

☐ FOR *allowing the legislature or the people to establish* the legal drinking age.

☐ AGAINST *allowing the legislature or the people to establish* the legal drinking age.

CONSTITUTIONAL AMENDMENT NO. 6

By Chapter 70, Laws of 1977, the Legislature proposed an amendment to the Constitution of the State of Montana to make voter review of local government an optional procedure and to allow the people to exercise that option every 10 years.

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Chapter 70 was approved by the following vote at the General Election held November 7, 1978:

For:	165,668
Against:	82,489

The title and text of Chapter 70 follow.

An Act to Submit to the Qualified Electors of Montana an Amendment to Article XI of the Montana Constitution to Make Voter Review of Local Government an Optional Procedure and to Allow the People to Exercise This Option Every 10 Years.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article XI, section 9 of the Montana constitution is amended to read as follows:

"Section 9. Voter review of local government. (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require *an election in each local government to determine whether a local government will undertake* a review procedure once every ten years after the first election. *Approval by a majority of those voting in the decennial general election on the question of undertaking a local government review is necessary to mandate the election of a local government study commission. Study commission members shall be elected during any regularly scheduled election in local governments mandating their election.*"

Section 2. Implementation. If not already implemented, the legislature shall implement this amendment with appropriate legislation in 1979, in order that the electors of each local government may indicate their preference "For" or "Against" the establishment of a study commission in 1984.

Section 3. Submission to electors. This amendment shall be submitted to the electors of the state of Montana at the general election to be held November 7, 1978, by printing on the ballot the full title, sections 1 and 2 of this act, and the following:

☐ FOR making voter review of local government optional.

☐ AGAINST making voter review of local government optional.

INITIATIVE NO. 79

By Initiative the people proposed a law to allow cities, towns, or counties to adopt obscenity ordinances or resolutions more restrictive than state law. The Initiative was approved by the following vote at the General Election held November 7, 1978:

For	139,763
Against	125,475

The title and text of the Initiative law follow.

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An Initiative Entitled: "An Act to Amend Section 94-8-110, R.C.M. 1947, to Allow Cities, Towns or Counties to Adopt Obscenity Ordinances or Resolutions More Restrictive Than State Law."

Be it enacted by the People of the State of Montana:

Section 1. Section 94-8-110, R.C.M. 1947, is amended to read as follows;

"94-8-110. Obscenity. (1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly;

(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene to anyone under the age of eighteen (18); or

(b) Presents or directs an obscene play, dance or other performance or participates in that portion thereof which makes it obscene to anyone under the age of eighteen (18); or

(c) Publishes, exhibits or otherwise makes available anything obscene to anyone under the age of eighteen (18); or

(d) Performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of eighteen (18); or

(e) Creates, buys, procures or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of eighteen (18); or

(f) Advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if:

(a) it is a representation or description of perverted ultimate sexual acts, actual or simulated, or

(b) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated, or

(c) it is a patently offensive representation or description of masturbation, excretory functions or lewd exhibition of the genitals, and

(d) taken as a whole the material:

(i) applying contemporary ~~Montana~~ *community* standards, appeals to the prurient interest in sex,

(ii) portrays conduct described in (a), (b), or (c) above in a patently offensive way, and

(iii) lacks serious literary, artistic, political or scientific value.

(3) In any prosecution for an offense under this section evidence shall be admissible to show:

(a) The predominant appeal of the material, and what effect if any, it would probably have on the behavior of people;

(b) The artistic, literary, scientific, educational or other merits of the material;

(c) The degree of public acceptance of the material in ~~this state,~~ *the community;*

(d) Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material; or

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(e) Purpose of the author, creator, publisher or disseminator.

(4) A person convicted of obscenity shall be fined at least five hundred dollars ($500) but not more than one thousand dollars ($1,000), or imprisoned in the county jail for a term not to exceed six (6) months, or both.

(5) ~~No city or municipal ordinance may be adopted which is more restrictive as to obscenity than the provisions of this section and section 94-8-110.1~~ *Cities, towns or counties may adopt ordinances or resolutions which are more restrictive as to obscenity than the provisions of this section and section 94-8-110.1.*"

Section 2. Effective date. Section 1 of this act is effective January 1, 1979.

INITIATIVE NO. 80

By Initiative the people proposed laws relating to voter approval of proposed nuclear power facilities. The Initiative was approved by the following vote at the General Election held November 7, 1978:

For:	177,778
Against:	95,179

The title and text of the Initiative follow.

An Act Empowering Montana Voters to Approve or Reject Any Proposed Nuclear Power Facility Certified Under the Montana Major Facility Siting Act; Defining Terms; Establishing State Safety and Financial Liability Standards for Major Nuclear Facilities; Exempting Medical and Research Facilities; Providing for Publication of Emergency Evacuation Plans; Invalidating Emergency Approval Authority for Nuclear Facilities; Amending Section 70-804, Revised Codes of Montana, 1947.

Be it enacted by the people of the state of Montana:

SECTION 1. There is a new R.C.M. section that reads as follows:

Findings as to nuclear safety — reservation of nuclear facility approval powers to the people. (1) The people of Montana find that substantial public concern exists regarding nuclear reactors and other major nuclear facilities, including the following unresolved issues:

(a) the generation of waste from nuclear facilities, which remains a severe radiological hazard for many thousands of years and to which no means of containment assuring the protection of future generations exists;

(b) the spending of scarce capital to pay the rapidly increasing costs of nuclear facilities, preventing the use of that capital to finance renewable energy sources which hold more promise for supplying useful energy, providing jobs, and holding down energy costs;

(c) the liability of nuclear facilities to sudden catastrophic accidents which can affect large areas of the state, thousands of people, and countless future generations;

(d) the refusal of utilities, industry, and government to assume normal financial responsibility for compensating victims of such nuclear accidents;

(e) the impact of nuclear facilities on the proliferation of nuclear bombs and terrorism;

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(f) the increasing pattern of abandonment of used nuclear facilities by their owners, resulting in radiological dangers to present and future societies as well as higher public costs for perpetual management; and

(g) the detrimental effect of the large uranium import program necessary to the expansion of nuclear power on American energy independence, defense policy, and economic well being.

(2) Therefore, the people of Montana reserve to themselves the exclusive right to determine whether major nuclear facilities are built and operated in this state.

SECTION 2. There is a new R.C.M. section that reads as follows:

Definitions. As used in this act, the following definitions apply:

(1) (a) "Nuclear facility" means each plant, unit, or other facility designed for, or capable of,

(i) generating 50 megawatts of electricity or more by means of nuclear fission,

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels, or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility;

(b) "nuclear facility" does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy.

(2) "Facility," as defined in subsection (3) of section 70-803, R.C.M. 1947, is further defined to include any nuclear facility as defined in subsection (1)(a) of this section.

SECTION 3. Section 70-804, R.C.M. 1947, is amended to read as follows:

70-804. Certificate from board required prior to construction of a facility — exemptions — *approval by popular vote of certificate for nuclear facility.* (1) A person may not commence to construct a facility in the state without first applying for and obtaining a certificate of environmental compatibility and public need issued with respect to the facility by the board. A facility with respect to which a certificate is issued, may not thereafter be constructed, operated or maintained except in conformity with the certificate and any terms, conditions and modifications contained therein. A certificate may only be issued pursuant to this chapter.

(2) A certificate may be transferred, subject to the approval of the department, to a person who agrees to comply with the terms, conditions, and modifications contained therein.

(3) This chapter does not apply to *any aspect of* a facility over which an agency of the federal government has exclusive jurisdiction, *but applies to any unpreempted aspect of a facility over which an agency of the federal government has partial jurisdiction.*

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(4) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that would otherwise be covered by this chapter and that is unlikely to have a significant environmental impact by reason of length, size, location, available space or right of way, or construction methods.

(5) A certificate is not required under this chapter for a facility under diligent on-site physical construction or in operation on January 1, 1973.

(6) If the board decides to issue a certificate for a nuclear facility, it shall report such recommendation to the applicant and may not issue the certificate until such recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.

SECTION 4. There is a new R.C.M. section that reads as follows:

Additional requirements for issuance of a certificate for the siting of a nuclear facility. (1) The board may not issue a certificate to construct a nuclear facility unless it finds that

(a) no legal limits exist regarding the rights of a person or group of persons to bring suit for and recover full and just compensation from the designers, manufacturers, distributors, owners, and/or operators of a nuclear facility for damages resulting from the existence or operation of the facility; and further, that no legal limits exist regarding the total compensation which may be required from the designers, manufacturers, distributors, owners, and/or operators of a nuclear facility for damages resulting from the existence or operation of such facility;

(b) the effectiveness of all safety systems, including but not limited to the emergency core cooling systems, of such nuclear facility has been demonstrated, to the satisfaction of the board, by the comprehensive laboratory testing of substantially similar physical systems in actual operation;

(c) the radioactive materials from such nuclear facilities can be contained with no reasonable chance, as determined by the board, of intentional or unintentional escape or diversion of such materials into the natural environment in such manner as to cause substantial or long-term harm or hazard to present or future generations due to imperfect storage technologies, earthquakes or other acts of God, theft, sabotage, acts of war or other social instabilities, or whatever other causes the board may deem to be reasonably possible, at any time during which such materials remain a radiological hazard; and

(d) the owner of such nuclear facility has posted with the board a bond totalling not less than 30 per cent of the total capital cost of the facility, as estimated by the board, to pay for the decommissioning of the facility and the decontamination of any area contaminated with radioactive materials due to the existence or operation of the facility in the event the owner fails to pay the full costs of such decommissioning and decontamination. Excess bond, if any, shall be refunded to the owner upon demonstration, to the satisfaction of the board, that the site and environs of the facility pose no radiological danger to present or future generations

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and that whatever other conditions the board may deem reasonable have been met.

(2) Nothing in this section shall be construed as relieving the owner of a nuclear facility from full financial responsibility for the decommissioning of such facility and decontamination of any area contaminated with radioactive materials as a result of the existence or operation of such facility at any time during which such materials remain a radiological hazard.

SECTION 5. There is a new R.C.M. section that reads as follows:

Annual review of evacuation and emergency medical aid plans. (1) The governor shall annually publish, publicize, and release to the news media and to the appropriate officials of affected communities, in a manner designed to inform residents of the affected communities, the entire evacuation plan specified in the licensing of each certified nuclear facility within this state. Copies of such plan shall be made available to the public upon request at no more than the cost of reproduction.

(2) The governor shall establish procedures for annual review by state and local officials of established evacuation and emergency medical aid plans with regard for, but not limited to, such factors as the adequacy of such plans, changes in traffic patterns, population densities, the locations of schools, hospitals, and industrial developments, and other factors as requested by locally elected representatives.

SECTION 6. There is a new R.C.M. section that reads as follows:

Emergency approval authority invalid for nuclear facilities. Notwithstanding the provisions of subsections 70-811(4)(a) and (4)(b), the board may not waive compliance with any of the provisions of this act relating to certification of a nuclear facility.

SECTION 7. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application.

INITIATIVE NO. 81

By Initiative the people proposed laws to authorize the sale of table wine in grocery stores and drug stores. The Initiative was approved by the following vote at the General Election held November 7, 1978:

For	169,069
Against	112,195

The title and text of the Initiative follow.

An Act Authorizing Grocery Stores and Drug Stores to Sell Table Wine for Off-Premises Consumption; Revising Control and Marketing Policies with Respect to Table Wine; Establishing a System of Wholesaling

Table Wine by Licensing Table Wine Distributors; Imposing a Tax on Table Wine; Amending Sections 4-1-107, 4-2-204, 4-3-102, 4-4-201 and 4-4-401, R.C.M. 1947; and Providing an Effective Date.

Be it enacted by the People of the State of Montana:

Section 1. There is a new section in Title 4, RCM 1947, that reads as follows:

The public policy of the state of Montana is to retain a complete monopoly by the state over the acquisition, importation and distribution of wine containing more than 14% alcohol by volume but to regulate and control the acquisition, importation and distribution of table wine containing not more than 14% alcohol by volume in a manner paralleling the regulation and control of importation, acquisition and distribution of beer within this state. When the words "table wine" are used in this act in either the singular or plural they refer only to wine containing not more than 14% alcohol by volume.

Section 2. Section 4-1-107, RCM 1947, is amended to read as follows:

"4-1-107. Definitions. As used in this code:

"(1) 'Agency agreement' means an agreement between the department and a person appointed to sell liquor as a commission merchant, rather than as an employee.

"(2) 'Alcohol' means ethyl alcohol, also called ethanol or the hydrated oxide of ethyl.

"(3) 'Alcoholic beverage' means a compound produced and sold for human consumption as a drink that contains more than one-half of one percent (0.5%) of alcohol by volume.

"(4) 'Beer' means a malt beverage containing not more than seven percent (7%) of alcohol by weight.

"(5) 'Brewer' means a person who produces malt beverages.

"(6) 'Department' means the Montana department of revenue.

"(7) 'Immediate family' means a spouse, dependent children, or dependent parents.

"(8) 'Industrial use' means a use described as industrial use by the Federal Alcohol Aministration Act and the federal rules and regulations of 27 CRF.

"(9) 'Liquor' means an alcoholic beverage except beer *and table wine.*

"(10) 'Malt beverage' means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts, or their products, and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without other wholesome products suitable for human food consumption.

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"(11) 'Package' means a container or receptacle used for holding an alcoholic beverage.

"(12) 'Proof gallon' means a U.S. gallon of liquor at sixty degrees on the Fahrenheit scale that contains fifty percent (50%) of alcohol by volume.

"(13) 'Public place' means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

"(14) 'Residence' means a building, part of a building where a person resides, but does not include any part of a building that is not actually and exclusively used as a private residence.

"(15) 'Rules and regulations' means rules and regulations published by the department pursuant to this act.

"(16) 'State liquor facility' means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

"(17) 'State liquor store' means a retail store operated by the department in accordance with this code for the purpose of selling distilled spirits and wines *containing more than 14% alcohol by volume.*

"(18) 'Storage depot' means a building or structure owned or operated by a brewer at any point in the state of Montana, off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer, and from which a brewer may sell or distribute beer as permitted by this code.

"(19) 'Warehouse' means a building or structure owned or operated by a licensed wholesaler for the receiving, storage and distribution of beer or table wine as permitted by this code.

"(20) 'Wine' means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe, fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging and that contains not less than seven percent (7%) nor more than twenty-four percent (24%) of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine, labeled and sold as wine in accordance with federal regulations are also wine.

"(21) *'Table wine' means wine as defined above which contains not more than 14% alcohol by volume.*"

Section 3. There is a new section in Title 4, RCM 1947, that reads as follows:

Winery and importer registration. Any winery or importer of table wines which holds the appropriate license from the United States of America and which desires to distribute its table wines within this state shall apply to the department of revenue for registration on forms to be prepared and

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furnished by the department. Each winery will furnish the department with a copy of each container label currently used by the winery on its products imported into Montana. The department shall require such winery or importer to agree to furnish monthly and other reports concerning quantities and prices of table wine it ships into the state, names and addresses of consignees, and such other information as the department may determine to be necessary to assure importation and distribution of table wines within this state conform to the requirements of this act. No winery or importer of table wines shall ship table wines into this state until such registration is granted by the department; and such registration may be cancelled or suspended by the department upon a finding after notice and hearing that the registrant has not complied with the terms of its registration.

Section 4. There is a new section in Title 4, RCM 1947, that reads as follows:

Wine distributor's license — records. (1) Any person desiring to sell and distribute table wine at wholesale to retailers under the provisions of this code shall apply to the department of revenue for a license to do so and shall tender with his application the annual license fee of $400 and the department may issue licenses to qualified applicants in accordance with the provisions of this code. All table wine distributors' licenses issued in any year shall expire on the 30th day of June at midnight of such year. No license fee may be imposed upon table wine distributors by a municipality or any other political subdivision of the state. The license shall be at all times prominently displayed in the place of business of such table wine distributor.

To qualify for a table wine distributor's license the applicant shall be a resident of Montana; provided, however, any individual or partnership which has been licensed as a table wine distributor may, upon incorporation in accordance with the laws of Montana, transfer such license to the corporation if a majority of the capital stock thereof is held by said individual or the members of said partnership; or if applicant is a foreign corporation said corporation shall be authorized to do business in Montana; and said applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house or warehouse for the receiving of, storage, handling, and moving of table wine in large and jobbing quantities for distribution and sale in original packages to other licensed table wine distributors or licensed retailers. Each table wine distributor shall be entitled to only one (1) wholesale table wine license, which license shall be issued for his principal place of business in Montana; a duplicate license may be issued for one (1) subwarehouse only in Montana for each table wine distributor's license, which said duplicate license shall at all times be prominently displayed at said subwarehouse. A table wine distributor may also hold a license to sell beer at wholesale but shall not hold or have any interest, direct or indirect, in any license to sell beer, wine, or liquor at retail.

All table wine manufactured outside of the state of Montana and shipped into Montana shall be consigned to and shipped to a licensed table wine distributor, and by him unloaded into his warehouse in Montana or subwarehouse in Montana; said distributor shall distribute said

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table wine from such warehouse or subwarehouse; said distributor shall keep records at his principal place of business of all table wine including the name or kind received, on hand, sold and distributed; said records may at all times be inspected by any member or representative of the department of revenue; any table wine which has been shipped into Montana and has not been shipped to and distributed from a warehouse of a licensed table wine distributor shall be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of intoxicating liquor.

Section 5. There is a new section in Title 4, RCM 1947, that reads as follows:

To whom table wine distributor may sell. A table wine distributor may sell and deliver table wine purchased or acquired by him to another table wine distributor, retailer, or common carrier which holds a license issued by the department of revenue. It shall be unlawful for any table wine distributor to sell, deliver or give away any table wine to be consumed on such distributor's premises or to give, sell, deliver, or distribute any table wine purchased or acquired by him to the public.

Section 6. There is a new section in Title 4, RCM 1947, that reads as follows:

Monthly report of table wine distributor. Every licensed table wine distributor shall, on or before the fifteenth day of each month, make an exact return to the department of revenue of the amount of table wine purchased or acquired by him during the previous month, the amount of table wine sold and delivered by him during the previous month, and the amount of inventory on hand in the manner and form as shall be prescribed by the department, and the department shall have the right at any time to make an examination of the said table wine distributor's books and of his premises, and otherwise check the accuracy of such return or to check the alcoholic content of table wine which he may have on hand.

Section 7. There is a new section in Title 4, RCM 1947, that reads as follows:

Carriers' reports of table wine transported. Every railroad, motor carrier and airline transporting table wine manufactured out of this state from points outside this state and delivering to points within this state shall, on or before the fifteenth day of each month, make an exact return to the department of revenue of the amount of such table wine so transported and delivered by such railroad, motor carrier, or airline during the previous month, and shall state in such return the name and address of the consignor and consignee, the date of delivery and the amount delivered.

Section 8. There is a new section in Title 4, RCM 1947, that reads as follows:

Financial interest in retailers prohibited. No winery or table wine distributor shall advance or loan money to, or furnish money for, or pay for or on behalf of any retailer, for any license or tax which may be required to be paid by any retailer, and no winery or table wine distributor shall be financially interested, either directly or indirectly, in the conduct or

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operation of the business of a retailer. A winery or table wine distributor shall be deemed to have such a financial interest if (1) such winery or table wine distributor owns or holds any interest in or a lien or mortgage against the retailer or his premises; or (2) if such winery or table wine distributor is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from or to the other; or (3) if such table wine distributor extends more than seven days' credit to a retail licensee or furnishes to any retail licensee any furniture, fixtures, or equipment to be used in the dispensation or sale of table wine; or (4) if any retailer holds an interest as a stockholder, or otherwise, in the business of the table wine distributor.

Section 9. There is a new section in Title 4, RCM 1947, that reads as follows:

Tax on Wine. A tax of seventy-five cents (75¢) per gallon is hereby levied and imposed on table wine imported by any table wine distributor, and such tax shall be paid by the table wine distributor by the 15th of the month following receipt of the table wine at the table wine distributor's warehouse. The tax computed and paid in accordance with this section shall be the only tax imposed by the state or any of its subdivisions, including cities and towns, and it shall be distributed in accordance with applicable statutes and regulations.

Section 10. Section 4-2-204, RCM 1947, is amended to read as follows:

"4-2-204. Department to sell to licensees — posted price. The department may sell through its stores all kinds of liquor, wine *containing more than 14% alcohol by volume*, and cordials kept in stock to licensees licensed under this code at the posted price thereof in the store in which the liquor is sold. All sales shall be upon a cash basis. The posted price means the retail price of such liquor as fixed and determined by the department and in addition thereto an excise and license tax as provided in this code.

Section 11. Section 4-3-102, RCM 1947, is amended to read as follows:

"4-3-102. Liquor container must have been sealed with official seal. Except in the case of

"(a) liquor imported by the state, or by the department; or

"(b) liquor had and kept by a person, and in a place and manner referred to in section 4-1-202; or

"(c) beer, ~~and~~ malt liquor, *and table wine* lawfully had or kept under this code; or

"(d) any liquor kept for sale by a druggist under this code no liquor shall be kept or had by any person within the state unless the package, not including a decanter or other receptacle containing the liquor for immediate consumption, in which the liquor is contained has, while containing that liquor, been sealed with the official seal prescribed under this code."

Section 12. Section 4-4-201, RCM 1947, is amended to read as follows:

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"4-4-201. Issuance of retail beer licenses — limit on number of retail licenses — wine license amendments — off-premises consumption. (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer, except that:

"(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by congress, as follows:

"(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than one retail beer license which may not be used in conjunction with a retail all-beverages license;

"(ii) in incorporated cities and incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities or towns, one beer license for each 500 inhabitants which may not be used in conjunction with retail all-beverages licenses;

"(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities, two additional retail beer licenses for the first 2,000 inhabitants or major fraction thereof and one additional retail beer license for each additional 2,000 inhabitants which may not be used in conjunction with retail all-beverages licenses;

"(b) the number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail beer licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined populations of both of such municipalities and may not exceed the foregoing limitations. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town.

"(c) retail beer licenses of issue on March 7, 1947, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations;

"(d) such limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to a post of a nationally chartered

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veterans' organization or a lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

"(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof or for use at premises situated within any incorporated town shall be as determined by the department in the exercise of its sound discretion, except that no retail beer license may be issued for any premises so situated unless the department determines that the issuance of such license is required by public convenience and necessity.

"(2) The cities and incorporated towns may enact ordinances defining certain areas in the cities and town where alcoholic beverages may or may not be sold. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the department may issue. However, no retail license may be issued by the department for any premises situated within any zone of such city or town where the sale of beer or liquor is prohibited by ordinance, a certified copy of which has been filed with the department. The department may deny the issuance of a retail beer or all-beverages license if it determines that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

"(3) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The division may issue such amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. A person holding a beer-and-wine license may sell wine for consumption on the premises. ~~He may buy wine only at retail from the department.~~ Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.

"(4) A retail license to sell beer *or table wine, or both,* in the original packages for off-premises consumption only may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, corporation to sell beer *or table wine, or both,* and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue is not limited by the provisions of subsection (1) of this section but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause."

Section 13. Section 4-4-401, RCM 1947, is amended to read as follows:

"(1) (a) Each beer licensee, *licensed to sell either beer or table wine only, or both beer and table wine,* under the provisions of this code, shall pay an annual license fee as follows:

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"(i) each brewer, wherever located, whose product is sold or offered for sale within the state, $500; for each storage depot, $400.

"(ii) each *beer* wholesaler, $400*; each table wine distributor, $400.*

"(iii) each beer retailer, $200; with a wine license amendment, an additional $200.

"(iv) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license*; for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200.*

"(v) any unit of a nationally chartered veterans' organization, $50.

"(b) A transfer of any brewer's, *beer* wholesaler's, *table wine distributor's* ~~or~~ beer retailer's *or table wine retailer's* license may be made on application to the department with the consent of the department, provided that the transferee qualifies under this code.

"(c) This code shall not be construed or interpreted so as to repeal, amend, modify, change, or alter any provisions of this code which require beer *and table wine* manufactured outside of Montana to be consigned to and shipped to a licensed *beer* wholesaler *or licensed table wine distributor* any by him unloaded into his warehouse or subwarehouse in Montana.

"(2) The permit fee under 4-4-105(1) is computed at the rate of $15 a day for each day beer is sold at those events lasting 2 or more days but in no case be less than $30.

"(3) The permit fee under 4-4-105(2) is $10 for the sale of beer only or $20 for the sale of all alcoholic beverages.

"(4) Passenger carrier licenses shall be issued upon payment by the applicant of an annual license fee in the sum of $300.

"(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license is $200.

"(6) Each licensee licensed under the quotas of 4-4-202 shall pay an annual license fee as follows:

"(a) except as hereinafter provided, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $400.

"(b) except as hereinafter provided, for each license in incorporated cities with a population of more than 2,000 and less than 5,000, or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $500;

"(c) except as hereinafter provided, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $650;

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"(d) for each license in incorporated cities with a population of 10,000 or more, or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $800;

"(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and shall be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and shall be paid by the applicant.

"(f) an applicant for the issuance of an original license to be located in areas described in paragraph (d) of this subsection shall pay a one-time original license fee of $20,000 for any such license issued. The one-time license fee of $20,000 shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee of $800.

"(7) The license fees herein provided for are exclusive of and in addition to other license fees chargeable in Montana for the sale of liquor, *table wine,* beer, and malt beverages."

Section 14. Effective date. This act is effective July 1, 1979.

REFERENDUM NO. 74

By Chapter 264, Laws of 1977, the Legislature proposed to amend certain statutes to raise the legal age for consuming or possessing alcoholic beverages to nineteen.

Chapter 264 was approved by the following vote at the General Election held November 7, 1978.

For:	207,476
Against:	65,196

The title and text of Chapter 264 follow.

An Act to Amend Sections 4-6-104, 94-5-609, and 94-5-610, R.C.M. 1947, to Raise the Legal Age for Consuming or Possessing Alcoholic Beverages to Nineteen and Providing That the Proposed Act be Submitted to the Electors of the State of Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 4-6-104, R.C.M. 1947, is amended to read as follows:

"4-6-104. Age limit for sale of alcoholic beverages. Except in the case of an alcoholic beverage given to a person under the age of *19* years by

his parent or guardian for beverage or medicinal purposes or administered to him by his physician or dentist for medicinal purposes or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply an alcoholic beverage to any person under the age of *19* years or permit any person under that age to consume an alcoholic beverage."

Section 2. Section 94-5-609, R.C.M. 1947, is amended to read as follows:

"94-5-609. Unlawful transactions with children. (1) A person commits the offense of unlawful transactions with children if he knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances;

(b) sells or gives intoxicating substances *other than alcoholic beverages* to a child under the age of majority;

(c) sells or gives alcoholic beverages to a person under 19 years of age; or

(d) being a junk dealer, pawnbroker, or secondhand dealer he receives or purchases goods from a child under the age of majority without authorization of the parent or guardian.

(2) A person convicted of the offense of unlawful transactions with children shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined not to exceed $1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 3. Section 94-5-610, R.C.M. 1947, is amended to read as follows:

"94-5-610. Unlawful possession of intoxicating substance by children. (1) A person *under* the age of *18 years* commits the offense of possession of intoxicating substance if he knowingly has in his possession an intoxicating substance *other than an alcoholic beverage. A* person *under* the age of *19 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, except that he* does not commit the offense when in the course of his employment *it is necessary to possess alcoholic beverages.*

(2) A person convicted of the offense of possessing an intoxicating substance shall be fined not to exceed $50 or be imprisoned in the county jail for any term not to exceed 10 days, or both."

Section 4. Effective date. Sections 1, 2, and 3 of this act, if approved by the electors of the state of Montana, are effective January 1, 1979.

Section 5. Submission to electors. The question of whether this act will become effective shall be submitted to the electors of the state of Montana

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at the general election to be held November 7, 1978, by printing on the ballot the full title, and the following:

☐ FOR raising the legal drinking age to 19.

☐ AGAINST raising the legal drinking age to 19.

REFERENDUM NO. 75

By Chapter 463, Laws of 1977, the Legislature proposed enactment of a law to continue the funding of public educational institutions subject to Board of Regents' supervision by a levy of not to exceed 6 mills on all taxable property each year for 10 years.

Chapter 463 was approved by the following vote at the General Election held November 7, 1978:

For:	181,920
Against:	88,641

The title and text of Chapter 463 follow.

An Act to Continue the Funding of Public Educational Institutions Subject to Board of Regents' Supervision by a Levy of Not to Exceed 6 Mills on All Taxable Property Each Year for 10 Years and Providing That the Proposed Act Be Submitted to the Electors of the State of Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 75-8615 that reads as follows:

75-8615. State tax levy — support of public education institutions. Upon the approval of the electors of this state to be determined by their vote at the general election to be held in November of 1978, the legislature shall levy a property tax of not more than 6 mills on the taxable value of all real and personal property each year for 10 years beginning with the year 1979. All revenue from this property tax levy shall be appropriated for the support, maintenance, and improvement of the Montana university system and other public educational institutions subject to board of regents' supervision.

Section 2. Submission to electorate. The question whether this act will become effective shall be submitted to the electors of the state of Montana at the general election to be held November 7, 1978, by printing on the ballot the full title of this act, and the following:

☐ FOR the 6-mill levy for the support of public educational institutions subject to board of regents' supervision.

☐ AGAINST the 6-mill levy for the support of public educational institutions subject to board of regents' supervision.

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CHANGES IN NAMES DECREED IN 1977

Date of Judgment	Original Name	Name Decreed	Residence
Jan. 6, 1977	Kathleen Lynn Nelson	Kathleen Lynn Hughes	Missoula
Jan. 6, 1977	Kristine Anne Nelson	Kristine Anne Hughes	Missoula
Jan. 10, 1977	Michael David Lee	Michael David Pambrun	Missoula
Jan. 11, 1977	Duane Allen Gremmer	Treverse D. Branden	Livingston
Jan. 11, 1977	Edwin MacVaugh White	Edwin MacVaugh	West Glacier
Jan. 13, 1977	John Michael Lamb	Tad John Michael Lamb	Missoula
Jan. 18, 1977	Sandra Kay Harpster	Cassandra Kay Lufkin	Kalispell
Jan. 19, 1977	Kari Sue Drabbels	Kari Sue Totman	Malta
Jan. 19, 1977	Iva Angeline Mohn	Iva Angeline Adams	Kalispell
Jan. 19, 1977	Thoedore Joseph Vlasak	Theodore Joseph Dascoli	Billings
Jan. 28, 1977	Marilyn Kae Bauer	Marilyn Kimberly-Kae Ingwaldson	Yellowstone Co.
Feb. 1, 1977	Charles E. Soule	Charles E. Shrum	Livingston
Feb. 8, 1977	The Lutheran Church of Christ	Christ Lutheran Church	Big Sandy
Feb. 16, 1977	Mary Kathryn Hewett	Mary Kathryn Hewett Beck	Great Falls
Feb. 16, 1977	Kimberly Ruth Metcalf	Kimberly Ruth Cox	Polson
Feb. 17, 1977	Adrienne Hesler	Adrienne Biondich	Helena
Feb. 17, 1977	Julie Rae Trorchie's	Julie Rae Beckert	Great Falls
Feb. 18, 1977	Tracy Tamara Berger	Tracy Tamara Cain	Miles City
Feb. 22, 1977	Natalie Ann Phanekham	Natalie Ann Vermann	Woodstock, NY
Feb. 23, 1977	Jeanette Lee Green	Janet Lee Burdeau	Browning
Feb. 28, 1977	Helen Marie Swenson	Helen Marie Zell	Missoula
March 2, 1977	Jody Lynn Voss	Joe Lee Voss	Cascade Co.
March 7, 1977	Kathryn Gutierrez	Kathryn Giltner	Miles City
March 7, 1977	Kathleen Joanne Lequia	Kathleen Joanne Bergerson	Miles City
March 7, 1977	Nancy Turso	Nancy Sallgren	Miles City
March 10, 1977	Steven LeRoy Pugh	Steven LeRoy Lundell	Shelby
March 10, 1977	James Howard Smith	James Howard Hoenke	Helena
March 11, 1977	Scott Hellmann	Scott Patrick LaRoque	Whitehall
March 18, 1977	Donald Shane Arland	Donald Shane Vincent	Cascade Co.
March 21, 1977	Rubena Faye Clubfoote	Rubena Faye Lenyard	Rosebud Co.
March 21, 1977	Derry Dean Dassinger	Derry Dean McLane	Glendive
March 21, 1977	Kathleen Lynn Dassinger	Kathleen Lynn McLane	Glendive
March 21, 1977	Monte Lane Dassinger	Monte Lane McLane	Glendive
March 21, 1977	Donna Dayle Thornton	Donna Dayle Davison	Cascade Co.
March 24, 1977	Bobby Joe Hope	Robert Joseph Hope II	Busby
March 24, 1977	George Campbell Wilson	Jesse Campbell Wilson	Helena
March 25, 1977	Fairy Fern (Zellner) Brock	Shelly Marie Brock	Yellowstone Co.
March 25, 1977	Ronald Mark Dickgraber	Ronald Mark Dykegreve	Helena
March 25, 1977	Wayne Jay Dickgraber	Wayne Jay Dykegreve	Helena
March 28, 1977	Sally Scott Dodington	Sarah Louise Scott	Missoula
March 28, 1977	Virginia Bingham Miller	Virginia Beliere Miller	Missoula
March 29, 1977	Donald Brit Himes	Donald Brit Colter	Glendive
March 29, 1977	Jeanne Louise Himes	Jeanne Louise Colter	Glendive
March 30, 1977	Maxie Pauline Lane	Maxie Pauline Cleveland	Great Falls
March 31, 1977	Cindy Marie Lennemann	Cindy Marie Swandal	Wilsall
March 31, 1977	Craig Alan Lennemann	Craig Alan Swandal	Wilsall
April 1, 1977	George Louis Hoffmann	Emmett George Hoffmann	Rosebud Co.
April 1, 1977	Paul James Superak	Laughing Water	Helena
April 5, 1977	John Edward Rott	John Edward Root	Beaverhead Co.
April 5, 1977	Nichole Kay Rott	Nichole Kay Root	Beaverhead Co.
April 5, 1977	Robert Charles Rott	Robert Charles Root	Beaverhead Co.
April 6, 1977	Marilyn L. Lawson	Marilyn L. Kent	Malta
April 10, 1977	Debra K. Mikkelson	Debra K. Martin	Plains
April 11, 1977	Blane Francis Kerr	Blane Francis Jackson	Billings
April 11, 1977	Brent Steven Kerr	Brent Steven Jackson	Billings
April 11, 1977	Nina Alyce Kerr	Nina Alyce Jackson	Billings
April 12, 1977	Patricia Ann Homan Pack	Patricia Ann Homan	Marion
April 12, 1977	Joseph Warren Upshaw	Joseph Warren Bean-Upshaw	Chinook
April 14, 1977	J. Anne Edelman	J. Anne Owen	Rosebud Co.
April 14, 1977	Dianne Lizbeth Reber	Dugan Lizbeth Reber	Missoula
April 18, 1977	Jennifer Rose LeBrun	Jennifer Rose Childs	Billings
April 19, 1977	Ida Gertrude Edie	Ida Gertrude Ager	Helena
April 19, 1977	Thomas Winans Edie	Thomas Winans Ager	Helena
April 22, 1977	Elarian Kae Jerke	Elarian Kae Tibbetts	Terry
April 24, 1977	Carol Jean Eagle	Carol Jean MacKay	Baker
April 24, 1977	Juanita Mary Ellen Eagle	Juanita Mary Ellen MacKay	Baker
April 24, 1977	William Samuel Eagle	William Samuel MacKay	Baker
April 26, 1977	Loella Leabo Zachwieja	Loella Leabo Stevens	Helena

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CHANGES IN NAMES DECREED IN 1977

Date of Judgment	Original Name	Name Decreed	Residence
April 26, 1977	Perry Zachwieja	Perry Leabo Stevens	Helena
April 26, 1977	Stephen D. Zachwieja, Jr.	Zack Stevens	Helena
April 27, 1977	Rebekah Jeanne Rehder	Rebekah Jeanne French	Cascade Co.
April 29, 1977	Cathy C. Door	Cathy C. Goodwin	Miles City
April 29, 2977	Carl Lee Evans	Carl Lee Gibson	Ennis
May 3, 1977	Joan R. Spittler	Joan R. Barber	Great Falls
May 5, 1977	Mary Thompson Vinson	Jean Carr	Missoula
May 6, 1977	Charlene Ann Rogers	Charlene Ann Larsen	Helena
May 6, 1977	Jason Russell Rogers	Jason Charles James Larsen	Helena
May 10, 1977	Debra K. Mikkelson	Debra K. Martin	Plains
May 12, 1977	Joseph Lee Gladeau	Joseph Lee Probert	Kalispell
May 17, 1977	Benny Lionello Butzlaff	Benny Lionello Bee	Roosevelt Co.
May 17, 1977	Colleen Faye Butzlaff	Colleen Faye Bee	Roosevelt Co.
May 17, 1977	Denny Duane Butzlaff	Denny Duane Bee	Roosevelt Co.
May 17, 1977	Harold Ben Evan Butzlaff	Benny Bee	Roosevelt Co.
May 17, 1977	Lenard Keith Escarcega	Patrick Keith Forrest	Roosevelt Co.
May 18, 1977	Vance Reilly Chappel	Reilly Vance Fraser	Cascade Co.
June 1, 1977	Katherine A. Larson	Katherine A. Ereaux	Malta
June 2, 1977	Ramona Marie Atley	Ramona Marie Pocha	Helena
June 3, 1977	Ila Michel Thibault	Ila Michel	Miles City
June 6, 1977	Doris Marie Horton	Toby Horton	Bozeman
June 6, 1977	John Andrew Skrypez	John Andrew Brewer	Miles City
June 8, 1977	Lando Jack Carrier's	Lando Jack Gregori	Great Falls
June 8, 1977	Melody Lynn Carrier's	Melody Lynn Gregori	Great Falls
June 13, 1977	Melodie Roseanne Williams	Virginia Waddell Williams	Bozeman
June 14, 1977	Addie Hamilton	Addie Schmidt	Noxon
June 17, 1977	Patricia Louise Adams	Patricia Louise Adams Lopez	Billings
June 22, 1977	Arthur John Gutierrez	Arthur John Alvarado	Billings
June 22, 1977	Thomas J. Stratton	Thomas Jay Kindle	Malta
June 28, 1977	Jon Thorp Harder, Jr.	Jon Thorp Bronson	Kalispell
June 30, 1977	Henry Robert Arrendondo	Henry Robert Sprague	Hardin
July 6, 1977	Johannes Dykman	Joe Dykman	Harrison
July 6, 1977	Gerald Orrin Frith	Gerald Orrin Romanchuk	Great Falls
July 6, 1977	Michael Alan Frith	Michael Alan Romanchuk	Great Falls
July 6, 1977	Elizabeth M. Kober	Elizabeth M. Carlson	Billings
July 6, 1977	Jonathan William Kober	Jonathan William Carlson	Billings
July 6, 1977	Sherry S. Zion	Sherry S. Anglin	Great Falls
July 7, 1977	Robert L. Cook	Robert L. Finch	Rosebud Co.
July 7, 1977	Marla Fischer	Marla Fleming	Miles City
July 11, 1977	Anita Carol Hitch	A.C. Hitch	Billings
July 13, 1977	Clarissa Elaine (Patterson) Nichols	Lisa Clarissa Nichols	Yellowstone Co.
July 18, 1977	Dennis Wayne Black	Dennis Wayne Beaudry	Missoula
July 18, 1977	Kathleen Rae Moraca	Kathleen Rae Anderson	Missoula
July 19, 1977	Clara Jo Hoffman	Clara Jo Arneson	Miles City
July 21, 1977	Viginia Wade Huseby	Virginia Wade	Big Timber
July 25, 1977	David Conrad Sterzing	David Conrad Morgan	Missoula
July 25, 1977	Gloria Joan Sterzing	Amanda Genel Morgan	Missoula
July 26, 1977	Ruby C. Johnson	Ruby C. Cannon	Noxon
July 27, 1977	Ricky Loren Blackbird	Ricky Loren Thomas	Great Falls
July 27, 1977	Gloria Virginia Stevenson	Kalmar Ruth Stevenson	Great Falls
July 28, 1977	Debra K. McKnight	Debra K. Guardipee	Butte
July 28, 1977	Melody Weinandy	Melody Moberry	Miles City
Aug. 3, 1977	Scott Wessel	Scott Nolan Wessel	Sheridan
Aug. 5, 1977	Guy Stephen Hartwick	Guy Stephen Soltesz	Butte
Aug. 9, 1977	Scott Erwin Welgos	Scott Erwin Johnston	Martin City
Aug. 10, 1977	Thomas Bruce Kasala	Thomas Bruce Petranek	Fergus
Aug. 11, 1977	Jane Elaine Costello	Jayne Elaine Costello	Missoula
Aug. 12, 1977	Steven Bruce Glaeske	Steven Bruce Jackman	Great Falls
Aug. 15, 1977	Eileen Kay Trang Hovland	Eileen Kay Trang	Yellowstone Co.
Aug. 15, 1977	Daniel Bruce Strehlow	Daniel Bruce Moran	Missoula
Aug. 16, 1977	Beverly Raschkow	Beverly Holmen	Miles City
Aug. 18, 1977	Angelique Sophie du Fresne Von Hohenesche Fontaine	Angelique Sophie du Fresne Von Hohenesche de Fontaine	Missoula
Aug. 18, 1977	Christian Sully Fontaine	Christian Sully de Fontaine	Missoula
Aug. 18, 1977	Sully H. Fontaine	Sully H. de Fontaine	Missoula
Aug. 23, 1977	Robert Kenyon Gurholt aka Robert Kenyon Phelps	Robert Kenyon Gross	Plains
Aug. 25, 1977	Eric Travis Reed	Eric Travis Harkins	Missoula
Aug. 30, 1977	James Milton Robeck	James Milton Edwards	Livingston

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CHANGES IN NAMES DECREED IN 1977

Date of Judgment	Original Name	Name Decreed	Residence
Sept. 2, 1977	Penny Jane Durbin	Penny Jane DeLay	Yellowstone Co.
Sept. 2, 1977	Scott Gerald Lake	Scott Gerald DeLay	Yellowstone Co.
Sept. 2, 1977	Jane Agnes Warren	Janes Agnes DeLay	Yellowstone Co.
Sept. 2, 1977	Linda Jo Woods	Linda Jo Stapley	Troy
Sept. 6, 1977	Frances C. Westby	Frances C. Roberg	Harlowton
Sept. 7, 1977	Nancy K. Jakkola	Nancy K. Bangart	Malta
Sept. 8, 1977	Robert Leith Newman	Joe Newman	Missoula
Sept. 9, 1977	Deborah Kay Hanson	Deborah Kay Behr	Wolf Point
Sept. 9, 1977	Phyllis A. Johnson	Phyllis A. Shovelski	Shelby
Sept. 12, 1977	Vernon Wesely Cloninger	Grr Wesely Cloninger	Bozeman
Sept. 14, 1977	Sheila Marie Bailey	Sheila Marie Johansen	Great Falls
Sept. 14, 1977	Rodney Scott Copeland	Rodney Scott Hagen	Sidney
Sept. 14, 1977	Caesar A. Cortex	Caesar A. Rivera	Great Falls
Sept. 14, 1977	Charlene Ann Pippenger Cox	Cheri Ann Pippenger Cox	Billings
Sept. 16, 1977	Donna R. Bannister	Donna R. Morrison	Baker
Sept. 16, 1977	Sandra J. Olson	Sandra J. Curran	Rosebud Co.
Sept. 21, 1977	Roland Paul Schmid	Ronald Paul Schmid	Cascade Co.
Sept. 22, 1977	Dorothea R. Brown	Dorothea R. Gallaher	Thompson Falls
Sept. 23, 1977	Alwilda Babe Riggs	Alwilda Babe Howard	Billings
Sept. 26, 1977	David Richard Brechbill	David Richards	Missoula
Sept. 30, 1977	Candace Rae Moody	Candace Rae Harris	Fairfield
Oct. 3, 1977	Denise M. Manus	Denise M. Ewals	Billings
Oct. 3, 1977	Samuel Blake Manus	Blake Alan Ewals	Billings
Oct. 3, 1977	Katherine Ella Moore	Katherine Ella Fuson	Helena
Oct. 4, 1977	Bella May Hall	Billie May Hall	Roosevelt Co.
Oct. 5, 1977	Josefina M. Emerson	Josefina Mangcucang Gamban	Olongapo City,
Oct. 5, 1977	Scotty John Schieno	Scotty John Huft	Fallon
Oct. 6, 1977	Susan Jane Clayton	Susan Jane Anderson	Big Timber
Oct. 11, 1977	Don Boyd Cain	Don Boyd Jordan	Rock Springs
Oct. 11, 1977	Leah Kay Cain	Leah Cain Jordan	Rock Springs
Oct. 11, 1977	Marlene Palmer	Marlene Burch	Thompson Falls
Oct. 13, 1977	Marcheta Marie Hert	Marcheta Marie Sorlien	Miles City
Oct. 14, 1977	William Dale Lucas	Lucas Stone	Miles City
Oct. 17, 1977	Deborah Ann Slater	Deborah Ann Nitschke	Miles City
Oct. 18, 1977	Laura Avis Agnew	Laura Avis Gneiting	Whitefish
Oct. 26, 1977	Shirley Ketchum	Shirley Stevens	Glendive
Oct. 26, 1977	Dorothy Elaine Tremblay	Dorothy Elaine Ames	Malta
Oct. 31, 1977	Judith Gale Murray	Judith Gale Turner	Kremlin
Nov. 2, 1977	Gordon Yatshon Wong	Gordon Yatshon Hom	Anaconda
Nov. 2, 1977	Karen H. Wong	Karen Lynn Hom	Anaconda
Nov. 3, 1977	Anne Aller Oiestad	Anne Aller	Big Timber
Nov. 7, 1977	Glenn Dale Frank	Glenn Dale Nutting	State of MT
Nov. 7, 1977	Michael John Frank	Michael John Nutting	State of MT
Nov. 7, 1977	Samuel Lee Frank	Samuel Lee Nutting	State of MT
Nov. 7, 1977	Daniel J. Trissel	Daniel Silverthorne	Helena
Nov. 16, 1977	Stephen J. Wing	Stephen J. Weidner	Great Falls
Nov. 17, 1977	Susan I. Walker	Susan I. Donges	Miles City
Nov. 21, 1977	Jonathan Pryor Allcock	Jonathan Pryor Alcott	Bozeman
Nov. 21, 1977	James Darren Dexter	James Darren Cline	Bozeman
Nov. 21, 1977	Mary Bell Dexter	Mary Bell Cline	Bozeman
Nov. 21, 1977	Shawn Mathew Dexter	Shawn Mathew Cline	Bozeman
Nov. 21, 1977	Jack Thomas Handl	Jason Thomas Handl	Bozeman
Nov. 22, 1977	Joelle J. Gunn	Joelle J. Johnson	Missoula
Nov. 23, 1977	Patty Kay Archey	Patty Kay Fordyce	Fergus Co.
Dec. 1, 1977	Kristine A. Martinez	Kristine A. Horenberger	Big Timber
Dec. 1, 1977	Pauline P. Starin	Pauline W. (Wharton) Poore	Billings
Dec. 1, 1977	Jeffrey Scott Turner	Jeffrey Scott Swecker	Laurel
Dec. 5, 1977	Reza Kiachehr	Mahan Kiachehr	Bozeman
Dec. 12, 1977	Francis Clinton Rides Horse	Golden Eagle Rides Horse	Crow Agency
Dec. 13, 1977	Ricky Jay Smith	Rick Jay Ferrin	Stanford
Dec. 13, 1977	Ann Dolson	Ann Marlenee	Hot Springs
Dec. 15, 1977	Barbara Ann Bohlman	Barbara Ann Elliston	Harlowton
Dec. 15, 1977	Therese A. Bourn	Therese A. Stevens	Harlowton
Dec. 16, 1977	Sharon Wilkerson	Sharon Kay Burns	Miles City
Dec. 20, 1977	Ivan Carson Philpot	Ivan Carson Carlson	Superior
Dec. 27, 1977	Stephanie Nicholson	Stephanie Burch	Helena
Dec. 30, 1977	Leila R. Bloxom	Leila R. Hawkinson	Miles City

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CHANGES IN NAMES DECREED IN 1978

Date of Judgment	Original Name	Name Decreed	Residence
Jan. 1, 1978	Renate Weldele	R. Weldele	Great Falls
Jan. 9, 1978	Kristi Pihl	Kristi Johnson	Choteau
Jan. 9, 1978	Amanda Rene Skenandore	Amanda Rene Contreraz	Yellowstone Co.
Jan. 9, 1978	James Dean Skenandore	James Dean Contreraz	Yellowstone Co.
Jan. 9, 1978	Samuel Curtis Skenandore	Samuel Curtis Contreraz	Yellowstone Co.
Jan. 13, 1978	Lisa Marie Fryer	Lisa Marie McLaughlin	Gildford
Jan. 20, 1978	Julie Ann Stratton	Julie Ann Rohloff	Black Creek WI
Feb. 14, 1978	William Francis C. Brown	Willis F. Brown Haagenson	Highwood
Feb. 14, 1978	Donald Randolph Swindell	Donald Randolph Layton	Bozeman
Feb. 27, 1978	Sara June Johnson	Sara June Jarolimek	Yellowstone Co.
March 1, 1978	Denise Rae Poffenberger	Denise Rae Helm	Miles City
March 10, 1978	Darrell Dalton Malone, Jr.	Pat D. Malone	Billings
March 13, 1978	Wilho Edward Strom	Edward W. Nelson	Missoula
March 13, 1978	Carol Kimble Wagner	Carol Nadine Wagner	Helena
March 14, 1978	Else Carey	Barbara Else Obach	Plains
March 14, 1978	Janette Ann Lewis	Janette Ann Reinhardt	Livingston
March 14, 1978	Jenny Elizabeth Lewis	Jenny Elizabeth Reinhardt	Livingston
March 14, 1978	Ronnie Alan Lewis	Ronnie Alan Reinhardt	Livingston
March 17, 1978	Cleo Wynne Ewing	Cleo Wynne McKay	Miles City
March 21, 1978	Delia DeAnne Weller	Delia DeAnne Kinsey	Big Timber
March 24, 1978	Mary Anne Sewell	Mary Anne Trankel	East Helena
March 28, 1978	Mary Lee Elliott	Mary Lee Grimm	Thompson Falls
March 29, 1978	Jan Marie Fifield	January Marie Fifield	Billings
March 30, 1978	Lisa Anne Heidorn	Lisa Anne Adcock	Red Lodge
March 30, 1978	Mark Steven Heidorn	Mark Steven Adcock	Red Lodge
April 5, 1978	Eunice D. Kovach	Eunice D. Romo	Malta
April 6, 1978	Mary Agnes (Mae) Leutschaft	Mary Agnes (Mae) Trankel	East Helena
April 6, 1978	Sandra Carol Strampher	Sandra Carol Calhoun	Libby
April 7, 1978	Michael James Plouffe	Micheal James Schmitt	Lustre
April 13, 1978	Jerry Lee Heinze	Jerry Lee Finstad	Butte
April 13, 1978	Iva May Kittrell	Iva May Johnston	Butte
April 13, 1978	Julie Ann Kittrell	Julie Ann Johnston	Butte
April 20, 1978	Lonnie M. Whittet	Lonnie M. Dawson	Baker
April 25, 1978	June V. Thomas	June V. Stephanson	Thompson Falls
April 27, 1978	Ruby E. McBride	Ruby E. Gowan	Milltown
April 28, 1978	Denise Marie Southwell	Denise Marie Wall	Butte
April 28, 1978	Shawn Earl Southwell	Shawn Earl Wall	Butte
April 28, 1978	Roger Dean Stuart	Roger Dean Hedden	Hamilton
May 5, 1978	Guy B. Hipp	Guy B. Boucher	Butte
May 8, 1978	David Edward Haas	David Edward O'Donnell	Havre
May 8, 1978	Dianna Jane Haas	Dianna Jane O'Donnell	Havre
May 8, 1978	Sandra Jeanne Peaster	Sandra Jeanne Lambert	Miles City
May 12, 1978	Florence L. Moullet	Florence L. LeRette	Shawmut
May 15, 1978	Eleanor Elizabeth Devan	Eleanor Elizabeth Woods	Billings
May 15, 1978	Katherine Jean Lippi	Kathie Jean Soare	Miles City
May 17, 1978	Angela Jolene Ontko	Angela Jolene Ontko Marshall	Yellowstone Co.
May 17, 1978	Carolyn Jo Ontko	Carolyn Jo Ontko Marshall	Yellowstone Co.
May 17, 1978	Dustin Michael-John Ontko	Dustin Michael-John Ontko Marshal	Yellowstone Co.
May 17, 1978	Samuel John Ontko	Samuel John Ontko Marshall	Yellowstone Co.
May 17, 1978	Teri Jo Ontko	Teri Jo Ontko Marshall	Yellowstone Co.
May 18, 1978	Catherine Alford Pfahler	Catherine Alford	Big Timber
May 18, 1978	Fredric L. Quie	Fredric L. Quivik	Butte
May 18, 1978	Melinda A. Kravik Quie	Melinda A. Kravik Quivik	Butte
May 20, 1978	Rance Christen Cozzens	Rance Christen White	Livingston
May 22, 1978	Richard Binkholder	Richard Allan McIntyre	Gallatin Gateway
May 22, 1978	Mary Ellen Marshall	Mary Ellen Doty	Yellowstone Co.
May 23, 1978	William Andrew Ekholt	William Andrew Williams	Missoula
May 25, 1978	Mark Lamar Guenthner	Mark Lamar Guenther	Missoula
May 25, 1978	Jason Christopher Litchfield	Jason Christopher Wehring	Kalispell
June 1, 1978	Helen Christine Zier	Helen Christine Pearson	Miles City
June 2, 1978	Thelma La Vern Goddard	Jayne LaVerne Goddard	Conner
June 5, 1978	Kendra Lee Piedalue	Kenra Lee Iverson-Piedalue	Missoula
June 5, 1978	Marci Louise Piedalue	Marci Louise Iverson-Piedalue	Missoula
June 7, 1978	Mary Susan Eich	Mary Susan Russell	Malta
June 7, 1978	Daniel Thomas Metzger	Daniel Tomas Hughes	Yellowstone Co.

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CHANGES IN NAMES DECREED IN 1978

Date of Judgment	Original Name	Name Decreed	Residence
June 7, 1978	Mark Allen Metzger	Mark Allen Hughes	Yellowstone Co.
June 7, 1978	Sandra Lea Metzger	Sandra Lea Hughes	Yellowstone Co.
June 8, 1978	Margaret Helen Hollow Phelps	Margaret Helen Hollow-Phelps	Helena
June 9, 1978	Silvia Dawn Cranor	Silver Dawn Cranor	Darby
June 13, 1978	Bonnie S. Alexander	Bonnie S. Ganatos	Thompson Falls
June 13, 1978	Marsha McLinden	Marsha Hawker	Soda Springs ID
June 14, 1978	Mary Kathleen Ekholt	Mary Kathleen Kaiser	Kalispell
June 14, 1978	Derlda M. Finkenbinder	Derlda M. Osborne	Big Timber
June 14, 1978	Opal E. Semenza	O. Semenza	Great Falls
June 14, 1978	Julie K. Small	Julie K. Overstreet	Big Timber
June 14, 1978	Roberta E. Swan	R. Swan	Great Falls
June 15, 1978	Lynette Clareen Schiable	Lynette Clareen Miller	Miles City
June 16, 1978	Cynthia Marie Orf	Cynthia Marie Earp	Miles City
June 26, 1978	Jamie Denise Bauer	Jamie Ann Ingwaldson	Yellowstone Co.
June 26, 1978	Stephanie Jaye Finch	Stephanie Jaye Newman	Yellowstone Co.
June 26, 1978	Teressa Diana Marsh	Sheri Lynn Daugherty	Miles City
June 26, 1978	Elphie Ruth Watt	Elphi Ruth Briggs	Miles City
June 30, 1978	Alma Aaron Babcock	Aaron William Hoffenbacker	Butte
June 30, 1978	Mary Louise Edith Babcock	Mary Louise Edith Hoffenbacker	Butte
July 7, 1978	John Szydlowski	John Lawrence Warren	Butte
July 10, 1978	Cody Michael Cornwell	Cody Lynn Cornwell	Glasgow
July 10, 1978	Isabel Genaro Hernandez	Raul Genaro Hernandez	Three Forks
July 11, 1978	Frances M. Gordon	Frances S. Stewart	Crowheart WY
July 12, 1978	Lyda Kay Langford	Lyda Kay Lang	Fergus
July 19, 1978	Elizabeth Rita Hanson	Elizabeth Rita Dyrdahl	Malta
July 20, 1978	Della Parker	Della Parker aka Della Ann Parker	Sunburst
July 25, 1978	Janet Lynne Grouns	Janet Lynne Wollaston	Thompson Falls
Aug. 2, 1978	Rosemary C. Tuma	Rosemary S. Spring	Malta
Aug. 4, 1978	Ronald Eugene Knell	Ronald Eugene Knoell	Butte
Aug. 4, 1978	Roy Kenneth Larson	Roy Kenneth Sipes	Stevensville
Aug. 8, 1978	Eleanore G. Haviland	Eleanore G. Harp	Clark Fork ID
Aug. 14, 1978	Fannie Ledvinka McKnight	Francis Josephine Ledvinka McKnight	Helena
Aug. 18, 1978	Debra Lee Bumgardner	Debra Lee Carlson	Miles City
Aug. 21, 1978	Sean Ross McDermott	Sean Ross Lyle	Butte
Aug. 21, 1978	Kari Rae Netzer	Kerri Rae Natzer Alderson	Florence
Aug. 21, 1978	Rhonda Michelle Netzer	Rhonda Michelle Netzer Alderson	Florence
Aug. 22, 1978	Debra Anne Vaira	Deb Legato, aka Debra Anne Legato	Glendive
Aug. 22, 1978	Lee Ann J. Wagle	Lee Anne Jennifer Hollow	Helena
Aug. 23, 1978	Vicky L. Lieberg	Vicky L. Fredrickson	Malta
Aug. 24, 1978	Jeanne E. Schoeneck	Jeanne Jones	Missoula
Aug. 25, 1978	Anthony Thomas Bouley	Anthony Thomas Lewis	Butte
Aug. 25, 1978	Catherine Colleen Ignatowiz	Catherine Colleen Lewis	Butte
Aug. 25, 1978	Kathleen Marie McDaniel	Kathleen Marie Strombeck	Billings
Aug. 25, 1978	James Thomas Stauduhar a/k/a Thomas James Stauduhar	Marcus Tom Stauduhar	Butte
Aug. 28, 1978	Karley Danielle Johnson	Karley Danielle Sura	Glendive
Aug. 31, 1978	LaVonne Madaleva Belcourt	LaVonne Madaleva Lack	Milltown
Sept. 1, 1978	Douglas Grant Mundy	Douglas Grant Hicklin	Yellowstone Co.
Sept. 7, 1978	Donald Richard Fisher	Richard Clint Krantz	Missoula
Sept. 7, 1978	Bradley Wayne Trickel	Brad Trickel Farnsworth	Missoula
Sept. 8, 1978	Denise June Parker	Denise June Kline	Sunburst
Sept. 8, 1978	Larry Dean Parker	Larry Dean Kline	Sunburst
Sept. 11, 1978	Pamela Jean Gallegos	Pamela Jean Kinsey	Terry
Sept. 11, 1978	Cynthia Marie Jones	Cynthia Marie Faist	Billings
Sept. 11, 1978	Gregg Allan Parker	Gregg Allan Kline	Hill County
Sept. 11, 1978	Bret Carlton Zdrojek	Bret Carlton Bennett	Billings
Sept. 13, 1978	Brian Clark Zdrojek	Brian Clark Bennett	Billings
Sept. 18, 1978	Myrtle S. Kelso	Myrtle S. Peterson	Columbus
Sept. 19, 1978	Cathy J. Best	Cathy J. Ellison	Harlowton
Sept. 19, 1978	Anita Lynn Daniels	Anita Lynn Brown	Fairfield
Sept. 19, 1978	Leah Edwards	Leah Allen	Power
Sept. 19, 1978	Wiley Cornelius Edwards	Ray Allen	Power
Sept. 21, 1978	Robin McKinney Cantin	Robin McKinney	Big Timber
Sept. 21, 1978	Camille Christine Glessner	Camille Christine Beavers	Missoula

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CHANGES IN NAMES DECREED IN 1978

Date of Judgment	Original Name	Name Decreed	Residence
Sept. 21, 1978	Jannie Jo Beavers Glessner	Jannie Jo Beavers	Missoula
Sept. 21, 1978	Kimberly JoAnn Glessner	Kimberly JoAnn Beavers	Missoula
Sept. 25, 1978	Clyde Christian Baker	Clyde Baker Thiel	Yellowstone Co.
Sept. 26, 1978	Kim L. Donathan	Kim L. Miller	McCook NE
Oct. 4, 1978	Richard Edward Many White Horses	Edward James Lewis	Glacier County
Oct. 6, 1978	Stephen Troy Walker	Stephen Troy Merrifield	Yellowstone Co.
Oct. 10, 1978	Laura J. Chenoweth	Laura J. Allen	Trout Creek
Oct. 10, 1978	Douglas Leary	Douglas McMillan	Butte
Oct. 10, 1978	Barbara J. Young	Barbara J. Fishbaugh	Trout Creek
Oct. 11, 1978	Melinda D. Potter	Melinda Dahlquist	Great Falls
Oct. 19, 1978	Charlene Ann Bailor	Charlene Ann Hustuft	Libby
Oct. 23, 1978	Britt Fred Bischoff	Britt Jess Hougen	Bozeman
Oct. 23, 1978	Debra Ann Bischoff	Debra Ann Hougen	Bozeman
Oct. 24, 1978	Lester Edwin Johnson	Lester Edwin Booth	Thompson Falls
Oct. 24, 1978	Vicki Lynn Rounds	Vikki Lynn Chaffin	Kalispell
Oct. 24, 1978	Carol S. Tanner	Carol S. Woodahl	Thompson Falls
Oct. 27, 1978	Anne Schlesinger Benedetti	Anne Schlesinger Weston	Helena
Oct. 27, 1978	Mark Stephen Benedetti	Mark Stephen Weston	Helena
Oct. 27, 1978	Thomas Russel Kidder	Thomas Russel Anderson	Stevensville
Oct. 30, 1978	DeWayne Jay Lyon	DeWayne Jay Westfall	Bozeman
Oct. 30, 1978	Douglas John Lyon	Douglas John Westfall	Bozeman
Nov. 1, 1978	Mary Lou Keith	Mary Lou Gibson	Miles City
Nov. 8, 1978	Matthew Emmett Dooley III	Tracy Matthew Emmett Dooley	Polson
Nov. 13, 1978	Dorothy Mae Riggs	Dorothy Mae Kimball	Miles City
Nov. 14, 1978	Lonny C. Schauch	Lonny C. Desimone	Lakewood CO
Nov. 15, 1978	Bridget Vincent Reilly	Bridget Mary Carson	Marion
Nov. 15, 1978	Andrea Lea Sigsworth	Andrea Lea Stephens	Billings
Nov. 15, 1978	Marilyn Stephens Sigsworth	Marilyn Gaye Stephens	Yellowstone Co.
Nov. 15, 1978	Paula Diane Sigsworth	Paula Diane Stephens	Yellowstone Co.
Nov. 15, 1978	Philip Aaron Sigsworth	Philip Aaron Stephens	Yellowstone Co.
Nov. 20, 1978	Joy Koell Hatch	Joy Koell Majors	Miles City
Nov. 27, 1978	Ruth Ann Wilson	Ruth Ann Attebury	Bozeman
Nov. 28, 1978	Cathleen Ann Smith	Khathee Ann Smith	Butte
Nov. 30, 1978	Tracy Jo Marry	Tracy Jo Jasperson	Missoula
Dec. 5, 1978	Leon Czerny	Leon Steven Rossman	Kalispell
Dec. 6, 1978	Lily E. Pavlish	Lily E. Scheitlin	Terry
Dec. 8, 1978	Marie-Therese Lee	Miese Holmes	Butte
Dec. 11, 1978	Alfred Dean R. Edwards	Dean R. Edwards	Lincoln Co.
Dec. 12, 1978	Zoeann Jones	Zoeann Olson	Malta
Dec. 12, 1978	Mary Lynn Rowe	Mary Lynn VanDerhoff	Paradise
Dec. 13, 1978	David Michael Poor	David Michael Nickovich	East Helena
Dec. 13, 1978	Paula Ann Poor	Paula Ann Nickovich	East Helena
Dec. 13, 1978	Shauna Micheall Poor	Shauna Michell Nickovich	East Helena
Dec. 13, 1978	Stanley Russell Willis	Troy Russell Willis	Ronan
Dec. 14, 1978	Bruce Emmitt O'Donnell	Bruce Emmitt Woodruff	Helena
Dec. 15, 1978	Barbara Jean Miller	Barbara Jean Kniefel	Billings
Dec. 15, 1978	Bernard Edward Miller	Bernard Edward Kniefel	Billings
Dec. 15, 1978	Denise Lynn Miller	Denise Lynn Kniefel	Billings
Dec. 15, 1978	Mark Alan Miller	Mark Alan Kniefel	Billings
Dec. 18, 1978	Susan Jean Holter	Susan Jean Kateley	Miles City
Dec. 19, 1978	Sheryl Eloise Herren Davis	Sheryl Eloise Herren	Helena
Dec. 20, 1978	Jan Martinson Dschaak	Jan Eileen Martinson	Billings
Dec. 21, 1978	Nureet Ruth Libeskind	Nureet Ruth Libeskind Hadas	Missoula
Dec. 21, 1978	Ran Libeskind	Ran Libeskind Hadas	Missoula
Dec. 21, 1978	Erma Jean Lichter	Erma Jean Wolverton	Reedpoint
Dec. 21, 1978	Cheryl A. Satra	Cheryl Ann Scott	St. Ignatius
Dec. 21, 1978	Shara Dee Ward	Shara Dee Close	Deer Lodge
Dec. 21, 1978	Shawna Cher-rie Ward	Shawna Cher-rie Close	Deer Lodge
Dec. 21, 1978	Tawna Sue Ward	Tawna Sue Close	Deer Lodge
Dec. 22, 1978	Mary Lucille Crumbaker	Mary Lucille Crumbaker-Smith	Butte
Dec. 22, 1978	Thomas Henry Smith	Thomas Henry Crumbaker-Smith	Butte
Dec. 27, 1978	Dona Bloom	Dona Harvey	Plains
Dec. 27, 1978	Dwayne Dick	Dwayne Taylor	Rock Springs
Dec. 27, 1978	Wilma Bernice Rooney	Wilma Bernice Dodge	Miles City
Dec. 28, 1978	Jessica Lynn Conley	Jessica Lynn Karjala	Geyser

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